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Defense Primer: The Uniform Code of Military Justice (UCMJ)

Under Article I, Section 8 of the U.S. Constitution, Congress has the power to raise and support armies; provide and maintain a navy; and provide for organizing and disciplining their members. Under this authority, Congress has enacted the Uniform Code of Military Justice (UCMJ), which is the code of military criminal laws applicable to all U.S. military members worldwide.

The President implemented the UCMJ through the Manual for Courts-Martial (MCM), which was initially prescribed by Executive Order 12473 (April 13, 1984). The MCM contains the Rules for Courts-Martial (RCM), the Military Rules of Evidence (MRE), and the UCMJ. The MCM covers almost all aspects of military law. Military courts are not considered Article III courts, but instead are established pursuant to Article I of the Constitution and, as a result, are of limited jurisdiction.

Jurisdiction

The UCMJ gives courts-martial jurisdiction over servicemembers as well as several other categories of individuals. Jurisdiction of a court-martial does not depend on where the offense was committed; it depends solely on the status of the accused (e.g., an active duty servicemember or a member of the National Guard when in federal service).

Types of Offenses

Courts-martial try “military offenses,” which are listed in the punitive articles of the UCMJ and are codified in 10 U.S.C. §877 et seq. Some “military offenses” have a civilian analog, while others are exclusive to the military. The President is authorized to prescribe the punishments that a court-martial may impose within the limits established by Congress. For offenses specifically not covered by the UCMJ, the Armed Forces have used Article 134 to assimilate state and federal criminal laws in order to impose court-martial jurisdiction. The potential punishments for such violations generally match those applicable to the corresponding civilian offense.

Types of Courts-Martial

Congress, in creating the military justice system, established three types of courts-martial: (1) summary, (2) special, and (3) general. While the promulgated RCM and the MRE are applicable to all courts-martial, the jurisdiction and authorized punishments vary among the different courts-martial types.

Summary Courts-Martial

The summary court-martial can adjudicate minor offenses allegedly committed by enlisted servicemembers. Summary courts-martial are composed of one commissioned officer who need not be a lawyer. The accused must consent to the proceedings and normally is not entitled to a lawyer. If an

accused refuses to consent to a trial by summary court-martial, a trial may be ordered by special or general court-martial, as may be appropriate, at the discretion of the Convening Authority (CA). A summary court-martial can adjudge maximum punishments of 30 days’ confinement; hard labor without confinement for 45 days; restriction to specified limits for 45 days; forfeiture of two-thirds’ pay per month for one month; and reduction to the lowest pay grade. In the case of enlisted members above pay grade E-4, the summary court-martial may not adjudge confinement or hard labor without confinement, and can only reduce the member to the next lower pay grade.

Special Courts-Martial

The special court-martial can try any servicemember for any noncapital offense or, under presidential regulation, capital offenses. Special courts-martial generally try offenses that could be considered misdemeanors under civilian or federal law (offenses punishable by less than one year in confinement). The accused is entitled to an appointed military attorney or a military counsel of his or her selection (at no cost to the servicemember), or the accused can personally hire and pay for a civilian counsel. Regardless of the offenses tried, the maximum punishment allowed at a special court-martial is confinement for one year; hard labor without confinement for up to three months; forfeiture of two-thirds’ pay per month for up to one year; reduction in pay grade; and a bad-conduct discharge.

General Courts-Martial

A general court-martial is the highest trial level in military law, and is usually used for the most serious offenses. Prior to convening a general court-martial, a preliminary hearing must be conducted. Known as an Article 32 hearing, it is meant to ensure that there is a basis for prosecution. As with the special court-martial, the accused is entitled to an appointed military attorney or a military counsel of his or her selection (at no cost to the servicemember), or the accused can personally retain and pay for civilian counsel. It can adjudge, within the limits prescribed for each offense, a wide range of punishments to include confinement; reprimand; forfeitures of up to all pay and allowances; reduction to the lowest enlisted pay grade; punitive discharge (bad-conduct discharge, dishonorable discharge, or dismissal); restriction; fines; and, for certain offenses, death.

Post-Trial Review

Convictions at a general or special court-martial that include a punitive (bad-conduct or dishonorable) discharge are subject to an automatic post-trial review by the CA. Upon review of the record of trial and the Staff Judge Advocate’s recommendation, the CA may, among other remedies, suspend all or part of the sentence, disapprove of

a finding or conviction, or lower the sentence. The CA may not increase the sentence. Once the CA takes action on the case, the conviction is ripe for an appeal.

The three service appellate courts (the Navy-Marine Corps Court of Criminal Appeals, the Army Court of Criminal Appeals, and the Air Force Court of Criminal Appeals) have jurisdiction in cases where the sentence includes confinement for one year or more, a bad-conduct or dishonorable discharge, death, or a dismissal from service in the case of a commissioned officer, cadet, or midshipman.

If the conviction is affirmed by the service court, the appellant may request review by the Court of Appeals for the Armed Forces (CAAF) and ultimately the U.S. Supreme Court. Review by these courts is discretionary.

All court-martial convictions not reviewable by the service appellate courts are reviewed by a judge advocate to determine if the findings and sentence, as approved by the CA, are correct in law and fact. If those criteria are met, the conviction is final. If not, the judge advocate forwards the case to the officer exercising general court-martial convening authority at the time the court-martial was convened for corrective action. If the CA declines to take corrective action, the case is referred to the Judge Advocate General for review.

Relevant Statutes

Title, 10, Chapter 47—The Uniform Code of Military Justice, *United States Code*

Other Resources

The Manual for Courts-Martial, available at https://www.loc.gov/rr/frd/Military_Law/CM-manuals.html

CRS Products

CRS Report R41739, *Military Justice: Courts-Martial, an Overview*, by R. Chuck Mason

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