

**National Defense Authorization Act Provisions
Military Rules of Evidence 412 and 513
FY 2013 – FY 2016**

FY 2016 NDAA PL. 114-92, 129 Stat. 726 (Nov 25, 2015)			
Section	Brief Description	NDAA Provision	Implementation
FY 2016 §531	<p><u>ARTICLE 6B</u> <u>ENFORCEMENT</u></p> <p>Enforcement of Certain Crime Victims' Rights by the Court of Criminal Appeals</p>	<p>Amends article 6b UCMJ by adding:</p> <p>(e) Enforcement by Court of Criminal Appeals –</p> <p>(1) If the victim of an offense under this chapter believes that a preliminary hearing ruling under article 32, or a court-martial ruling, violates the victim's rights afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals (CCA) for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.</p> <p>(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the CCA for a writ of mandamus to quash such order.</p> <p>(3) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the CCA, by such means as may be prescribed by the President, and, to the extent practicable, shall have priority over all other proceedings before the court.</p> <p>(4) Paragraph (1) applies with respect to the protections afforded by the following:</p> <p>(A) This section (article) (B) Article 32 (C) MRE 412 – victim's sexual background (D) MRE 513 – psychotherapist-patient privilege (E) MRE 514 – victim advocate-victim privilege (F) MRE 615 – exclusion of witnesses</p> <p>IMPLEMENTATION: MCM 2016 Edition</p>	<p>Effective Immediately Upon Passage</p> <p>(Nov 25, 2015)</p>

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FY 2015 NDAA PL 113-291, 128 Stat. 3292 (Dec 19, 2014)			
Section	Brief Description	NDAA Provision	Implementation
FY 2015 §531	Technical Revisions and Clarifications for certain FY14 NDAA Provisions	<ol style="list-style-type: none"> 1. Explicit authority for convening authority to take action on findings of a court-martial with respect to a qualifying offense. 2. Clarification of requirement for explanation in writing for modification to findings of a court-martial by convening authority. 3. Clarification regarding victim submission of matters for consideration by convening authority during clemency phase of courts-martial 4. Restoration of waiver of Article 32 Hearings by the accused. 5. Defense counsel interview of victim – requires DC to request through SVC or other victim counsel (rather than through trial counsel). 6. Clarification of definition of forcible sodomy – replaces “force” with “unlawful force.” 7. Clarification of scope of “prospective member” for purposes of inappropriate and prohibited relationships - to include a person “who is pursuing or has recently pursued becoming a member of the Armed Forces.” 8. Clarification of authority to appoint individuals to assume rights of certain victims – strikes requirement for judge to “designate a legal guardian...” and replaces with “designate a representative.” <p>IMPLEMENTATION: R.C.M. 801(a)(6) as revised by EO 13696 (Jun 17, 2015)</p> <p>9. Revision of effective dates for new Article 32 – applies to all preliminary hearings conducted on or after Dec 26, 2014.</p> <p>10. Transition rule for amendments related to Article 60 – new amendment applies to findings and sentence of a court-martial that includes both an offense committed before the effective date and an offense committed after the effective date. New amendment does not apply to findings and sentence of a court-martial where convening authority has taken action within 30 days of the enactment of FY15NDAA.</p> <p>IMPLEMENTATION: R.C.M. 1107 as amended by EO 13696 (Jun 17, 2015)</p>	Effective Immediately Upon Passage (Dec 19, 2014)
FY 2015 §534(c)	<u>ARTICLE 6B RIGHT TO BE HEARD THROUGH COUNSEL</u> Enhancement of Victims’ Rights to be Heard Through Counsel	<p>Directs MCM to be modified to provide that when a victim of an alleged sex-related offense has a right to be heard, the victim may exercise that right through counsel including through a SVC.</p> <p>IMPLEMENTATION: R.C.M. 305 (i)(2)(A)(iv); R.C.M. 906(b)(8); M.R.E. 412(c)(2); 513(e)(2); (514)(c), (e)(2) as revised by EO 13696 (Jun 17, 2015) and E.O. 13730 (May 20, 2016).</p>	Effective 180 days after enactment (Jun 19, 2015)
FY 2015 §535	<u>ARTICLE 6B ENFORCEMENT</u> Enforcement of Crime Victims’ Rights	<p>Amends Article 6b UCMJ by adding:</p> <p>If victim believes that a court-martial ruling violates victim’s rights afforded by MRE 412 or 513, victim may petition the Court of Criminal Appeals for a writ of mandamus to require the court-martial to comply with the MRE.</p> <p>IMPLEMENTATION: EO (JPP Report (Feb 2015) Recommendation 8)</p>	Effective Immediately Upon Passage (Dec 19, 2014)
FY 2015 §537	<u>MENTAL HEALTH ISSUES; MRE 513</u> Modification of MRE 513 – Psychotherapist/Patient Privilege	<p>MRE 513 shall be modified as follows:</p> <ul style="list-style-type: none"> - To include communications with other licensed mental health professionals within the communications covered by the privilege. - Eliminates the “when constitutionally required” exception (MRE 513(d)(8)) - Requires party seeking production or admission of protected records or 	Effective 180 days after enactment (Jun 19, 2015)

