

# FY14 NDAA Revisions to Article 32, UCMJ

	Name & Recording	Purpose	Burden of Proof	Presiding Official	Rights of Accused	Witnesses, Including Victims
Before 26 Dec 14	<p>Pretrial Investigation</p> <p>Recording: Not required</p>	<ul style="list-style-type: none"> <li>• Thorough and impartial investigation</li> <li>• Shall include inquiry as to the truth of the matter set forth in the charges</li> <li>• Consideration of the form of the charges</li> <li>• Recommendation as to the disposition</li> </ul> <p><i>See also RCM 405(a) Discussion ("The investigation also serves as a means of discovery.")</i></p>	<p><b>Reasonable grounds</b> to believe that the accused committed the offenses alleged</p>	<p><b>Investigating Officer</b></p> <ul style="list-style-type: none"> <li>• Commissioned officer who is not the accuser</li> <li>• <i>But</i>, current DoD Policy requires a judge advocate for sexual assault offenses</li> </ul>	<ol style="list-style-type: none"> <li>1. Advised of charges</li> <li>2. Represented by counsel</li> <li>3. Full opportunity to (1) cross-examine witnesses against if they are available and (2) to present anything he may desire in his own behalf and IO shall examine available witnessed requested by the accused</li> </ol> <p><i>See also RCM 405(f)</i></p>	<p>Any witness whose testimony is relevant shall be produced if reasonably available</p>
On/After 26 Dec 14*	<p>Preliminary Hearing</p> <p>Recording: Required</p>	<ul style="list-style-type: none"> <li>• Determine whether probable cause to believe offense was committed and accused committed offense</li> <li>• Determine whether convening authority has court-martial jurisdiction over the offense and the accused</li> <li>• Consider form of charges</li> <li>• Recommend disposition of case</li> </ul>	<p><b>Probable cause</b> to believe the offense was committed and the accused committed the offense</p>	<p><b>Hearing Officer</b></p> <ul style="list-style-type: none"> <li>• Impartial judge advocate, whenever practicable, who shall be equal to or senior in grade to trial and defense counsel</li> </ul>	<ol style="list-style-type: none"> <li>1. Advised of charges</li> <li>2. Represented by counsel</li> <li>3. May cross-examine witnesses and present additional evidence in defense and mitigation, relevant to the limited purposes of the hearing</li> </ol>	<p>Victims are not required to testify</p> <ul style="list-style-type: none"> <li>• If victim declines to testify, will be deemed to be not available</li> <li>• Victim may request recording and shall have access in accordance with MCM</li> </ul>

\* The revisions will only apply to hearings involving offenses committed on or after December 26, 2014. Therefore both versions of Art. 32 proceedings will be used. On September 18, 2014, Senator McCaskill submitted an amendment, SA 3919, for the new procedures to apply to all Article 32 proceedings held after December 26, 2014, however the FY15 NDAA never went to the Senate floor. It is to be determined whether the FY15 NDAA will address this issue.