

# **Report on Protections for Prospective Members and New Members of the Armed Forces During Entry-Level Processing and Training**



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## **Report on Protections for Prospective Members and New Members of the Armed Forces During Entry-Level Processing and Training**

In accordance with section 1741(d) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 (P.L. 113-66), the Department of Defense provides this report on whether a new Uniform Code of Military Justice (UCMJ) punitive article is required to address violations of the Military Services' policies protecting prospective members and new members of the Armed Forces during entry-level processing and training from inappropriate and prohibited relationships, communication, conduct, or contact.

### **Summary**

The Department of Defense is committed to ensuring that all service members treat potential recruits and entry-level personnel in a professional and appropriate manner. This has been a point of emphasis within the Department, especially in the wake of several incidents in which those with control over prospective or new members of the military abused their positions to perpetrate criminal acts on those under their charge. The Department of Defense and the Military Departments will continue to train service members on appropriate and inappropriate relationships and forbidden behavior with recruits and entry-level personnel, emphasize the importance of adhering to standards, and hold those who violate those standards appropriately accountable.

Experience demonstrates that statutes and regulations are in place to hold offenders appropriately accountable when prospective and new members of the military are victimized by service members who exercise control over them. Violations of those regulations and orders are punishable as violations of Article 92 of the UCMJ, 10 U.S.C. § 892 (2012). The maximum punishment for each violation of a lawful general order is a dishonorable discharge, forfeiture of all pay and allowances, and confinement for two years. Some of the conduct that violates those regulations and orders is also punishable as a violation of, among other UCMJ provisions, Article 93, 10 U.S.C. § 893 (2012), which prohibits cruelty and maltreatment. The maximum punishment for each Article 93 violation is a dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year. Other punitive articles, including Articles 120 and 120c, which proscribe rape, sexual assault, and other sexual offenses; Article 128, which proscribes assault; Article 133, which proscribes conduct unbecoming an officer; and Article 134, which proscribes conduct prejudicial to good order and discipline or of a nature to discredit the Armed Forces, may also apply to inappropriate relationships and behavior between supervisory personnel and individuals undergoing entry-level processing or training.

Because the UCMJ already criminalizes conduct that violates the policy set out in section 1741(a) of the NDAA for FY 2014, a new UCMJ article addressing such violations is not required.

## Current Law and Regulations

### A. Section 1741's Requirement for Service Regulations Prohibiting Certain Misconduct

Section 1741 of the NDAA for FY 2014, entitled "Enhanced Protections for Prospective Members and New Members of the Armed Forces During Entry-Level Processing and Training," establishes certain requirements for the Secretaries of each of the Military Services and of Homeland Security with respect to the Coast Guard.

1. Section 1741(a) requires the Services to maintain policies defining and proscribing inappropriate and prohibited relationships, communications, conduct, and contact, including when such an action is consensual, between:

a. a member of the Armed Forces who exercises authority or control over, or supervises, a member of the Armed Forces undergoing entry-level processing or training, and a member of the Armed Forces undergoing entry-level processing or training; and

b. a member of the Armed Forces and a prospective member of the Armed Forces.

2. Section 1741(b) requires that any member of the Armed Forces who engages in the conduct described by section 1741(a) be subject to prosecution under the UCMJ; and

3. Section 1741(c) requires that a member who engages in a substantiated violation of the policy described in section 1741(a) who is not otherwise punitively discharged or dismissed from the Armed Forces for that violation be processed for administrative separation.

### B. Existing Service Regulations

Each Service currently maintains its own punitive regulations defining and proscribing certain prohibited relationships among service members, to include superior-subordinate, trainer-trainee, and recruiter-recruit relationships. As these regulations are all signed by flag or general officers, violation of these regulations by service members is punishable under Article 92, UCMJ, as a failure to obey a lawful general order.