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		<p>communications to show a “specific factual basis” demonstrating a “reasonable likelihood” that the records or communications would yield evidence admissible under an exception to the privilege.</p> <ul style="list-style-type: none"> - Requesting party must demonstrate by a “preponderance of the evidence” that 1) the requested information meets one of the enumerated exceptions to the privilege, 2) that the information is not “merely cumulative” of other information available, and 3) that the party made “reasonable efforts” to obtain the same or substantially similar information through non-privileged sources. - Military judge may conduct an in camera review of records only when: 1) the moving party has met its burden and 2) an examination of the information is necessary to rule on the production or admissibility of protected records or communications. - Any production or disclosure permitted by the military judge must be “narrowly tailored” to only the specific records or communications, or portions thereof that meet the requirements for one of the enumerated exceptions to the privilege and are included in the stated purpose for which such records or communications are sought. <p>IMPLEMENTATION: M.R.E. 513 as revised by EO 13696 (Jun 17, 2015). (JPP Report (Feb 2015) Recommendation 11)</p>	
FY 2015 §545	JUDICIAL PROCEEDINGS PANEL NEW TASKS Additional Duties for Judicial Proceedings Panel	<p>Adds to JPP duties enumerated in section 576(a)(2) of the FY13 NDAA:</p> <p>(1) Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under the UCMJ, 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.</p> <p>JPP shall include the results of the review in “one of the reports required” by 576(c)(2)(B) of the FY13 NDAA.</p>	JPP Reports due Annually from 2015 Through Sept. 30, 2017

FY 2014 NDAA PL 113-66, 127 Stat. 672 (Dec 26, 2013)			
Section	Brief Description	NDAA Provision	Implementation
FY 2014 §1701(b)	ARTICLE 6B RIGHTS IN MCM Crime Victims’ Rights in MCM Regulations	<p>SecDef must recommend regulations for MCM to President within one year to implement Art 6b.</p> <p>IMPLEMENTATION: R.C.M. 305, 405, 702, 801(a), 806(b), 906(b), 1001(a), 1001A, 1107, M.R.E. 412, 513, 514, 615(e), as revised by EO 13696 (Jun 17, 2015). R.C.M. 305(i)(2)(A)(iv), 405(i)(2)(A), 705(d)(3), 806(b)(2),(6), as amended by E.O. 13730 (May 20, 2016).</p> <p>ALNAV 049/14 “Implementation of Certain Provisions of the FY 14 NDAA Related to Crime Victim Rights” (June 24, 2014); Army, AF, CG Policies</p>	Effective 1 Year after Enactment (Dec 26, 2014)
FY 2014 §1702(a)	ARTICLE 32 REVISION Article 32 Revision	<p>Complete revision of Article 32 to become a “preliminary hearing,” with four purposes: (1) probable cause determination; (2) jurisdiction determination; (3) consider form of charges; and (4) recommend disposition of case. Grants victim the right to refuse to testify and mandates that the hearing be recorded by a “suitable recording device.”</p> <p>IMPLEMENTATION: R.C.M. 405 as revised by EO 13696 (Jun 17, 2015).</p>	Effective 1 Year after Enactment (Dec 26, 2014)

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FY 2013 NDAA <small>PL 112-239, 126 Stat. 1632 (Jan 2, 2013)</small>			
Section	Brief Description	NDAA Provision	Implementation
<u>FY 2013</u> §576(d)(2) (E) and (F)	Duties of JPP to assess use of victim’s prior sexual history and mental health records	<p>(2) JUDICIAL PROCEEDINGS PANEL.—The panel required by subsection (a)(2) shall perform the following duties:</p> <p style="padding-left: 40px;">(E) Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), and any instances in which prior sexual conduct was determined to be inadmissible.</p> <p style="padding-left: 40px;">(F) Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.</p> <p>IMPLEMENTATION: JPP shall include the results of the review in “one of the reports required”</p>	