

112. (ALL) Please describe DoD and the Services' interpretation of the Secretary of Defense's proposed change to Article 60 and explain how that will be implemented by each service and the anticipated impact it will have on post-trial procedures.

DoD	<p>The Secretary of Defense's proposed Article 60 amendment would allow the convening authority to act on the findings only with respect to relatively minor offenses where the members adjudge a relatively minor sentence. In military practice, "[o]rdinarily all known charges [are] referred to a single court-martial." Rule for Courts-Martial 601(e)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.). As a result, on occasion, a charge for a serious offense is referred to court-martial in conjunction with a charge for a minor offense that would normally be disposed of by lesser means than a general or special court-martial. Sometimes the accused is then found not guilty of the charge alleging the serious offense but guilty of the charge alleging the less serious offense. In such cases, the Secretary of Defense's proposal would retain the convening authority's discretion to set aside the finding of guilty of the remaining less serious offense adjudged at a court-martial, and impose administrative sanctions instead, if appropriate. The number of cases in which a convening authority would be able to modify the findings of a court-martial would be reduced, and the convening authority would be required to insert into the record of trial a written explanation of any modification of a finding or sentence at court-martial.</p>
USA	<p>The Secretary of Defense's proposed Article 60 amendment would allow the convening authority to act on the findings only with respect to relatively minor offenses where the members adjudge a relatively minor sentence. In military practice, "[o]rdinarily all known charges [are] referred to a single court-martial." Rule for Courts-Martial 601(e)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.). As a result, on occasion, a charge for a serious offense is referred to court-martial in conjunction with a charge for a minor offense that would normally be disposed of by lesser means than a general or special court-martial. Sometimes the accused is then found not guilty of the charge alleging the serious offense but guilty of the charge alleging the less serious offense. In such cases, the Secretary of Defense's proposal would retain the convening authority's discretion to set aside the finding of guilty of the remaining less serious offense adjudged at a court-martial, and impose administrative sanctions instead, if appropriate. The number of cases in which a convening authority would be able to modify the findings of a court-martial would be reduced, and the convening authority would be required to insert into the record of trial a written explanation of any modification of a finding or sentence at court-martial.</p>
USAF	<p>DoD is collecting and consolidating the answer to this question from all of the services and will provide a single response.</p>
USN	<p>Responses are to be provided by OSD.</p>
USMC	<p>DoD Office of General Counsel will provide this answer.</p>
USCG	<p>The SECDEF proposal would allow a convening authority to set aside findings when the accused is charged with a very serious offense and a relatively less serious offense (e.g., robbery and underage drinking), and is acquitted of the very serious offense (e.g., robbery) and convicted only of the relatively less serious offense (e.g.,</p>

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underage drinking). Service members do not ordinarily face court-martial for the offense of underage drinking; commanders normally dispose of such offenses through nonjudicial punishment or adverse administrative action. Rather than have the service member in the above example go through life with a federal conviction for underage drinking, the SECDEF proposal would authorize the convening authority to set aside the court-martial finding of guilty for underage drinking and instead impose nonjudicial punishment or an adverse administrative action, thus treating the service member similarly to other service members charged with the same offense.

The SECDEF proposal would preclude the convening authority from changing the findings in most courts-martial. Convening authorities would retain their authority to execute pre-trial agreements and safeguard the interests of the command in every case by taking action under Article 60 on the sentence alone. All courts-martial where the convening authority does not set aside findings will continue to be reviewed under the applicable post-trial process established in the UCMJ (e.g., appellate review by a Court of Criminal Appeals, review by the Judge Advocate General).

The SECDEF proposal would also require the convening authority to explain, in writing, any action to modify the findings or sentence of a court-martial. This explanation would be made a part of the record of trial, enhancing the transparency of post-trial action by the convening authority and engendering greater trust in the military justice process for all interested parties.

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