1. Air Force – Prohibition of these types of relationships in the Air Force is covered primarily by Air Force Instruction (AFI) 36-2909, *Professional and Unprofessional Relationships* (1 May 1999), and its Air Education and Training Command (AETC) supplement, AETC Instruction (AETCI) 36-2909, *Recruiting, Education and Training Standards of Conduct* (2 December 2013).

a. AFI 36-2909 defines unprofessional relationships generally as relationships that "detract from the authority of superiors or result in, or reasonably create the appearance of, favoritism, misuse of office or position, or the abandonment of organizational goals for personal interests." These relationships can exist between officers, between enlisted members, between officers and enlisted members, and between military personnel and civilian employees or contractor personnel. Para. 2.2. The instruction further generally proscribes unprofessional

relationships by recruiting, basic military training and initial technical training, and other training and education personnel by prohibiting, “at a minimum”:

- i. Engaging in dating and social relationships with applicants, trainees, or students;
- ii. Making sexual advances toward or accepting sexual advances from applicants, trainees, or students;
- iii. Engaging in, or seeking to engage in, sexual activity or sexual relationships with applicants, trainees, or students;
- iv. Using grade, position, threats, pressure, or promises to attain or attempt to attain any personal benefit of any kind from applicants, trainees, or students; and
- v. Gambling with, lending money to, borrowing money from, becoming indebted to, or soliciting donations from an applicant, trainee, or student. Para. 3.5.

These limitations also govern relationships with the immediate family members of applicants, trainees, and students.

The instruction includes an explicit prohibition against fraternization between officers and enlisted members. Para. 5.1. Any unprofessional relationship not defined as fraternization may still be punished if the offender was ordered to cease engaging in the proscribed conduct.

b. All Air Force recruiting, basic training, and technical training personnel, as well as cadets, fall under the purview of AETC. Therefore, the proscription against unprofessional relationships involving these groups in AETCI 36-2909 facilitates punishment of violations of the policy set out in section 1741(a) of the NDAA for FY 2014. That regulation prohibits faculty, staff, and recruiters from engaging in consensual but unprofessional relationships with trainees, cadets, students, recruits, recruiters’ assistants, and Airmen in entry-level status. This prohibition continues throughout all periods of accession, training and instruction, including periods when personnel are awaiting basic military or initial skills training and periods when personnel have been eliminated from basic military or initial skills training and are awaiting discharge or reclassification. It also includes the entire period of entry-level status for enlisted personnel, regardless of their training status. Chap. 2. In addition to the general prohibition, AETCI 36-2909 enumerates dozens of specific acts prohibited between specified individuals.

i. Para. 2.3.2 prohibits:

(a) The faculty and staff from engaging in prohibited activities with applicants, recruits, trainees, cadets, students, Entry Level Status (ELS) Airmen, and/or their immediate family members;

(b) Trainees, cadets, students, and ELS Airmen assigned to AETC from engaging in prohibited activities with faculty, staff, recruiters, and/or their immediate family members;

(c) Recruiters from engaging in prohibited activities with recruits, applicants, Airmen in the Recruiter’s Assistant Program (RAPpers), trainees, cadets, students in initial skills training, ELS Airmen, and/or their immediate family members; and

(d) RAppers from engaging in prohibited activities with recruiters, recruits, applicants, and/or their immediate family members.

ii. Para. 2.3.3 identifies the following activities as prohibited for parties identified in para. 2.3.2:

- (a) Engaging in personal social contact by any means;
- (b) Developing, establishing, or carrying on personal social relationships;
- (c) Establishing, developing, or conducting intimate or sexual relationships;
- (d) Making sexual advances or seeking or accepting sexual favors;
- (e) Using one's grade or position, threats, pressure, or promises of return favors or favorable treatment to gain, or attempt to gain, sexual favors;
- (f) Establishing a common household where military operations do not reasonably require the sharing of living accommodations;
- (g) Soliciting donations, except for official Air Force campaigns or pursuant to approved fundraisers;
- (h) Gambling, lending money, borrowing money, or otherwise becoming indebted;
- (i) Accepting personal goods for storage or any other reason; and
- (j) Accepting personal services for any reason, even if for compensation.

