

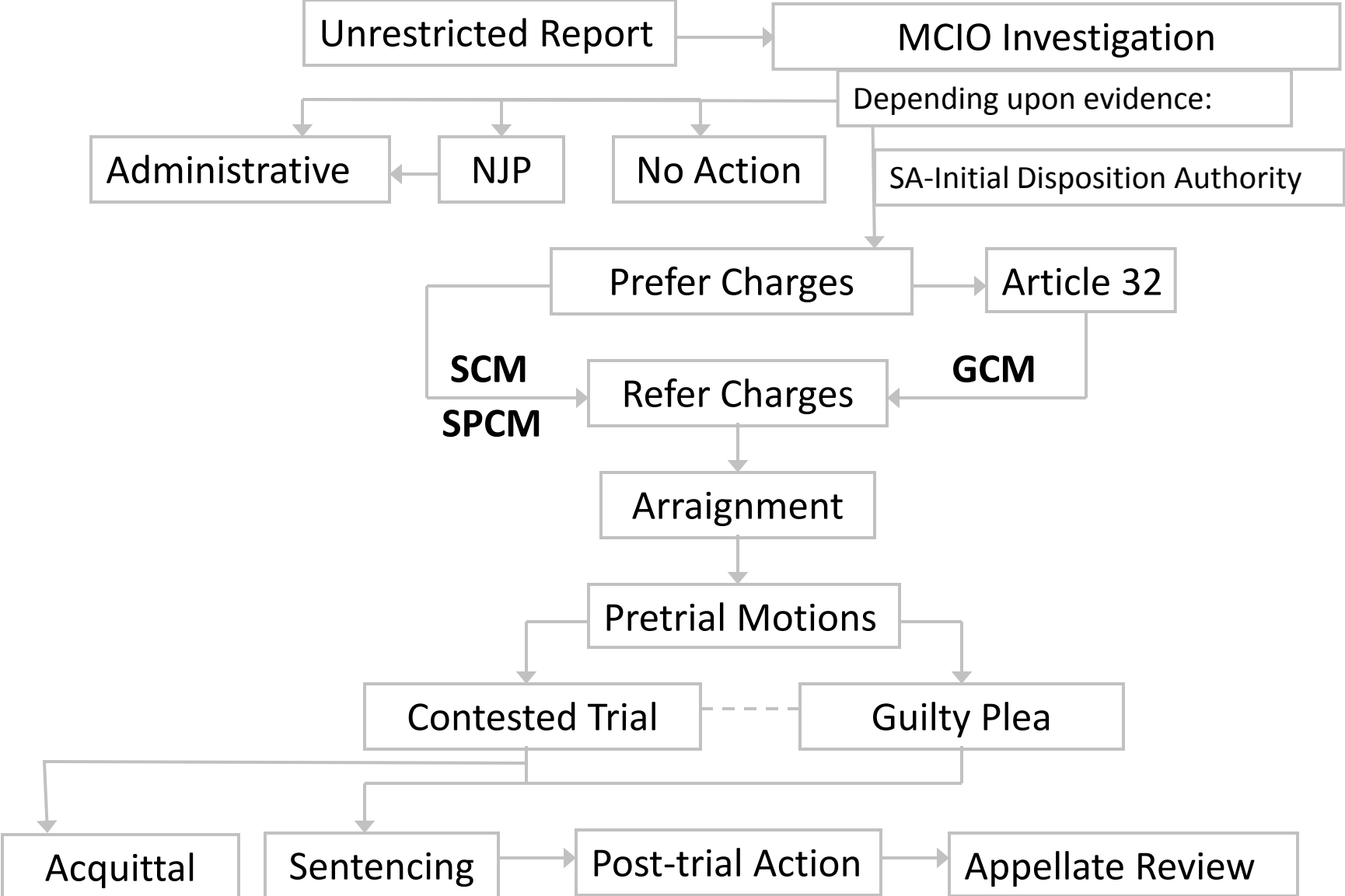
Military Justice Overview

Overview

- Purpose of Uniform Code of Military Justice (UCMJ)
 - “The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.” *Preamble to MCM.*

