

**AF/JA Input to OSD/CAPE  
Concerning  
Initial Estimated Implementing Costs for Military Justice Improvement Act**

**Question 1: What are the current requirements/authorizations for Judge Advocate Generals (JAGs), by grade?**

There are 1220 active duty Air Force JAG authorizations by grade\*, as follows:

- O-9 authorization: 1
- O-8 authorization: 1
- O-7 authorizations: 3
- O-6 authorizations: 121
- O-5 authorizations: 240
- O-4 authorizations: 337
- O-3 authorizations: 516
- O-2 authorizations: 1

*\* Source: Air Force JAG Corps, Unit Manning Document (UMD), 31 Jul 13 which holds 517 total combined O-2/O-3 authorizations*

**Question 2: What is the current inventory of JAGs by grade, “both structure and inventory, active and reserve, including an assessment of how many have ‘significant trial experience’?”**

In addition to 1220 active duty judge advocate authorizations, there are 941 Air Reserve Component authorizations: 270 Air National Guard, 93 Reserve Category A (Unit), 578 Reserve Category B (Individual Mobilization Augmentee – IMA).

Because military justice is a core competency for the Air Force JAG Corps, many senior judge advocates have “significant trial experience.” AF/JA’s Federal Legal Information through Electronics (FLITE) database identified three categories of trial experience relevant to assessing requirements for and costs of implementing a cadre of O-6 judge advocate convening authorities.

- Category 1: There are **41** O-6s with current or prior experience as NAF or MAJCOM Staff Judge Advocates (SJAs)
- Category 2: There are **54** O-6s with more than 30 courts-martial in their career\*\*
- Category 3: There are **28** O-6s with current or previous military judge experience

See Attachment 1, AF/JAX Data Call—Significant Trial Experience (12 Aug 13), for further details.

*\*\* Note: This information was self-reported through FLITE. Figure includes assignments as trial counsel defense counsel, and military judge, but does not include number of general court-martial convening authority (GCMCA) or special court-martial convening authority (SPCMCA) SJA recommendations to a convening authority.*

**Question 3: What is the total number of cases considered for disposition in a year?**

	Total Courts	GCM	SPCM	SCM	NJP
<b>CY11</b>	<b>918</b>	<b>297</b>	<b>473</b>	<b>148</b>	<b>6745</b>
<b>CY12</b>	<b>875</b>	<b>299</b>	<b>453</b>	<b>123</b>	<b>6374</b>
<b>CY13 (through 31 July)</b>	<b>637</b>	<b>262</b>	<b>280</b>	<b>95</b>	<b>3679</b>

Assumptions:

- “Considered for disposition” is interpreted as including only cases where charges have been preferred or that resulted in nonjudicial punishment.
- These figures do not include other disposition actions commanders may take under Rule for Courts-Martial (RCM) 306, including no action and administrative action.

**Question 4: What is the number of these cases that would be required to be considered by the O-6 JAGs under the Gillibrand proposal?**

	Number of Courts to CC	Number of Courts to JA O-6 DA	Number of NJP to CC	Number of NJP to JA O-6 DA
<b>CY11</b>	<b>597</b>	<b>321</b>	<b>6601</b>	<b>137</b>
<b>CY12</b>	<b>545</b>	<b>330</b>	<b>6241</b>	<b>109</b>
<b>CY13 (through 31 July)</b>	<b>388</b>	<b>249</b>	<b>3637</b>	<b>19</b>

Assumptions:

- These figures exclude cases that Section 586 would not require O-6 judge advocates to consider. Section 586 excludes: (1) cases involving only offenses under Articles 83-117 and Articles 133 and 134, Uniform Code of Military Justice (UCMJ); and (2) cases involving only offenses for which the maximum punishment is one year or less.
- Consistent with question 3, this question is interpreted as including only cases where charges have been preferred or that resulted in nonjudicial punishment. These figures do not include other disposition actions commanders may take under Rule for Courts Martial (RCM) 306, including no action and administrative action.

**Question 5: What is the current inventory of GCM Convening Authorities (GCMCAs)?**

There are currently 56 GCMCAs. Of these 56, only 47 are considered active. Nine MAJCOM GCMCAs only fulfill this function when the NAF GCMCA is unable to convene the court-martial due to a conflict or withhold of authority. Air Force Special Operations Command is the only active MAJCOM GCMCA.