The regulation also prohibits basic military training instructors from attending technical training graduations without prior written approval from their command and prohibits recruiters from attending basic military training or technical training graduations without prior written approval from their squadron commander.

iii. Paragraph 5.2 imposes additional prohibitions on recruiting personnel. It is a violation for them to:

- (a) Conceal, advise an applicant/recruit or other person to conceal, or conspire with an applicant/recruit or other person to conceal disqualifying factors;
- (b) Take any action to qualify an ineligible applicant/recruit in violation of directives;
- (c) Take any action to mislead or misinform a prospect or applicant/recruit regarding any aspect of recruiting policies, procedures, entitlements, or benefits;
- (d) Provide misinformation designed to induce an applicant/recruit to apply for or accept enlistment, commissioning, or appointment;
- (e) Advise applicants/recruits regarding the transfer of dependent custody or changing marital status for the purpose of entry into the Air Force;
- (f) Violate any other recruiting policy or procedure that results in the processing or enlistment, commissioning, or appointment of an ineligible applicant/recruit;
- (g) Initiate or participate in any action to influence lawyers, attorneys, law enforcement officials, or judicial authorities to release, dismiss, drop charges, or otherwise mitigate dispositions to qualify an individual for Air Force enlistment, commissioning, or appointment. Recruiting personnel will not accompany applicants or recruits to court for any reason;

(h) Purchase, use, or give advice regarding any type of drug testing product to attempt to determine an applicant's or recruit's qualifications;

(i) Release any applicant/recruit information to agencies or persons outside of the DoD. Instead, recruiting personnel will refer all inquiries or requests for such information to their Recruiting Squadron commander;

(j) Make statements that imply the Air Force will take legal action against an applicant/recruit who refuses to enter active duty or extended active duty;

(k) Become involved in, or otherwise assist in, general educational development (GED) testing of individuals beyond advising them to contact the nearest state education official authorized to administer the GED test;

(l) Sponsor an alien for permanent residence in the United States by citing the Air Force as a prospective employer. Additionally, recruiting personnel will not recruit in a foreign country unless invited by the foreign government; or

(m) Engage in recruiting irregularities. A "recruiting irregularity" is defined as any other failure to follow recruiting procedures not covered under AETCI 36-2909 that causes a prospect, applicant, or recruit to be misinformed about any aspect of the recruiting or enlistment process, policies, procedures, entitlements, and benefits.

2. Army – The Army prohibits trainers from engaging in the conduct described by section 1741(a) of the NDAA for FY 2014 via Army Training and Doctrine Command (TRADOC) Regulation 350-6, *Enlisted Initial Entry Training Policies and Administration*. The Army separately prohibits recruiters from engaging in the conduct described by section 1741(a) of the NDAA for FY 2014 via U.S. Army Recruiting Command (USAREC) Regulation 600-25, *Prohibited and Regulated Activities*.

a. Army Regulation 600-20, *Army Command Policy*, is a punitive regulation that prohibits relationships between Soldiers of different rank, between Soldiers and trainees, and between recruiters and recruits. Paragraph 4-14 prohibits relationships that:

i. Compromise, or appear to compromise, the integrity of supervisory authority or the chain of command;

ii. Cause actual or perceived partiality or unfairness;

iii. Involve, or appear to involve, the improper use of rank or position for personal gain;

iv. Are, or are perceived to be, exploitative or coercive in nature; or

v. Create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission.

Certain types of personal relationships between officers and enlisted personnel are prohibited. They include:

i. Ongoing business relationships between officers and enlisted personnel. This prohibition does not apply to landlord/tenant relationships or to one-time transactions such as the sale of an automobile or house, but does apply to borrowing or lending money, commercial solicitation, and any other type of ongoing financial or business relationship. In the case of

Army National Guard or Reserve personnel, this prohibition does not apply to relationships that exist due to the individuals' civilian occupation or employment;

ii. Dating, shared living accommodations other than those directed by operational requirements, and intimate or sexual relationships between officers and enlisted personnel. This prohibition does not apply to—

(a) Marriages. When evidence of fraternization between an officer and enlisted member prior to their marriage exists, their marriage does not preclude appropriate command action based on the prior fraternization. Commanders have a wide range of responses available including counseling, reprimand, orders to cease, reassignment, administrative action, or adverse action. Commanders must carefully consider all of the facts and circumstances in reaching a disposition that is appropriate. Generally, the commander should take the minimum action necessary to ensure that the needs of good order and discipline are satisfied;

