

52 FR 7103

Title 3 --

The President

Amendments to the Manual for Courts-Martial, United States, 1984

Executive Order 12586 of March 3, 1987

52 FR 7103

March 9, 1987

**TEXT:**

By the authority vested in me as President by the Constitution of the United States and by chapter 47 of title 10 of the United States Code (Uniform Code of Military Justice), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484 and Executive Order No. 12550, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 201(e) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

"(2) (A) A commander of a unified or specified combatant command may convene courts-martial over members of any of the armed forces.

"(B) So much of the authority vested in the President under Article 22(a)(9) to empower any commanding officer of a joint command or joint task force to convene courts-martial is delegated to the Secretary of Defense, and such a commanding officer may convene general courts-martial for the trial of members of any of the armed forces.

"(C) A commander who is empowered to convene a court-martial under subsections (e)(2)(A) or (e)(2)(B) of this rule may expressly authorize a commanding officer of a subordinate joint command or subordinate joint task force who is authorized to convene special and summary courts-martial to convene such courts-martial for the trial of members of other armed forces under regulations which the superior command may prescribe."

(2) Subparagraph (3)(A) is amended to read as follows:

"(A) The court-martial is convened by a commander authorized to convene courts-martial under subsection (e)(2) of this rule; or"

(3) The following new paragraphs are inserted at the end thereof:

"(6) When there is a disagreement between the Secretaries of two military departments or between the Secretary of a military department and the commander of a unified or specified combatant command or other joint command or joint task force as to which organization should exercise jurisdiction over a particular case or class of cases, the Secretary of Defense or an official acting under the authority of the Secretary of Defense shall designate which organization will exercise jurisdiction.

"(7) Except as provided in subsections (5) and (6) or as otherwise directed by the President or Secretary of Defense, whenever action under this Manual is required or authorized to be taken by a person superior to --

"(A) a commander of a unified or specified combatant command or;

"(B) a commander of any other joint command or joint task force that is not part of a unified or specified combatant command,

"the matter shall be referred to the Secretary of the armed force of which the accused is a member. The Secretary may convene a court-martial, take other appropriate action, or, subject to R.C.M. 504(c), refer the matter to any person authorized to convene a court-martial of the accused."

b. Chapter II is amended by inserting the following new Rule following R.C.M. 203:

"Rule 204. Jurisdiction over reserve component personnel

"(a) *Service regulations.* The Secretary concerned shall prescribe regulations setting forth rules and procedures for the exercise of court-martial jurisdiction and nonjudicial punishment authority over reserve component personnel under Articles 2(a)(3) and 2(d), subject to the limitations of this Manual and the UCMJ.

"(b) (1) *General and special court-martial proceedings.* A member of a reserve component must be on active duty prior to arraignment at a general or special court-martial. A member ordered to active duty pursuant to Article 2(d) may be retained on active duty to serve any adjudged confinement or other restriction on liberty if the order to active duty was approved in accordance with Article 2(d)(5), but such member may not be retained on active duty pursuant to Article 2(d) after service of the confinement or other restriction on liberty. All punishments remaining unserved at the time the member is released from active duty may be carried over to subsequent periods of inactive-duty training or active duty.

"(2) *Summary courts-martial.* A member of a reserve component may be tried by summary court-martial either while on active duty or inactive-duty training. A summary court-martial conducted during inactive-duty training may be in session only during normal periods of such training. The accused may not be held beyond such periods of training for trial or service of any punishment. All punishments remaining unserved at the end of a period of active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of inactive-duty training or active duty.

"(c) *Applicability.* This subsection is not applicable when a member is held on active duty pursuant to R.C.M. 202(c).

