

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE POLICY DIRECTIVE 51-2

4 NOVEMBER 2011



Law

ADMINISTRATION OF MILITARY JUSTICE

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available for downloading or ordering on the e-Publishing website at www.e-publishing.af.mil.

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AFLOA/JAJM

Certified by: AF/JA

Supersedes: AFPD 51-2,

(Lt Gen Richard C. Harding)

7 September 1993

Pages: 7

This Directive establishes the framework for administering military justice in the Air Force under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM). This Directive implements DoDD 1030.1, Victim and Witness Assistance; DoDI 5030.70, Coordination of Significant Litigation and Other Matters Involving the Department of Justice; and DTM 08-009, UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving with or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations. It applies to all organizational entities within the Department of the Air Force, including military members of the Air Force Reserve (AFR) and Air National Guard (ANG) while in Federal service. Send all recommended changes or comments about this publication to AFLOA/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews Navy Air Facility Washington, MD 20762, through appropriate channels, using AF Form 847, Recommendation for Change of Publication. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 33-363, Management of Records, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located at <https://www.my.af.mil/afirms/afirms/afirms/rims.cfm>.

SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. Major changes include updates to organizational names, office symbols and publication references; deletion of references to policy letters; clarification regarding jurisdiction over AFR, ANG, and Retired military members; and updates to the policies on pretrial agreements and Air Force action following state, federal, and foreign court prosecutions. In accordance with AFPD 90-1, Policy Formulation, specific metrics for courts-martial and nonjudicial punishment have been omitted

and now may be found in AFI 51-201, Administration of Military Justice, and AFI 51-202, Nonjudicial Punishment, respectively.

1. Good order and discipline are essential to an effective fighting force. Impartial, timely military justice helps sustain good order and discipline. This Directive establishes policies for implementing a uniform military justice system that promotes ethical standards, deters misconduct, and increases mission readiness.
2. All practitioners of military justice will be ethical and civil in conducting their business.
3. The Judge Advocate General (TJAG) will organize the military justice components of The Judge Advocate General's Corps to maintain their independent and adversarial interests.
4. All trial judges and appellate judges, and all persons who act in a quasi-judicial capacity, must be free to make their judicial determinations with absolute independence.
5. Defense counsel, at trial and the appellate level, will perform their defense functions with the sole objective of furthering the interests of their defense clients, consistent with their ethical obligations and their status as officers of the court.
6. Allegations of charges under the UCMJ will be processed without undue delay and promptly disposed of by the appropriate commanders. Processing goals may be established to help manage the military justice process, but they may not drive substantive decisions.
7. Air Force members will not be tried by court-martial or punished under Article 15, UCMJ, for substantially the same act or omission for which a state, Federal, or foreign court has tried them, unless the Secretary of the Air Force (SECAF) grants an exception to this policy.
8. Caution should be used whenever a pretrial agreement (PTA) is being considered. A PTA is appropriate when there are benefits to the government and the accused. PTAs should not be entered into by the government solely for expediency, i.e. to dispose of a case quickly with minimal consideration for the consequences of the agreement.
9. Military justice cases involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of punitive regulations and criminal statutes concerning classified information or the foreign relations of the United States must be reported to the Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM) as Special Interest cases. The Chief, Military Justice Division must grant permission to enter into pretrial agreement discussions in cases involving such offenses. AFLOA/JAJM will coordinate as required with the Department of Justice (DoJ) to ensure actions taken on such cases comply with Department of Defense (DoD) Instruction 5525.07, Implementation of the MOU Between Department of Justice and Department of Defense Relating to the Investigation and Prosecution of Certain Crimes.
10. Article 58a(a), UCMJ, will not operate to automatically reduce the grade of an enlisted member. All reductions in grade will be based upon adjudged and approved sentences.
11. Commanders will use nonjudicial punishment, under Article 15, UCMJ, as a prompt way to maintain good order and discipline and promote positive behavior changes in Air Force members without the stigma of a court-martial conviction. Commanders should consider nonpunitive discipline before resorting to nonjudicial punishment, but are not required to do so.

12. Convening authorities must obtain DoJ authorization through AFLOA/JAJM to grant immunity to witnesses who are not subject to the UCMJ or who are subject to DoJ prosecutorial interest.

13. When determining whether to release information regarding a criminal proceeding, the Air Force will balance public interest in the administration of justice against the accused's rights to a fair trial and privacy.

14. SECAF is the only individual in the Department of the Air Force who may decide whether to claim the privilege from disclosure of classified information under Military Rule of Evidence 505.

15. Exercise of Jurisdiction Over Reserve, Guard, and Retired Members:

15.1. Air Force Reserve and Air National Guard members who are recalled to active duty for court-martial may not be sentenced to confinement or be required to serve a punishment consisting of any restriction on liberty during the recalled period of duty without prior SECAF approval.

15.2. Retired Air Force members who are subject to UCMJ jurisdiction will not be tried by court-martial unless the alleged misconduct clearly links them to the military or is adverse to a significant military interest of the United States. SECAF approval is required prior to preferral of charges against retired members unless the statute of limitations for the alleged misconduct is set to immediately expire. In such cases, charges should be preferred and SECAF approval should be obtained as soon as possible.

16. For all military justice purposes, AFLOA/JAJM will be considered part of the Office of The Judge Advocate General.

17. This Directive establishes the following responsibilities and authorities:

17.1. SECAF or the SECAF's designee determines which of the commanders designated under the UCMJ to convene special or general courts-martial may exercise those powers.