(b) Situations in which a relationship that complies with the fraternization policy would move into non-compliance due to a change in status of one of the members (for instance, a case where two enlisted members are dating and one is subsequently commissioned or selected as a WO). In relationships where one of the enlisted members has entered into a program intended to result in a change in his or her status from enlisted to officer, the couple must terminate the relationship permanently or marry within either one year of the actual start date of the program or before the change in status occurs, whichever occurs later;

(c) Personal relationships between members of the National Guard or Army Reserve, when the relationship primarily exists due to civilian acquaintanceships, unless the individuals are on active duty (other than active duty for training), on fulltime National Guard duty (other than active duty for training), or serving as a dual status military technician; or

(d) Personal relationships between members of the regular Army and members of the National Guard or Army Reserve when the relationship primarily exists due to civilian association and the Reserve component member is not on active duty (other than active duty for training), on fulltime National Guard duty (other than active duty for training), or serving as a dual status military technician; and

iii. Gambling between officers and enlisted personnel.

Paragraph 4-15 prohibits other relationships that include –

i. *Trainee and Soldier relationships.* Any relationship between permanent party personnel and initial entry training trainees not required by the training mission is prohibited. This prohibition applies to permanent party personnel without regard to the installation of assignment of the permanent party member or the trainee;

ii. *Recruiter and recruit relationships.* Any relationship between permanent party personnel assigned or attached to USAREC and potential prospects, applicants, members of the Delayed Entry Program (DEP), or members of the Delayed Training Program not required by the recruiting mission is prohibited. This prohibition applies to USAREC personnel without regard to the unit of assignment of the permanent party member and the potential prospects, applicants, DEP members, or Delayed Training Program members; and

iii. *Training commands.* Training commands (for example, the U.S. Army Training and Doctrine Command (TRADOC) and the Army Medical Department Center) and

USAREC are authorized to publish supplemental regulations to paragraph 4–15, which further detail proscribed conduct within their respective commands.

b. TRADOC Regulation 350-6, Paragraph 2-6, titled “Trainee abuse and prohibited practices,” provides the following categories of inappropriate conduct: trainee abuse, hazing, sexual harassment, and prohibited relationships. The regulation specifically notes that any trainee abuse, hazing, sexual harassment, and prohibited relationships with or among soldiers in initial entry training is forbidden in accordance with Army Regulation 600-20 and punishable under the UCMJ.

c. USAREC Regulation 600-25, Chapter 2 lists activities that are prohibited between recruiters and contacts, prospects, and/or applicants, including:

- iii. Personal employment (e.g., babysitting);
- iv. Any conduct, activity, or relationship that involves or appears to involve partiality or unfairness;
- v. Any conduct, activity, or relationship that involves an actual or apparent improper use of rank or position for personal gain, such as borrowing money from subordinates;
- vi. Any conduct, activity, or relationship that creates an actual or clearly predictable adverse impact on discipline, authority, or morale;
- vii. Any conduct, activity, or relationship that violates the Army’s buddy system policy, currently defined as requiring, during the recruiting process, at least one qualifying person be present at all times whenever a recruiter meets with a prospect, applicant, or future soldier of the opposite gender;
- viii. Sexual harassment as defined in Army Regulation 600-20; and
- ix. Possession, storage, display, distribution, mailing, e-mailing, production, or receiving of pornography or related paraphernalia in a government vehicle, government computer, recruiting station, any headquarters facility, or any other property controlled, owned, or leased by USAREC.

