

A. AUTHORITIES

1. DISPOSITION OF SO CALLED 'FELONY' 'EXCLUDED' OFFENSES (AND REPEATED LESSER MISCONDUCT WHICH BY repeated instances BECOME more serious warranting SPCM OR GCM). Numerous offenses that remain with the Cdr (the 'excluded offenses') carry more than a year of prison (aiding the enemy, spying, espionage, negligent homicide, possession, distribution and creation of child pornography, kidnapping). Who has authority to refer these offenses to General Court-martial as all currently existing GCMCAs are deleted in the proposed Amendment, hereinafter MJIA. Does the President have to designate new GCMCAs? Or the Service Secretaries? Or the new Service Chief Convening Authority Offices? If so, what is expectation for such designation since existing GCMCAs were deleted? How does an amalgam of lower level offenses reach the GCM level if appropriate? The Amendment outlines the new JAG DA process– but there is no process outlined for 'Commander cases.'
2. CHIEF OF SERVICES CONVENING OFFICES. What are the qualifications of the designated convening authorities? Which offenses is this office responsible for if a case involves both MJIA and excluded offenses?
3. The amendment includes ATTEMPTS and CONSPIRACIES to commit the crime in the offenses reserved to the O6 JA DA but DOES NOT with respect to 'excluded' offenses. Was this omission intentional? If so, attempts and conspiracies to commit any offense reserved to the commander (missing movement, drug distribution or use, kidnapping etc...) could not be prosecuted.
4. The Coast Guard Commandant is not accounted for in the amendment so the Coast Guard loses all of its convening authorities and has no new office to manage the included offenses like the other Services. What is the expected course of action for the Coast Guard to be able to discipline offenders?
5. Is there any criminal jurisdiction in the United States that bifurcates responsibility to try cases in this manner and has it proven successful in addressing the perceived or actual failures being addressed?

B. PARALLEL SYSTEMS AND COSTS

1. What analysis was conducted in asserting that the Amendment will remain cost-neutral in implementation? How many O6 JA DAs will be needed by each Service, how many with the enumerated qualifications are available (not currently filling required SME billets, i.e. trial judge, appellate judge, Chief of the Government or Defense Appellate Divisions etc...) and how many will be needed to staff the new offices created by the Chiefs of Services. How many additional staff to support the new office of the Chief (centralized or dispersed) will be required to manage worldwide load of criminal investigations and the disposition thereof. Who will try the cases referred by the new DA and CAs – as the existing Trial Counsel report to the Staff Judge Advocate responsible only for the excluded offenses and are part of the accused's chain of command?
2. What is the process for cases where both 'systems of disposition' intersect? For example, an accused who kidnaps his victim and then commits rape. The former is the responsibility of the commander (Article 134) and the latter is reserved to the new O6 DA. Other cases could include an AWOL and a murder charge, or a larceny and disrespect or disobedience offense. Another example is if an intoxicated member grabs the buttocks of his victim against her will then drives

her home and while under the influence wrecks and kills her. The commander has authority to adjudicate the negligent homicide case but not the sexual contact offense? Explicit jurisdictional language contained in the Amendment could constitute grounds for challenge if a single Disposition authority takes single responsibility.

3. Many 'included' offenses for the O6 JA DA will not rise to court-martial – for example, charges arising from one service member borrowing a barracks mate's car without permission (larceny under Art. 121), use of a false pass or liberty chit (Art. 123), or theft of a shipmate's iPad Air - is the intent for the O6 DA to dispose of them or to push them to the Cdr? This will result in delay and question on procedure should the accused refuse the Cdr's disposition (see next question)

C. CONFLICTS OF INTEREST

The same office details the judge, the prosecutor, the defense counsel and the members of the panel. The existing system gives detailing responsibility to different senior leaders to ensure fairness and Due Process and to eliminate the perception of a conflict of interest – i.e. the CA appointment of the defense counsel and the trial judge - who would therefore, appear beholden to the CA. What case law, civilian or military, was reviewed prior to placing the selection of prosecutor, defense counsel, judge and jury all within the same authority?

D. PROCEDURE/APPLICATION

1. REFUSAL OF NJP OR SCM. When the O6 JA DA says no CM, and it returns to the Cdr for disposition and the accused demands trial by CM – which is a binding decision by the DA, will the SM receive a windfall of no action? Will the DA reconsider or will the Cdr system be responsible for the prosecution? Recall that under Article 15 and Summary Court-martial, an accused may refuse the disposition and demand trial. How is this to be resolved for offenses under the purview of the O6 JA? If O6 JA refuses and SPCMCA can't refer to SPCM, SCM or take to NJP then who is responsible for the lack of accountability built into the statute?
2. ARTICLE 32. Is an Article 32 investigation still required under the new bifurcated system – especially with respect to offenses under the purview of the O6 JA DA. If a case involves both a MJIA and excluded offense, what are the speedy trial ramifications while one offense goes through the Article 32 process while the other is subject to direct referral by the DA?
3. ARTICLE 34. Is Article 34 pretrial advice prior to referral to General Court-martial still required for those offenses under the purview of the O6 JA?
4. Who has authority to enter pretrial agreements with respect to offenses that are 'included' in the O6 JA's authority. This includes PTAs where accused may be willing to plead to some offenses but not others, yet the ministerial GCMCA or SPCMCA has a binding referral decision from the O6 JA.
5. Does the amendment intend to apply only to preferred charges, or to investigations/cases that would support charges of the MJIA offenses?