See Attachment 2, Special Order G-12-001, Worldwide Convening Order (20 Mar 12).

**Question 6: What are the current requirements/authorizations for GCMCAs?**

The current requirements and authorizations for GCMCAs is 56, which equals the current inventory of 56 GCMCAs. In addition to the GCMCA positions themselves, each GCMCA is supported by an SJA and military justice staff. For illustration purposes:

- The military justice staff at 12 AF—currently the GCMCA with the most cases—includes 8 military justice personnel: one O-6 SJA, one O-5, one O-4, one O-3, two E-7s and two E-6s;
- The military justice staff at AFDW—currently the GCMCA with the fewest cases—includes 5 military justice personnel: one O-6 SJA, three O-4s, and one E-6.

**Question 7: What is the current caseload of those GCMCAs?**

The current average case load is 24 courts-martial and 208 nonjudicial punishment actions. The current case load of GCMCAs varies, based on multiple factors. As a comparison:

- A small command GCMCA like the Air Force Life Cycle Management Center currently has 2 courts-martial and 9 nonjudicial punishment actions;
- A large GCMCA like 12 AF has 65 courts-martial and 345 nonjudicial punishment actions.

**Question 8: What is the number of cases that involve non-exempt (as outlined in the legislation) offenses?**

	GCM		SPCM		SCM	
	Number of Courts to CC	Number of Courts to JA O-6 DA	Number of Courts to CC	Number of Courts to JA O-6 DA	Number of Courts to CC	Number of Courts to JA O-6 DA
<b>CY11</b>	<b>85</b>	<b>212</b>	<b>383</b>	<b>90</b>	<b>129</b>	<b>19</b>
<b>CY12</b>	<b>64</b>	<b>235</b>	<b>366</b>	<b>87</b>	<b>115</b>	<b>8</b>
<b>CY13</b>	<b>74</b>	<b>188</b>	<b>227</b>	<b>53</b>	<b>87</b>	<b>8</b>

*Note: This chart breaks down by court-martial forum the data provided as a response to Question 4.*

**Question 9: Provide a description of a proposed model for implementation.**

Background and LIMFACS for S.1197 Implementation Assumptions.

- a. Section 568(a)(2) and 568 (a)(3)(A)(i-iii) require Service Secretaries to provide for a senior O-6 or above judge advocate with “significant experience in trials by general or special court-martial” to determine under article 30(b) of the Uniform Code of Military Justice whether to try charges of covered offenses by court-martial.
- b. Section 568(a)(3)(C) mandates the disposition authority’s decision on covered offenses “shall be binding on any applicable convening authority for a trial by court-martial on such charges.”
- c. Section 568A(a) amends Article 22, UCMJ. Under the revised article, the following individuals may convene GCMs: the President, Secretary of Defense, any Combatant Commander, any Service Secretary, an O-6 or above who is assigned such responsibility by his/her respective Service Chief, or any other commanding officer in any of the armed forces when empowered by the President.
- d. Section 568A does not amend Article 23, UCMJ, to revise who may serve as a SPCMCA.
- e. Section 568A(c) expressly states, “An officer specified in subsection (a)(5) may not convene a court-martial under this section if the person is in the chain of command of the accused or the victim.”
- f. Section 568A(b) prohibits current GCM convening authorities on the worldwide convening order from serving as a convening authority to a GCM on any covered offenses, even where the accused or victim is outside of their chain of command.
- g. Section 568 does not clarify whether the intent is to create (a) one office to accomplish just the disposition authority function, (b) one office to perform both disposition authority and convening authority functions, or (c) two separate offices performing the disposition function in one and convening authority in the other.
- h. Section 568 does not discuss who has authority to direct Article 32, UCMJ, pretrial investigations; however, RCM 405 states any court-martial convening authority may direct an Article 32, UCMJ, investigation unless prohibited by Secretary regulations.

Assumption A: Regarding background point g (above), any reasonable organization construct devised by TJAG would meet the legislation’s intent.

Assumption B: Legislation’s main intent is to remove an accused’s commander and chain of command from the disposition decision on all covered offenses and substitute therefore, from outside of the command chain, a senior O-6 or above judge advocate general officer with “significant experience in trials by general or special court-martial.”