3. Navy – Prohibited relationships between Naval personnel are based on customs and traditions of the naval service and are covered by several distinct but overlapping instructions and regulations.

a. Fraternalization is primarily covered by section 1165 of the U.S. Navy Regulations, 1990, which prohibits unduly familiar relationships between officer members and enlisted members that do not respect differences in grade or rank and, when prejudicial to good order and discipline or of a nature to bring discredit on the naval service, prohibits unduly familiar relationships that also do not respect differences in grade or rank among officers or among enlisted members. Navy Regulation 1165 specifically indicates that prejudice to good order and discipline may result from circumstances which:

- i. Call into question a senior’s objectivity;
- ii. Result in actual or apparent preferential treatment;
- iii. Undermine the authority of a senior; or
- iv. Compromise the chain of command.

b. A Chief of Naval Operations Instruction (OPNAVINST 5370.2C (26 Apr 2007)) reinforces section 1165 of the Navy Regulations, but also expands its scope to specifically preclude “personal relationships which are unduly familiar between staff/instructors and student personnel within Navy training commands, and between recruiting personnel and prospects, applicants, or Delayed Entry Program (DEP) personnel that do not respect differences in grade, rank or the staff/student relationship....”

c. Multiple Navy Recruit Training Command Instructions (NAVCRUITRACOMINST) address issues of fraternization between Navy recruits and staff instructors who interact with them at recruit training (Great Lakes):

i. NAVCRUITRACOMINST 1600.3 (Mar 19, 2013) reinforces the fraternization prohibition of the Navy Regulations and prohibits unduly familiar relationships that do not respect the “Staff/trainee” status. It establishes standards of conduct for Recruit Training Command (RTC) staff and states, in part, that “any contact that is sexual in nature between Staff and trainees is strictly prohibited and will not be tolerated.” This prohibition applies to “current recruits . . . (and) . . . former recruits until six months after the recruit has completed his or her training pipeline.” Under this instruction, Recruit Division Commanders (RDC) or staff personnel are specifically prohibited from isolating recruits with a single RDC or staff member and the instruction specifically defines the scope of permissible touching of a trainee (correcting position, correcting movement, training demonstration, etc.).

ii. NAVCRUITRACOMINST 5370.3 (May 29, 2013) further enumerates the scope of fraternization and details unduly familiar relationships as specific activities including:

- (a) Arranging or attempting to arrange personal/social encounters;
- (b) Exchanging personal contact information such as email addresses, home addresses, phone numbers, or pager numbers;
- (c) Communicating through any social networking tools such as Twitter, Facebook, Myspace, etc.;
- (d) Engaging in business or other monetary activities including, but not limited to, loans, advertising a personal business, and soliciting others to engage in any business or monetary transaction;
- (e) Dating, cohabitating, engaging in intimate or sexual relations, and/or inappropriate displays of affection; and
- (f) Engaging in any nonprofessional social relationship.

d. Navy Recruiting Command has an additional specific instruction expanding the prohibition against fraternization to its community. COMNAVCRUITCOM 5370.1F (Oct 12 2011) is a punitive instruction that prohibits not only relationships between officer and enlisted personnel and Chief Petty Officers (E7-E9) and junior personnel (E1-E6) within the same command, but also personal relationships “between recruiting personnel and prospects, applicants and Future Sailors.” This instruction establishes strict bounds for the limits of relationships and provides that recruiting personnel shall not:

