

## *Summary of Major Legislative Proposals*

The MJRG's proposals for amendments to the UCMJ generally fall into seven categories. The Report's major proposals would:

- ***Strengthen the Structure of the Military Justice System by—***
  - Establishing selection criteria for military judges, mandating tour lengths, and requiring appointment of a Chief Trial Judge in each armed force.
  - Creating authority for military judges to handle specified legal issues that arise before formal referral of a case to court-martial that would otherwise await a ruling until after referral to court-martial.
  - Establishing a military magistrates program as an option for the services, with magistrates authorized to preside over specified pre-referral matters upon designation by a military judge, and to preside with the consent of the parties in the proposed judge-alone special court-martial.
  - Establishing a military judge-alone special court-martial as an additional option for disposition, similar to the judge-alone forum in civilian proceedings, with confinement limited to a maximum of six months and no punitive discharge.
  - Requiring issuance of guidance on the disposition of criminal cases similar to the U.S. Attorneys Manual, tailored to military needs.
  - Mandating additional training for commanders and convening authorities focused on the proper exercise of UCMJ authority.
- ***Enhance Fairness and Efficiency in Pretrial and Trial Procedures by—***
  - Enhancing victims' rights by:
    - Facilitating the opportunity for victim input on disposition decisions at the preliminary hearing stage.
    - Providing for public access to court documents and pleadings.
    - Treating victims consistently with regard to defense counsel interviews and access to records of trial.
  - Expanding authority to obtain documents during investigations through subpoenas and other process.
  - Enhancing the utility of the preliminary hearing for the staff judge advocate and convening authority and providing an opportunity for parties and victims to submit relevant information on the appropriate disposition of offenses.
  - Replacing the current variable composition and voting percentages for court-martial panels (military juries) with a requirement for a standardized number of panel members and a consistent voting percentage.
  - Requiring, to the greatest extent practicable, at least one defense counsel be learned in the law applicable to capital cases, as in federal civilian courts and military commissions.

- ***Reform Sentencing, Guilty Pleas, and Plea Agreements by—***
  - Replacing the current sentencing standard (which relies on maximum punishments with minimal criteria in adjudging a sentence below the maximum) with a system of judicial discretion guided by parameters and criteria.
  - Ensuring that each offense receives separate consideration for purposes of sentencing to confinement.
  - Improving military plea agreements by allowing negotiated ranges of punishments and adjudged sentences within the range.
  - Continuing to permit appeals of sentences by servicemembers, and establishing government appeals of sentences in circumstances similar to federal civilian practice.
  - Providing for the effective implementation of these reforms by establishing sentencing by military judges in all non-capital trials.
  
- ***Streamline the Post-Trial Process by—***
  - Eliminating redundant post-trial paperwork and requiring an entry of judgment by the military judge similar to federal civilian practice to mark the completion of a special or general court-martial.
  - Establishing restricted authority to suspend sentences in cases in which the military judge recommends a specific form of suspension and the convening authority approves a suspension within the military judge's recommendation.
  
- ***Modernize Military Appellate Practice by—***
  - Providing servicemembers, like their civilian counterparts, with the opportunity to obtain judicial review in all cases.
  - Transforming the automatic appeal of cases to the service Courts of Criminal Appeals into an appeal of right in which the accused, upon advice of appellate defense counsel, would determine whether to file an appeal.
  - Focusing the appeal on issues raised by the parties, with the opportunity for the Courts of Criminal Appeals to review for plain error.
  - Establishing harmless error standards of review for guilty pleas similar to those applied by the federal civilian courts of appeal.
  - Providing for review of issues identified by the accused regarding factual sufficiency when the appellant makes a sufficient showing to justify relief.
  - Permitting the government to appeal a sentence under conditions similar to those applied by the federal civilian courts of appeal.
  - Permitting the government to file interlocutory appeals in general and special courts-martial regardless of whether a punitive discharge could be adjudged.
  - Continuing to require automatic review of capital cases and requiring, to the greatest extent practicable, at least one appellate defense counsel be learned in the law applicable to capital cases.

- Expanding direct review jurisdiction of the Courts of Criminal Appeals primarily with respect to cases in which an accused is sentenced to confinement for more than six months.
- ***Increase Transparency and Independent Review of the Military Justice System by—***
  - Creating a statute requiring uniform public access to courts-martial documents and pleadings similar to that available in federal civilian courts.
  - Establishing an independent blue ribbon panel of experts to conduct periodic reviews of the UCMJ.
- ***Improve the Functionality of Punitive Articles and Proscribe Additional Acts by—***
  - Creating new enumerated offenses, including:
    - Article 93a: Prohibited activities with military recruit or trainee by person in position of special trust
    - Article 121a: Fraudulent use of credit and debit cards
    - Article 123: Offenses concerning Government computers
    - Article 132: Retaliation
  - Authorizing the President to designate lesser included offenses under legislative criteria.
  - Aligning the definition of “sexual acts” in Article 120 with federal civilian law.
  - Revising the stalking offense (Article 130) to include cyberstalking and threats to intimate partners.
  - Amending the statute of limitations for child-abuse offenses, fraudulent enlistment, and to extend the period when DNA testing implicates an identified person.
  - Restructuring the punitive articles of the UCMJ.
  - Establishing specific statutory punitive articles to cover many forms of misconduct now addressed by Executive Order in the General Article.