

68. (Services) Describe the procedures for entering into a guilty plea in a sexual assault case, to include the role of the SJA, prosecutor, defense counsel, accused, victim, direct and intermediate commanders, as well as the Convening Authority.

USA	<p>Generally, the guilty plea process in a sexual assault case works the same as it does in non-sexual assault cases. As with any victim case (property, financial, identity or otherwise), the wishes of the victim in a sexual assault case should always be considered by the trial counsel and the staff judge advocate prior to advising the convening authority. Army Regulation 27-10, para. 17-15 requires a government representative (typically the trial counsel and/or victim witness liaison) "[w]hen appropriate, ... to consult with victims of crime concerning (1) Decisions not to prefer charges. (2) Decisions concerning pretrial restraint of the alleged offender or his or her release. (3) Pretrial dismissal of charges. And, (4) Negotiations of pretrial agreements and their potential terms." Similarly, Army Regulation 600-20, para. 8-5(o)21 requires commanders "[w]hen appropriate, consult with the victim on pretrial and charging decisions."</p> <p>Procedurally, either side (typically either the defense attorney or the prosecutor on behalf of the convening authority) may propose any term or condition not prohibited by law or public policy and the convening authority has the sole authority to bind the government. Recommendations of subordinate commanders are typically considered, but not required. The offer must be in writing and all of the terms of the agreement must be encompassed in the agreement.</p> <p>The defense attorney has a constitutional obligation to provide effective assistance of counsel throughout the process, including during pretrial negotiations. The defense attorney typically drafts the agreement consistent with the negotiations between the prosecutor and defense.</p> <p>In exchange for the accused relieving the government's burden to prove the case beyond a reasonable doubt, the convening authority may agree to limit the term of confinement, withdraw one or more charges or specifications, or exclude certain evidence in aggravation. Permissible terms of a pretrial agreement are governed by Rule for Courts-Martial (RCM) 705:</p> <p>(b) Nature of agreement. A pretrial agreement may include:</p> <p>(1) A promise by the accused to plead guilty to, or to enter a confessional stipulation as to one or more charges and specifications, and to fulfill such additional terms or conditions which may be included in the agreement and which are not prohibited under this rule; and</p> <p>(2) A promise by the convening authority to do one or more of the following:</p> <p>(A) Refer the charges to a certain type of court-martial;</p> <p>(B) Refer a capital offense as noncapital;</p>
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	<p>(C) Withdraw one or more charges or specifications from the court-martial; (D) Have the trial counsel present no evidence as to one or more specifications or portions thereof; and (E) Take specified action on the sentence adjudged by the court-martial.</p> <p>The guilty plea process requires the military judge to ensure the providence of the accused's guilty plea. A military judge cannot accept a plea of guilty to a specification unless convinced that the accused made a knowing and intelligent plea and the accused adequately explained that his actions at the time of the offense met all of the elements of the offense to which the accused pleaded guilty. Once the military judge accepts the guilty plea, the pre-sentencing phase begins. During this phase of the proceeding, the prosecutor has the opportunity to present evidence in aggravation and the defense has the opportunity to present evidence in extenuation and mitigation. A sexual assault victim would typically have the opportunity to participate in this portion of the proceeding.</p> <p>In addition to the Army's victim witness liaisons, who for decades have explained the court-martial process to alleged victims and assisted with compensation and travel issues, the Army has also recently stood-up a Special Victim Counsel program. This brand new program provides a Judge Advocate to alleged military and dependent victims under the Army's Legal Assistance program. The Special Victim Counsel may provide services including: accompanying the alleged victim to interviews, examinations, hearings, and court-martial proceedings; representing alleged victims at court-martial as permitted by law; referral to Trial Defense Service for collateral misconduct as necessary; advocate alleged victim's interest with the prosecution on disposition options; assist alleged victim with victim impact statements; advise alleged victim on collateral civil issues; and legal assistance services.</p>
USAF	<p>In general, in any court-martial and regardless of the crime charged, the accused can agree to enter a plea of guilty outright. An accused may also plead guilty via a pre-trial agreement (PTA) to one or more offenses, often in exchange for a cap, or upper limit, on the sentence that the convening authority will approve. The decision to accept or reject a PTA offer submitted by an accused is within the sole discretion of the convening authority that referred the case to trial. The accused is entitled to have the convening authority personally act upon the offer before trial.</p> <p>Either the government or the defense counsel may initiate PTA negotiations. Normally, in a sexual assault case, government counsel will confer with the Special Victim's Counsel and the victim with regard to victim input in these negotiations. The defense however, must submit the actual written PTA offer to the SJA. The SJA will forward the written PTA offer to the convening authority with a recommendation. The SJA will normally make the convening authority aware of the victim's position with regard to the proposed PTA. The entire PTA must be in writing and signed by the accused, defense counsel, and the convening authority. The PTA must not involve any informal oral promises or representations. Either party may void a PTA by withdrawing from it. The convening authority may withdraw from a PTA: any time before the accused begins performance of promises contained in the agreement; upon</p>