- i. Form, or attempt to form, a dating or private social relationship with anyone known to be a prospect, applicant, or Future Sailor;
- ii. Allow anyone known to be a prospect, applicant, or Future Sailor to remain in any recruiting office except for official business;
- iii. Allow anyone known to be a prospect, applicant, or Future Sailor to ride in any government vehicle except for official purposes. Recruiting personnel shall not ride in the personal vehicle of anyone known to be a prospect, applicant, or Future Sailor;
- iv. Engage in any consensual sexual act or have any prohibited physical contact with anyone known to be a prospect, applicant or Future Sailor. Prohibited physical contact includes, but is not limited to, caressing, massaging, hugging, kissing, fondling, and holding hands. Authorized physical contact includes, but is not limited to, shaking hands or performing required body fat measurements on a member of the same sex;
- v. Perform body fat measurements on any prospect, applicant, or Future Sailor of the opposite sex;
- vi. Harass any prospect, applicant, or Future Sailor. Harassment includes, but is not limited to:
  - (a) Any language or act which would, measured by an objective standard, constitute cruelty, oppression, or maltreatment under Article 93, Uniform Code of Military Justice, if the victim were subject to the orders of the harasser; and
  - (b) Abusive language which tends to degrade a prospect, applicant, or Future Sailor, whether directed at or used in the presence of such person;
- vii. Use anyone known to be a prospect, applicant, or Future Sailor to provide any benefit, financial or otherwise, for themselves or others;
- viii. Allow or invite any prospect, applicant, or Future Sailor to enter into, operate, or be transported in the privately owned vehicle (POV) of recruiting personnel unless authorized in advance by a POV-use authority approved by the Commanding Officer;
- ix. Gamble with any prospect, applicant, or Future Sailor, including playing any game of skill with money or other things of value at stake;
- x. Solicit or accept, directly or indirectly, anything of value from any source in return for granting favors, privileges, or other preferential treatment to any prospect, applicant, or Future Sailor;
- xi. Solicit or accept, directly or indirectly, anything of value from anyone known to be a prospect, applicant, or Future Sailor;
- xii. Borrow money or any articles of value from, or lend the same to, anyone known to be a prospect, applicant, or Future Sailor;
- xiii. Engage in, or offer to engage in, any unofficial financial or business dealings with anyone known to be a prospect, applicant, or Future Sailor;
- xiv. Photograph or accept any pictures of anyone known to be a prospect, applicant, or Future Sailor other than those required for official purposes;
- xv. Spend the night with anyone known to be a prospect, applicant, or Future Sailor, or allow any such person to spend the night in the same home, apartment, or hotel room without prior command approval;
- xvi. Process for enlistment or appointment any person with whom the recruiting personnel developed a social relationship prior to that person becoming a prospect, applicant, or Future Sailor, or prior to learning that person was a prospect, applicant, or Future Sailor; or

xvii. Enter any portion of an establishment known to be a MEPS lodging and/or meal facility, except that recruiting personnel may enter the main lobby of such a facility when their official duties make it necessary to assist in the proper check-in and check-out of an applicant and/or Future Sailor.

While disciplinary measures are available for any violation of this lawful general order, COMNAVCRUITCOMINST 5370.1F mandates that commanding officers initiate mandatory processing where substantiated allegations of recruiter fraternization with a prospect, applicant, and/or Future Sailor involves consensual sexual acts, intimate physical contact, dating, sexual assault, sexual harassment, and other similar cases of sexual misconduct.

e. Additionally, command-specific regulations and instructions exist that prohibit relationships outside the normal scope of fraternization, but where such relationships would be prejudicial to specific command programs. For example, JAGINST 5370 (Dec 06, 2010) prohibits judge advocate personnel from engaging in personal relationships with Judge Advocate General's Corps prospects consistent with OPNAVINST 5370.2C and the prohibitions in COMNAVCRUITCOMINST 5370.1F. Also, the Commandant of the United States Naval Academy (USNA) has issued COMDTMIDNINST 5400.6Q that specifically prohibits unduly familiar relationships between upper-class midshipmen and 4/C midshipmen (freshmen); midshipmen and USNA staff; midshipmen and enlisted personnel; midshipmen and officers; and other unduly familiar relationships between midshipmen. Violations of any of these regulations or instructions can be punished under Article 92, UCMJ.

4. Marine Corps – As with the Navy, prohibited relationships between Marine personnel are based on customs and traditions of the naval service and are covered by several distinct but overlapping instructions and regulations.

a. Fraternization is primarily covered by section 1165 of the U.S. Navy Regulations, 1990, which prohibits personal relationships between officer members as well as between enlisted members that are unduly familiar, do not respect differences in grade or rank, and are prejudicial to good order and discipline or of a nature to bring discredit on the naval service. This regulation is broader than the prohibition of fraternization in paragraph 83 of Part IV of the Manual for Courts-Martial. The Marine Corps Manual also provides the following: “Professional and personal relationships, including duty, social, and business contacts among Marines of different grades will be consistent with traditional standards of good order and discipline and the mutual respect that has always existed between Marines of senior grade and those of lesser grade. Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank constitute fraternization and are prohibited. When prejudicial to good order and discipline or of a nature to bring discredit on the Marine Corps, personal relationships between officer members or between enlisted members that are unduly familiar and that do not respect differences in grade or rank constitute fraternization and are prohibited. Prejudice to good order and discipline or discredit to the Marine Corps may result from any circumstance which calls into question a senior's objectivity, results in actual or apparent preferential treatment, undermines the authority of the senior, or compromises the chain of command.” Additionally, the Marine Corps Recruit Depot (MCRD)/Western Recruiting Region (WRR) San Diego, CA and MCRD/Eastern Recruiting