Assumption C: Legislation’s intent is to maximize use of existing manpower, organizational structures and organizational processes to accomplish disposition of covered offenses.

Assumption D: Under rules of statutory construction, TJAG authority under Title 10, United States Code, Sections 806 and 8037 would remain intact in the absence of conflicting newer legislation in S.1197 thus allowing TJAG to organize the Air Force Disposition Authority (AF/DA) function and promulgate rules implementing Section 568 as best determined by TJAG.

Assumption E: Any ambiguity in Section 568 may be resolved by TJAG's reasonable interpretation of the statute as a matter of deference per *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

### **Proposed USAF Disposition Authority**

AF/DA would centrally locate in a single office with seven O-6 judge advocates (JA) fulfilling the roles of disposition authority and in select cases as convening authorities under the legislation. RCM 601(c) forbids the same officer who served as the accuser (aka the "disposition authority") from referring the charge; therefore, the JAG who serves as AF/DA in a case cannot serve as the convening authority who refers the charge in that case. Of the seven O-6 JAs, one would be the Chief, Disposition Authority, directing the workload and assigning cases for disposition decisions and referral decisions among all DAs (including his/her own cases).

The Disposition Authority Office would be a flat organization with each O-6 DA supported by a Senior Assistant DA (O-4) and an Assistant DA (O-3 clerk) and a 7-level NCO paralegal. The result is seven teams working all aspects of the disposition of covered offenses.

In support of the disposition function would be an E-9 superintendent, a Central Members Selection function with an O-5 JA and a 7-level paralegal NCO (or a GS equivalents), and one 7-level paralegal NCO performing the Central Witness Funding function. See Attachment 3, Organizational Chart of Proposed Model.

To maintain the separation of roles, the DA would direct a binding disposition on a convening authority outside of the chain of command of the accused and of the victim when applicable (required by Section 568A(b) which amends Article 22, UCMJ). To comply with this legislative change, TJAG may organize one, all, or a combination of the following processes:

- The AF/DA office may have a different O-6 from within the office (one of the DAs) serve as the convening authority for all covered offenses taken to a GCM or SPCM (preferred COA).
- The AF/DA office may direct, for SPCM only, that a SPCMCA outside of the chain of command of the victim and accused convene the SPCM.
- The AF/DA may send the court-martial to convening authorities left in place at Article 22, UCMJ, by Section 568, to wit: the President, Secretary of Defense, any Combatant Commander, any Service Secretary or any other commander empowered by the President (but presumably not one in conflict with the legislation, such as a commander in the accused or victim's command chain).

To implement Section 568’s intent, the legislation should reconcile UCMJ changes directed under this proposal with authorities under the Rules for Court-Martial as well as other articles of the Uniform Code of Military Justice.

- In particular, these legislative changes to convening authority under Article 22 must be reconciled with the requirement to conduct an Article 32 pre-trial investigation (see also RCM 405) before convening a GCM and authority to order such pre-trial investigation under RCM 404 and 407. Section 586 does not make the AF/DA’s recommendation to proceed to an Article 32 hearing binding on the authority who may order an Article 32 hearing pursuant to the RCMs.
- Additional reconciliation must be completed with command discretion that currently exists at RCMs 401 – 403 as well as the policy enumerated at RCM 306 generally as to initial disposition.

**Question 10 – What is the number of staff judge advocates (SJAs) required to staff the new GCMCAs?**

The proposed model would require one SJA who would be designated from among the existing centralized DA/CA senior O-6s.

Again, TJAG could determine whether additional SJAs are needed to advise the O-6 DA/CA JAs. Several options exist, including TJAG directing that pretrial advice under RCM 406 be completed by the SJAs currently assigned in the field and forwarded to the AF/DA.

**Question 11 – Please provide information about the costs of setting up this new office (manpower, facilities, communication, etc.) required for implementation.**

The charts below detail costs for a 33-person office as proposed at Question 9 (above).