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	<p>the accused's failure to fulfill any material promise or condition of the agreement; when the military judge's inquiry discloses a disagreement as to a material term of the PTA; or when the findings of guilty are set aside during the appellate review.</p> <p>If an accused has violated conditions of a PTA that involve post-trial misconduct, the convening authority may withdraw up to the time of his/her final action in the case. The convening authority may not withdraw from a PTA in any way that would be unfair to the accused. Any withdrawal must be in writing. The convening authority is no longer bound by the agreement if an accused withdraws from a PTA.</p> <p>At trial, the military judge will conduct a full inquiry into the specific terms of the PTA to ensure the accused: fully understands both the meaning and effect of each provision of the PTA; has voluntarily entered into the PTA; and that no oral promises were made in connection with the PTA. This inquiry is in addition to the judge's inquiry into the validity of the guilty plea itself. In a trial by military judge alone, the military judge will not examine the sentencing cap of the PTA until after he or she has independently adjudged a sentence. In a trial by members, the members will not be told about the PTA.</p> <p>The accused will get the benefit of the lesser sentence, regardless of whether it was adjudged or in the PTA. If the sentence adjudged by the military judge or members exceeds the limits of the PTA, the convening authority may only approve the lesser sentence agreed to in the PTA. If the adjudged sentence is less than the PTA cap, only the adjudged sentence may be approved.</p> <p>The conditions of a PTA may include: a promise to enter into a reasonable stipulation of fact concerning the facts and circumstances surrounding the offenses to which the accused pleads guilty; a promise to testify as a witness in a trial of another person; a promise to provide restitution; a promise to conform his/her conduct to certain conditions of probation before final action is taken by the convening authority; a promise to waive certain procedural requirements. The procedural requirements that might be waived by the PTA include: an Article 32 investigation; the right to a trial before court members; the right to a trial before military judge sitting alone; or the opportunity to obtain the personal appearance of certain witnesses at the sentencing hearing.</p>
USN	<p>The procedures for entering into pretrial agreements (guilty pleas) are embodied in Rule for Court-Martial 705.</p> <p>Defense counsel advises the accused on the range of punishments possible given the particular offenses, the likelihood of conviction based on the evidence, and the possibility of a plea agreement with the government. Defense counsel must inform the accused that they have the option to plead guilty – if truly guilty. An accused in the military may only enter a plea of guilty if he admits and reflects his belief that he is guilty, he understands the rights he gives up by pleading guilty, and he knowingly and voluntarily agrees to give up those rights and enter a plea of guilty. The defense counsel must also inform the accused that pleading guilty to certain offenses (and</p>

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certain other non-sex offenses, such as kidnapping) will result in sex offender registration. If directed by the accused, the defense counsel will begin negotiating a plea agreement between the accused and the Convening Authority via the trial counsel. Defense counsel, consistent with his or her responsibility, will attempt to negotiate the most favorable terms possible for the accused, while the trial counsel will attempt to reach a result that the Convening Authority has determined to be fair and just given the circumstances of the case.

Negotiation of pretrial agreements can be initiated by the accused, defense counsel, trial counsel, the SJA, or the Convening Authority, but the decision to actually enter into a guilty plea is driven by the accused after consultation with defense counsel. If the accused elects to formally propose a pretrial agreement, the terms and conditions of the proposed agreement are reduced to writing by the defense counsel and served on the Convening Authority via the trial counsel. The accused must understand that he or she gives up the rights to remain silent regarding the charges to which he or she is pleading guilty, to a trial of the facts before a fair and independent fact finder, to confront the witnesses and evidence against him or her, and to present evidence on his or her own behalf on the merits. The Convening Authority may either accept or reject the accused's offer, or may propose a counteroffer. Although the Convening Authority may seek advice on this decision from the SJA, trial counsel, staff, and subordinate commanders, the decision is within his or her sole discretion.