Region (ERR) Parris Island, SC have additional general orders that prohibit inappropriate relationships, communications, conduct, or contact between Marines who exercise authority or control over, or who supervise, Marines and prospective members undergoing entry-level processing or training or others under their charge.

b. Protections for Applicants – The WRR or the ERR is the parent command for every Marine recruiter and officer selection officer in the Marine Corps. Both the WRR (Depot Order 1100.4B, “Recruiting Personnel Personal Relations with Members of the Delayed Entry Program (DEP), Prospective Recruit Applicants, And Prospective Officer Candidates”) and ERR (Depot Order 1100.5B, “Relationships between Recruiting Personnel and Prospective Recruit Applicants/Members of the Delayed Entry Program and Pre-Fleet Marines”) have general orders that prohibit recruiting personnel from engaging in, soliciting, or otherwise seeking inappropriate social relationships or sexual relationships with prospective applicants (including officer candidates), members of the delayed entry program, or pre-fleet Marines.

i. MCRD Parris Island Depot Order 1100.5B also lists behaviors that are specifically prohibited, including:

(a) Using the internet, email, or social media such as text or multimedia messaging to communicate with any prospective recruit applicant, member of the DEP, or Pre-fleet Marine in an unprofessional or personal manner not directly related to recruiting;

(b) Financial dealings of any kind with any prospective applicant, member of the DEP, or Pre-fleet Marine;

(c) Engaging in physical contact with any prospective applicant, member of the DEP, or Pre-fleet Marine other than reasonable physical contact in self-defense, or when necessary to protect life, prevent serious physical injury, or carry out administrative activities;

(d) Consuming alcoholic beverages in the presence of, or providing, either directly or through the use of a third party, alcoholic beverages to any prospective applicant, member of the DEP, or Pre-fleet Marine; and

(e) Hosting any prospective applicant, member of the DEP, or Pre-fleet Marine at the home of recruiting personnel for any reason, including “hanging out,” without prior written approval from the Recruiting Station Commanding Officer.

ii. MCRD San Diego Depot Order 1100.4B also lists behaviors that are specifically prohibited, including:

(a) Encouraging, seeking, soliciting, or engaging in sexual relations with members of the DEP, prospective applicants, or prospective officer candidates. This prohibition applies regardless of the consent of the individuals involved;

(b) Financial dealings of any kind with any member of the DEP, prospective recruit applicant, or prospective officer candidate, to include acceptance of services or other gratuities, borrowing or lending money, commercial solicitation, or acting as a broker;

(c) Physical contact with any member of the DEP, prospective recruit applicant, or prospective officer candidate, other than reasonable physical contact necessary to protect life or prevent serious injury, in self-defense, or as a necessary part of administrative activities; and

(d) Providing alcoholic beverages, either directly or through the use of a third party, to any member of the DEP, prospective recruit applicant, or prospective officer candidate, unless previously approved by the applicable Recruiting Station Commanding Officer. Under no circumstances will alcoholic beverages ever be provided to members of the DEP, prospective recruit applicants, or prospective officer candidates who are under 21 years of age.

c. Protections for Recruits and Entry-Level Trainees – Marine Corps Training Command is the parent command for MCRDs Parris Island and San Diego and for every Marine unit that conducts follow-on military occupational specialty (MOS) training for new Marines. Training Command General Order 01-03 states: “Permanent personnel and student personnel will not, while on duty or in leave or liberty status, associate with each other in an informal, personal or intimate manner which reflects a familiarity that is inappropriate for the workplace. Permanent personnel and student personnel will not engage in any conduct that creates an actual or perceived conflict of interest between their military duties and their personal activities.” Marine Corps Order 1510.32F also provides that: “All who are associated with recruit training must ensure this vital process is conducted in a professional manner. Hazing, maltreatment, abuse of authority or other illegal alternatives to leadership are counterproductive practices and are expressly forbidden. Marines in supervisory positions are strictly charged to treat all recruits firmly, fairly, with dignity and compassion. Leaders/supervisors will be held accountable for their actions.” Further, the MCRDs have additional general orders that prohibit nonprofessional social or personal relationships between permanent personnel and recruits or new Marines who are awaiting orders to their follow-on school.

