

Military Rule of Evidence 412 at Article 32 Preliminary Hearing

FY13 NDAA – JPP TASK 1: Review and assess those instances in which prior sexual conduct of the alleged victim was considered in an Article 32, and any instances in which prior sexual conduct was determined to be inadmissible.

FY14 NDAA – Revises Art. 32 to be a preliminary hearing with 4 purposes:

1. probable cause determination;
2. jurisdiction determination;
3. form of charges review; and
4. disposition recommendation.

The revised Article also grants victims the right to refuse to testify.

E.O. 13669 – Modifies R.C.M. 405 (Art. 32 preliminary hearings) by clarifying the authority and procedures to be used by Art. 32 preliminary hearing officers (PHO) and implements the FY14 NDAA Art. 32 changes.

E.O. 13696 – Eliminated the “constitutionally required” exception to M.R.E. 412 at Art. 32 preliminary hearings (JPP supported this proposal in its initial report).

FY16 NDAA – Expands Art. 6b (Victims’ Rights) to allow victims to appeal a M.R.E. 412 preliminary hearing ruling to the Court of Criminal Appeals (CCA).



JPP receives public meeting presentations about the application of M.R.E. 412 at Art. 32 preliminary hearings.

JPP Initial Report with a chapter on M.R.E. 412/513 and two continuing tasks for the JPP:

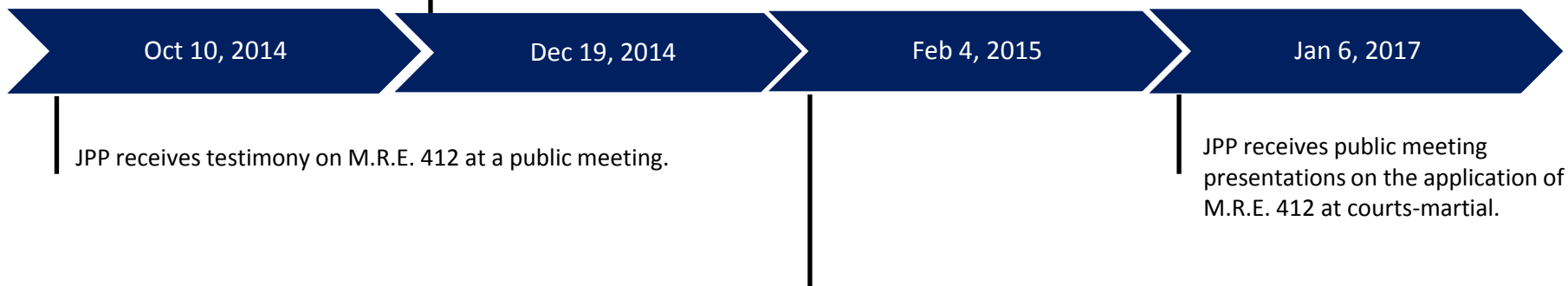
- 1. Continue to monitor M.R.E. 412 issues at Art. 32 preliminary hearings in light of recent changes.**
- 2. Monitor how the PHOs carry out their duties in conducting M.R.E 412 hearings and making evidentiary rulings.**

JPP receives public meeting presentations on M.R.E. 412.

Military Rule of Evidence 412 at Courts-Martial

FY13 NDAA – JPP TASK 2: Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in courts-martial and what impact that evidence had on the case.

FY15 NDAA – Amends Article 6b (Victims' Rights) to authorize victims to petition the CCA for a writ of mandamus to compel compliance with M.R.E. 412 at court-martial.



JPP receives testimony on M.R.E. 412 at a public meeting.

JPP receives public meeting presentations on the application of M.R.E. 412 at courts-martial.

JPP Initial Report with a chapter on M.R.E. 412/513. The JPP:

- 1. Stated an intent to receive additional evidence, including how the rule is being applied in practice, before providing recommendations related to the “constitutionally required” exception in M.R.E. 412.**
- 2. Stated an intent to complete its statutory task of reviewing records that deal with M.R.E. 412 issues.**

Military Rule of Evidence 513 at Article 32 Preliminary Hearings and Courts-Martial

FY15 NDAA – JPP Task 3: Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under the U.C.M.J., by the accused during the preliminary hearing conducted under Article 32 and during court-martial proceedings, as compared to the use of similar records in civilian criminal legal proceedings. JPP shall include the results of the review in “one of the reports required” by the FY13 NDAA.

FY14 NDAA – Revises Art. 32 to be a preliminary hearing with 4 purposes:

1. probable cause determination;
2. jurisdiction determination;
3. form of charges review; and
4. disposition recommendation.

The revised Article also grants victims the right to refuse to testify.

E.O. 13669 – Modifies R.C.M. 405 by clarifying the authority and procedures to be used by Art. 32 PHO and implements the FY14 NDAA changes to Art. 32.

FY15 NDAA (Effective Jun 17, 2015) significant revisions to M.R.E. 513, including:

1. elimination of the “constitutionally required exception” (applies at both Art. 32 preliminary hearings and courts-martial);
2. a higher burden of proof on the party seeking production or admission;
3. limitation on *in camera* reviews; and
4. a requirement for production orders to be “narrowly tailored.”

E.O. 13696 – Implemented the FY15 NDAA revisions to M.R.E. 513. The PHO is not authorized to order production of M.R.E. 513 communications.

FY16 NDAA – Expands Art. 6b (Victims’ Rights) to allow victims to appeal a M.R.E. 412 preliminary hearing ruling to the CCA.



Dec 26, 2013

Jun 13, 2014

Oct 10, 2014

Dec 19, 2014

Feb 4, 2015

Jun 17, 2015

Nov 25, 2015

Jan 6, 2017

JPP receives public meeting presentations on M.R.E. 513.

JPP Initial Report with a chapter on M.R.E. 412/513 and three continuing tasks for the JPP:

- 1. The JPP will continue to monitor M.R.E. 513 issues in Article 32 hearings in light of recent changes.**
- 2. The JPP will continue to monitor how M.R.E. 513 matters are addressed by military judges in light of the FY15 NDAA changes.**
- 3. The JPP recommended that the Secretary of Defense should issue specific, uniform guidance on access to mental health records. The JPP intends to continue to assess this issue in order to provide additional comments and recommendations.**

JPP hears testimony about the recent application of M.R.E. 513 at Art. 32 preliminary hearings and courts-martial.

Prepared by JPP Staff, January 5, 2017