

**Excerpts From The Joint Explanatory Statement
FY 2017 National Defense Authorization Act (S.2943)
Conference Committee Report**

Items Related to Remaining JPP Tasks

I. Depositions

A. The Senate bill contained a provision (sec. 5231) that would amend Article 49 of the UCMJ to conform the UCMJ with the language and function of Federal Rule of Criminal Procedure 15(a)(1), and to move the procedural aspects of Article 49 to Rules for Courts-Martial 702.

1. The provision would clarify that a convening authority or a military judge may order depositions only if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be preserved for use at a court-martial, military commission, court of inquiry, or other military court or board.
2. The provision would clarify parties who may request a deposition, and require that, whenever practicable, depositions be taken before an impartial judge advocate. The provision would provide that:
 - (1) representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under Article 27; and
 - (2) the accused shall have the right to be represented by civilian or military counsel in the same manner as such counsel are provided for in Article 38(b). The provision would clarify situations in which depositions may be used in military proceedings with a more direct reference to the military rules of evidence.
3. The provision would amend the section to provide that testimony by deposition may be presented in capital cases only by the defense.

B. The House amendment contained an identical provision (sec. 6609).

C. The Committee **adopted the Senate bill** (the House amendment was identical).

II. Plea Agreements

A. The Senate bill contained a provision (sec. 5237) that would amend Article 53a of the UCMJ

1. to authorize:
 - (1) construction and negotiation of charge and sentence agreements;
 - (2) military judges to determine whether to accept a proposed plea agreement; and

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(3) the operation of sentence agreements with respect to the military judge's sentencing authority.

2. The new Article 53a would provide that the military judge shall accept any lawful sentence agreement submitted by the parties, except that:

(1) in the case of an offense with a sentencing parameter under Article 56, the military judge may reject the agreement only if it proposes a sentence that is both outside the sentencing parameter and plainly unreasonable; and

(2) in the case of an offense without a sentencing parameter, the military judge may reject the agreement only if it proposes a sentence that is plainly unreasonable.

B. The House amendment contained a similar provision (sec. 6614) that did not include the authority for the military judge to reject a sentencing provision that the military judge determines is plainly unreasonable (as highlighted above).

C. The Committee adopted the **House amendment**.

III. **Sentencing**

A. The Senate bill contained a provision (sec. 5261) that would amend Article 56 of the UCMJ to:

1. Replace the court-martial practice of "unitary" sentencing with "segmented" sentencing where, if confinement is adjudged for guilty findings, the amount of confinement for each guilty finding would be determined separately;
2. Authorize segmented sentencing for fines;
3. Authorize sentencing parameters and criteria to provide guidance to military judges in determining an appropriate sentence;
4. Authorize the United States to appeal a sentence to the Court of Criminal Appeals; and
5. Incorporate Article 56a, authorizing a sentence of confinement for life without the eligibility of parole any time a life sentence is authorized, into Article 56, UCMJ, without substantive change.

B. The House amendment contained a similar provision (sec. 6701) that did not include sentencing parameters.

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- C. The Committee **adopted the House bill with an amendment** to conform to the provision under Article 25, UCMJ, as amended in a separate provision in this Act, that would provide an accused the option to request sentencing by members. In cases in which the accused has elected sentencing by members the court-martial will announce a single sentence for all the offenses for which an accused was found guilty.

IV. Article 32

- A. The Senate bill contained a provision (sec. 5203) that would amend Article 32 of the UCMJ to require the preliminary hearing officer to provide an analysis of information that will be useful in fulfilling the statutory responsibilities of the staff judge advocate, in providing legal determinations and a disposition recommendation to the convening authority under Article 34; and to assist the convening authority, in disposing of the charges and specifications in the interest of justice and discipline.
- B. The House amendment contained a similar provision (sec. 6502).
- C. The Committee **adopted the Senate bill with an amendment** that would include as a purpose of the preliminary hearing a recommendation as to the disposition that should be made of the case.