### C. Uniform Code of Military Justice

Engaging in the conduct described by section 1741(a) of the NDAA for FY 2014 may be punished under several punitive articles of the UCMJ, including:

1. Article 92 – *Failure to obey a lawful order or regulation*. Service members who violate a punitive regulation may be punished under Article 92(1) for failure to obey a lawful general order or regulation. So long as the punitive regulation is lawful, knowledge is imputed to the service member and is not an element of the offense. *See* MANUAL FOR COURTS-MARTIAL, UNITED STATES, Pt. IV, ¶ 16.c.(1)(d) (2012 ed.). Even if the Service regulation is not punitive, service members who violate it may still be held accountable under Article 92(3) for either willful or negligent dereliction of duty. While knowledge is a required element for prosecutions involving willful dereliction of duty, negligent dereliction of duty may be proven “if the individual reasonably should have known of the duties.” *Id.*, ¶ 16.c.(3)(b). The maximum punishment for failing to obey a lawful general order or regulation includes dismissal (in the case of an officer) or a dishonorable discharge (in the case of an enlisted member) and confinement for two years. The maximum punishment for willful dereliction of duty includes a bad-conduct discharge (or a dismissal in the case of an officer) and confinement for six months. The maximum punishment for negligent dereliction of duty includes a dismissal in the case of an officer (but no punitive discharge in the case of an enlisted member) and confinement for three months.

2. Article 93 – *Cruelty and maltreatment*. Article 93 proscribes cruelty toward, oppression of, or maltreatment of any person subject to the accused’s orders. While this provision is clearly applicable to service members in a training environment, it is inapplicable where military recruiters engage in the conduct described in section 1741(a) involving civilians who are being recruited to become members of the Armed Forces, as they do not have a duty to obey the orders of any member of the Armed Forces. The maximum punishment for violating Article 93 includes dismissal or a dishonorable discharge and confinement for one year.

3. Article 120 – *Rape and sexual assault generally*. Article 120 includes several offenses, the maximum authorized confinement for which ranges from seven years for abusive sexual contact to life without eligibility for parole for rape. All Article 120 offenses carry the possibility of a dismissal for an officer or dishonorable discharge for an enlisted member.

4. Article 120c – *Other sexual misconduct*. Under Article 120c, misconduct such as unlawfully viewing, recording, or broadcasting the exposed body of a victim or exposing the accused’s own body to the victim may be punished by court-martial. The maximum punishment includes dismissal or a dishonorable discharge and confinement ranging from one to seven years, depending on the particular offense.

5. Article 128 – *Assault*. Misconduct involving unwelcome touching or threats to touch can be prosecuted under Article 128/. The maximum punishment for an assault consummated by a battery includes a bad-conduct discharge (or dismissal in the case of an officer) and confinement for six months.

6. Article 133 – *Conduct unbecoming an officer and gentleman*. All officers have a duty to refrain from behavior that seriously compromises their character as an officer. This offense is often charged separately from the actual underlying misconduct. The maximum punishment includes a dismissal and confinement analogous to the maximum term of confinement for the underlying misconduct.

7. Article 134 – *General article*. Any misconduct deemed to be prejudicial to good order and discipline or service discrediting may be charged as a violation of Article 134. In Part IV of the Manual for Courts-Martial, the President has specifically enumerated 53 offenses under Article 134, several of which may apply to the conduct described by section 1741(a) of the NDAA for FY 2014.

## **Conclusion**

The foregoing authorities demonstrate that there is no need to amend the UCMJ to create a new article prohibiting inappropriate relationships, communication, conduct, or contact between those in entry-level processing or training and service members who exercise control over them. The UCMJ already provides the Services with ample tools to appropriately address such misconduct.