17.2. TJAG issues Air Force publications consistent with this AFPD, establishing procedures and delegations needed to uniformly administer military justice in the Air Force. Commanders, TJAG, and Staff Judge Advocates (SJA) carry out these procedures consistent with the policy established in this AFPD.

17.3. SECAF delegations and directives concerning military justice will be maintained at AFLOA/JAJM and/or published in Air Force policy directives or instructions, as appropriate.

17.4. All Air Force personnel having official contact with victims and witnesses in the administration of military justice will treat them with dignity and respect, provide timely access to appropriate treatment and services, and help mitigate the physical, psychological, and financial hardships suffered from offenses punishable under the UCMJ and committed by a person subject to the UCMJ. The personal lives of victims and witnesses should be disrupted as little as possible in administering military justice.

18. This Directive does not confer any rights, benefits, or form of due process on any individual nor does it create any obligations for the United States, the Department of Defense, or the Air Force.

RICHARD C. HARDING
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Uniform Code of Military Justice

Manual for Courts-Martial, United States (2008 Edition)

AFPD 36-60, *Sexual Assault Prevention and Response (SAPR) Program*, 28 March 2008

AFPD 71-1, *Criminal Investigations and Counterintelligence*, 6 January 2010

AFPD 90-1, *Policy Formulation*, 6 October 2010

AFI 51-201, *Administration of Military Justice*, 21 December 2007 (Incorporating Change 1, 3 February 2010 and Air Force Guidance Memorandum to AFI 51-201, 4 April 2011)

AFI 51-202, *Nonjudicial Punishment*, 7 November 2003 (Incorporating through Change 3, 11 August 2011)

AFMAN 33-363, *Management of Records*, 1 March 2008

DoD Directive 1030.1, *Victim and Witness Assistance*, 13 April 2004

DoD Directive 5525.07, *Implementation of the MOU Between Department of Justice and Department of Defense Relating to the Investigation and Prosecution of Certain Crimes*, 18 June 2007

DoD Instruction 5030.7, *Coordination of Significant Litigation and Other Matters Involving the Department of Justice*, 22 August 1988

DTM 08-009, *UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving with or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations*, 10 March 2008

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFPD—Air Force Policy Directive

AFLOA—Air Force Legal Operations Agency

AFR—Air Force Reserves

AMJAMS—Automated Military Justice and Management System

ANG—Air National Guard

DoD—Department of Defense

DoJ—Department of Justice

MCM—Manual for Courts-Martial

RDS—Records Disposition Schedule

SECAF—Secretary of the Air Force

SJA—Staff Judge Advocate

TJAG—The Judge Advocate General

UCMJ—Uniform Code of Military Justice

Terms

Policy—Statements of important, high-level direction that guide decisions and actions throughout the Air Force. Policy translates the ideas, goals, or principles contained in the mission, vision, and strategic plan into actionable directives.

Attachment 2

MEASURING COMPLIANCE WITH POLICY

A2.1. TJAG will assess compliance with this Directive by measuring the administration of military justice in two key areas: (1) timeliness of courts-martial and nonjudicial punishments under Article 15, UCMJ, and (2) deterrent effectiveness as shown through courts-martial and nonjudicial punishments rates per thousand. Each legal office will report measurements to AFLOA/JAJM through the *Automated Military Justice Analysis and Management System (AMJAMS)*.

A2.2. Timeliness. The policy to promptly address and resolve allegations under the UCMJ will be measured by assessing the number of days from the date of discovery of the alleged offense until completion of the military justice action. Commanders and SJAs at all levels must ensure timely processing of all military justice actions.

A2.2.1. To achieve maximum disciplinary and rehabilitative effect, nonjudicial punishment should normally be offered to an individual as soon as possible after facts become known by the member's commander which indicate that offenses may have been committed. Compliance with this policy will be measured by assessing the average number of days from the date of discovery of the offense to the date nonjudicial punishment is offered, and the average number of days from the date nonjudicial punishment is offered to the date nonjudicial punishment is completed and found legally sufficient by the servicing SJA.

A2.2.2. Undue delays in bringing a case to trial present hardships to victims and witnesses, as well as the accused. Similarly, undue delays in post-trial processing of cases are disruptive to the lives of both victims and those accused and are costly to the Air Force. Therefore, expeditious processing of courts-martial is essential. Compliance with this policy will be measured by assessing the average number of days from the date of discovery of the offense until preferral; the average number of days from the date of preferral to the date of action by the convening authority; and the average number of days from the date of the action by the convening authority and the date the record of trial is forwarded to AFLOA/JAJM. SJAs are encouraged to analyze available statistical data relating to the segments of court processing over which they have significant control to highlight specific areas they can improve.

A2.3. Deterrent Effectiveness. Effective discipline should deter future misconduct. Analyzing the frequency of courts-martial and nonjudicial punishment use compared to the Air Force population can, over time, reflect deterrent effectiveness. Significant departures from trends may reflect disproportionate use or non-use of military justice tools.

A2.3.1. Courts-martial rates per thousand can indicate the deterrent effect of this disciplinary tool. Rates of courts-martial per thousand Air Force members can, over time, reflect trends as to commanders' need to use the court system to address serious breaches of military standards.

A2.3.2. Nonjudicial punishment rates per thousand can indicate the deterrent effect of this disciplinary tool. Rates of nonjudicial punishments per thousand Air Force members can, over time, reflect trends as to commanders' need to use nonjudicial punishment to address minor breaches of military standards.