<b>Estimate of Increased JA Resources Required for Reorganization - Full Stand Up</b>	
<b>Manpower</b>	<b>\$1.63m</b>
<b>Travel</b>	<b>\$98k</b>
<b>Training</b>	<b>\$58k</b>
<b>Equipment/Supplies***</b>	<b>\$288k</b>
<b>Software Development (AMJAMS)</b>	<b>\$5m</b>
<b>Total</b>	<b>\$7.07m</b>

\*\*\* *New office furniture, IT equipment, and annual office supply budget (\$25k) and MFD costs (\$2k)*

<b>Estimate of Increased JA Resources Required for Reorganization Using Existing Resources</b>	
<b>Manpower</b>	<b>\$1.63m</b>
<b>Travel</b>	<b>\$98k</b>
<b>Training</b>	<b>\$58k</b>
<b>Equipment/Supplies****</b>	<b>\$71k</b>
<b>Software Development (AMJAMS)</b>	<b>\$5m</b>
<b>Total</b>	<b>\$6.86m</b>

\*\*\*\* Eliminated office furniture purchase, half of the IT purchases, and MFD.

*Assumption: Figures calculated using existing facilities on a military installation. If the office is in an off-base facility, the cost will significantly increase due to lease and utility costs.*

*Note: Factor in 2.2% inflation cost through the FYDP for travel, training and supplies. Factor in a decrease in software development to sustainment levels approximated at \$250k/yr at the 2-yr point.*

**Question 12 – Please provide an Air Force review of the Navy/Marine resourcing assumptions and add service-specific modifications.**

AF/JA agrees with each of the assumptions made by the Navy/Marine resourcing assumptions, with specific comments on assumptions 6 and 7 (of 8).

*6 – Less PTAs [pretrial agreements] for specified offenses – no incentive for accused to plead because government cannot enforce benefit of bargain.*

We agree that this assessment could be true depending on the construct of the new entity. With a centralized convening authority, this problem would be avoided in that any PTA would be between the accused and the centralized convening authority. Commanders would only enter into PTAs for the courts-martial they still have the authority to convene. It is unclear how a binding disposition authority would impact PTAs.

*7 – There is still a chance for commanders to send non-specified offenses to SPCMs.*

We agree and would expand upon that assumption to include the power to convene GCMs for non-specified offenses.

**Question 13 – Please provide an Air Force review of the United States Marine Corps (USMC) position paper and add service-specific modifications.**

AF/JA generally agrees with the USMC’s comments. However, in commenting on the position paper, we note that “although the Senator Gillibrand amendment is referred to as both ‘S967’ and ‘the Military Justice Improvement Act - MJIA,’ all discussions are referring to the legislation that will ultimately be offered as a floor amendment to S.1197.” *Maj Hebner, SAF/LLP email, 9 Aug 13.* Accordingly, several of the valid USMC concerns are overcome in that those concerns are absent from the current version of Senator Gillibrand’s proposal, the floor amendment to S.1197.

We disagree with the USMC conclusion that the bill would statutorily eliminate all convening authorities from the division level and lower; that all GCMs and SPCMs would now be convened by a Service-level office that would also pick members and detail military judges.

a. The proposal in Section 568(a) proposes to keep the commander's current convening authority for offenses under Articles 83-117, 133 and 134, UCMJ; and for any offense that authorizes a maximum term of confinement of one year or less. For all of those offenses, the current system would remain intact; thus, requiring maintenance of the current convening authority construct in addition to the new system.

b. Moreover, nothing in the current proposal eliminates the current convening authorities' discretion from excluded offenses. Instead, the legislation removes the current convening authorities' discretion over covered offenses.

The USMC concludes that the proposal does not explain Article 32 hearings, UCMJ; initial disposition; preferral; referral; and court member selection. We agree that the proposed legislation does not explain Article 32 hearings; however, we disagree with the USMC's conclusion that the proposed legislation does not address initial disposition, preferral, referral, and court member selection. The Air Force proposes that the centralized Disposition Authority model would direct existing organizations to perform these functions thereby meeting the legislation's intent. The Judge Advocate General could promulgate rules to allow the Disposition Authority to: direct and receive proffered court members from effected commands (satisfying Section 568A(c)(1)(C)); request and receive detailed judges (satisfying Section 568A(c)(1)(B)); and act on and fund required witnesses as experts or as other fact witnesses. Finally, Article 32, UCMJ investigations could be ordered by the JAs serving as convening authorities pursuant to this legislation.