Prior to entering into any plea agreement, the trial counsel will discuss the terms of the potential agreement with the victim. Although the views of the victim as to disposition do not dictate the decision of the Convening Authority, these views are a factor the Convening Authority is obliged to consider under Rule for Court-Martial 306. The Convening Authority may also choose to consult intermediate commanders during this process, but there is no formal role for these intermediate commanders or the direct commander of the accused. Generally, the Convening Authority will rely on the advice of his or her SJA and the trial counsel, on past experience, and on his or her application of the RCM 306 factors to the particular case when determining whether to accept a plea agreement offered by the accused.

After an agreement is reached, defense counsel will enter the accused's pleas on the record. The accused will then be required to provide a factual basis for the guilty plea under oath before the Military Judge. The accused must, knowingly and voluntarily, admit to each element of the offense before the military judge will accept the accused's guilty pleas. The Military Judge will also inquire into the possibility of defenses to the charges and assesses whether those possible defenses have been investigated and whether the accused declines to raise them. In some cases the accused will enter into a stipulation of fact with the trial counsel and defense counsel that will be used by the judge to determine that the accused is in fact guilty. The stipulation may also be used in sentencing.

After the Military Judge accepts the accused's plea of guilty, the court-martial will proceed to sentencing. At sentencing the trial counsel is permitted to present matters in aggravation of the offense and defense counsel may seek to refute the government's

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	<p>case in aggravation and may also present matters in extenuation and mitigation. The accused may testify or make an unsworn statement regarding the offense, him or herself, or other matters the accused wishes to be heard regarding an appropriate sentence. Trial and defense counsel are then permitted to make an argument on sentencing.</p>
USMC	<p>In the Marine Corps, pretrial agreements for sexual assault cases are only entered into when it is in the best interests of both the government and the defense with input from the victim. When an accused offers a pretrial agreement to plead guilty, the trial counsel is ethically required to communicate this offer to plead guilty to the staff judge advocate and the convening authority pursuant to Rule 1.4 of JAGINST 5803.1D. The accused can include any information that he or she believes is relevant when communicating a pretrial agreement to the convening authority. After receiving the pretrial agreement, the trial counsel must speak to the victim or the victim's counsel about the victim's views as to the pretrial agreement pursuant to Marine Corps Order 5800.14. This information is communicated to the staff judge advocate or the convening authority, usually through a trial counsel memorandum discussing the strengths and weaknesses of the case as well as the appropriateness of the pretrial agreement, for the convening authority's ultimate decision regarding the pretrial agreement. The staff judge advocate discusses all of this information with the trial counsel and makes his own independent recommendation to the convening authority. The convening authority or the staff judge advocate can solicit the views of any subordinate commander as to the appropriateness of the pretrial agreement.</p>
USCG	<p>The Staff Judge Advocate, after consulting with the trial counsel will approach the Convening Authority to see whether the CA is interested in considering a plea at all. The trial counsel then typically consults with the victim to inform him/her that there is a possibility of a plea, but more importantly to get the victim's input as to what he or she believes a just outcome in the case is. The trial counsel, and if requested the victim's Special Victim Counsel, works to manage the victim's expectations, explains how the rest of the process may play out, and reinforces that the final decision on the plea rests with the Convening Authority. If the accused, through his counsel, has already made a verbal offer, the trial counsel may ask the victim for input on the specific sentence proposed by the defense, if the trial counsel believes it to be a legitimate offer. The trial counsel may also speak with the defense counsel about what types of terms he/she would positively endorse to the Convening Authority.</p> <p>After being informed by the trial counsel that there may be a plea offer in the case, the SJA will conduct his/her own research into what an appropriate outcome would be. The SJA consults with the trial counsel regarding his/her views, but will also do an independent analysis of the strengths and weaknesses of the facts, and consider the good order and discipline demands of the command. The SJA also consults with the Convening Authority prior to a formal offer made by the defense, to see if he/she is willing to accept a plea at all and, if so, to discuss what the Convening Authority's end goal in the case is.</p>

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	<p>After the trial counsel and SJA have done their research, the trial counsel will negotiate with the defense to come up with a written offer. Once the offer is in writing, the trial counsel will approach the SJA to discuss the offer. The SJA, alone or with trial counsel, will discuss the plea with the Convening Authority. The SJA or trial counsel will provide the victim's input to the Convening Authority. The Convening Authority will then ultimately make the decision on whether to accept the plea, continue to negotiate, or reject the plea outright.</p> <p>In sexual assault cases, there is little input from the intermediate or direct command of the accused. The Convening Authority may reach out to the subordinate command to get input, but does not do so in every case. The trial counsel usually keeps the subordinate commands informed of the progress of the case and the possibility of a plea, but does not usually solicit input.</p> <p>The trial counsel will be the principle liaison between the Convening Authority and defense counsel, and is also responsible for maintaining communication with the victim.</p>
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