- Underlying Principles of Military Justice
 - Commanders as decision-makers
 - Effective resolution of issues at lowest possible levels
 - Maintaining good order and discipline in the Armed Forces
 - Due Process protections for Service Members
 - Independence of Military Judges, Defense Counsel, Panel Members, and Convening Authorities from outside influence

Military Justice System Flow Chart



Disposition and Charging

- Initial disposition by immediate commander (or SA-IDA)
 - Factors considered and balanced
 - Nature of offense, harm caused, interests of justice, effect on morale, health, safety, welfare and discipline
 - Effect of the decision on the accused and command
 - Views of the victim
 - Availability and admissibility of evidence
 - Appropriateness of the authorized punishment to the particular accused or offense
 - Character and military service of the accused
- Preferral of charges *RCM 306 Discussion*
- Referral to special or general court-martial
 - Article 32 investigation required before referral to GCM
 - Article 34 advice of SJA required before referral to GCM

Article 32 Investigation

- Adversarial proceeding with the accused present and represented by defense counsel
- Open to public except during limited sexual history testimony
- Investigating Officer may be judge advocate or any commissioned officer
- Defense has opportunity to cross-examine government witnesses and call witnesses – serves as a means of discovery
- Defense may present evidence in defense, extenuation and/or mitigation
- Standard is truth of the matter / reasonable grounds
- Limited application of the Military Rules of Evidence but privileges apply
- Investigating Officer makes recommendation as to disposition
- Recommendation not binding on Convening Authority

Sentencing and Pretrial Agreements

- Pleas
 - Not guilty, guilty or mixed
- Forum
 - Military judge alone
 - Members (officers)
 - Members with enlisted representation
- Presentencing hearing
 - Typically is immediately after findings
 - Adversarial in nature
 - Sentencing authority adjudges a sentence
- Pretrial agreement
 - Entered into between accused and convening authority
 - Accused can receive lower adjudged sentence than that in the agreement
 - Convening authority must reduce adjudged sentence to that in the agreement in the event the sentencing authority adjudges a sentence that is higher

Article 60

- Convening authority must take action on the sentence
 - Pretrial agreements are given effect through this action
 - Clemency may be granted
- Convening authority may take action on the findings
 - May set aside or reduce findings due to legal error, clemency, factual insufficiency or for any reason
 - Convening authority acts in quasi-judicial capacity

Unlawful Command Influence

- No authority convening a general, special or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any other member, military judge or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercises of its or his functions in the conduct of the proceedings.
- No person subject to [the UCMJ] may attempt to coerce or, by unauthorized means, influence the action of a court-martial...in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

Article 37, UCMJ

Victims' Rights

- Crime Victims' Rights Act (CVRA) - 18 U.S.C. 3771
- DoD Directive 1030.01 (Victim and Witness Assistance)
 - 13 April 2004
- Two rights in CVRA not included in the DoD Directive
 - The victim's right to be heard during public proceedings
 - The victim's right to be free from unreasonable delay
- Military Rules of Evidence
 - 412, 513 and 514 provide a right to be heard
- No specified procedure for victims to seek redress for failure to be afforded his or her rights

Joint Service Committee

- **Purpose:** To assist the President in fulfilling his responsibilities under the UCMJ and to satisfy the requirements of Executive Order 12473 that the Secretary of Defense shall cause the Manual for Courts-Martial (MCM) to be reviewed annually and help ensure the UCMJ and MCM fulfill their fundamental purpose as a comprehensive body of military criminal law and procedure; and to recommend any appropriate amendments.
- **Organization:** The JSC is a standing committee operating under the direction of the General Counsel of DoD, who relies on the Associate Deputy General Counsel (Military Justice and Personnel Policy) for advice and day-to-day management of JSC matters. The committee is composed of representatives of the Judge Advocates General of the Military Departments, and the U.S. Coast Guard, and of the Staff Judge Advocate to the Commandant of the Marine Corps.