"(d) *Changes in type of service.* A member of a reserve component at the time disciplinary action is initiated, who is alleged to have committed an offense while on active duty or inactive-duty training, is subject to court-martial jurisdiction without regard to any change between active and reserve service or within different categories of reserve service subsequent to commission of the offense. This subsection does not apply to a person whose military status was completely terminated after commission of an offense."

c. R.C.M. 503(a)(2) is amended by inserting in the first sentence "orally on the record or" after "request".

d. R.C.M. 701(b)(2) is amended by striking out "a mental disease, defect, or other condition bearing upon the guilt of the accused" and inserting in lieu thereof "the defense of lack of mental responsibility".

e. R.C.M. 706(c)(1) is amended to read as follows:

"(1) *By whom conducted.* When a mental examination is ordered under subsection (b) of this rule, the matter shall be referred to a board consisting of one or more persons. Each member of the board shall be either a physician or a clinical psychologist. Normally, at least one member of the board shall be either a psychiatrist or a clinical psychologist. The board shall report as to the mental capacity, mental responsibility, or both of the accused."

f. R.C.M. 706(c)(2) is amended as follows:

(1) Subsection (A) is amended to read as follows:

"(A) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? (The term "severe mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects.)";

(2) Subsection (C) is amended to read as follows:

"(C) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?"; and

(3) Subsection (D) is deleted and subsection (E) is redesignated as subsection (D).

g. R.C.M. 707 is amended --

(1) in subsection (a) --

(a) by striking "or" in subsection (1);

(b) by striking the period at the end of subsection (2) and inserting in lieu thereof "; or"; and

(c) by inserting the following new paragraph at the end thereof:

"(3) Entry on active duty under R.C.M. 204."; and

(2) in subsection (c) by redesignating paragraph (8) as paragraph (9) and by inserting the following new paragraph after paragraph (7):

"(8) Any period of delay, not exceeding 60 days, occasioned in processing and implementing a request pursuant to R.C.M. 204 to order a member of a reserve component to active duty for disciplinary action."

h. R.C.M. 903 is amended --

(1) in subsection (b)(1) by inserting "or shall be made orally on the record" after "signed by the accused";

(2) in subsection (c)(1) --

(a) by striking out "receipt" and inserting in lieu thereof "notice";

(b) by striking out "timely written request" and inserting in lieu thereof "timely request"; and

(c) by inserting a comma after "enlisted accused"; and

(3) in subsection (c)(3) by striking out "written".

i. R.C.M. 916 is amended as follows:

(1) Subsection (b) is amended by striking out "Once" and inserting in lieu thereof "Except for the defense of lack of mental responsibility, once" and by inserting the following new sentence at the end thereof: "The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.";

(2) Subsection (e)(1) is amended to read as follows:

"(1) *Homicide or assault cases involving deadly force.* It is a defense to a homicide, assault involving deadly force, or battery involving deadly force that the accused:

"(A) Apprehended, on reasonable grounds, that death or grievous bodily harm was about to be inflicted wrongfully on the accused; and

"(B) Believed that the force the accused used was necessary for protection against death or grievous bodily harm.";

(3) Subsection (k)(1) is amended to read as follows:

"(1) *Lack of mental responsibility.* It is an affirmative defense to any offense that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense.";

(4) Subsection (k)(2) is amended to read as follows:

"(2) *Partial mental responsibility.* A mental condition not amounting to a lack of mental responsibility under subsection (k)(1) of this rule is not a defense, nor is evidence of such a mental condition admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense."; and

(5) Subsection (k)(3)(A) is amended by striking out "some evidence to the contrary is admitted" and inserting in lieu thereof "the accused establishes, by clear and convincing evidence, that he or she was not mentally responsible at the time of the alleged offense".

j. R.C.M. 918(a) is amended --

(1) in subsection (1) by inserting "not guilty only by reason of lack of mental responsibility;" after "guilty of any substitutions;"; and

(2) in subsection (2) by inserting "not guilty only by reason of lack of mental responsibility;" after "Article XX ;".

k. R.C.M. 920(e)(5)(D) is amended by inserting the following at the end thereof: "[When the issue of lack of mental responsibility is raised, add:] However, the burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused."

l. R.C.M. 921(c) is amended --

(1) by redesignating subsections (4) and (5) as (5) and (6) respectively; and

(2) by inserting the following new subsection after subsection (3):

"(4) *Not guilty only by reason of lack of mental responsibility.* When the defense of lack of mental responsibility is in issue under R.C.M. 916(k)(1), the members shall first vote on whether the prosecution has proven the elements of the offense beyond a reasonable doubt. If at least two-thirds of the members present (all members for offenses where the death penalty is mandatory) vote for a finding of guilty, then the members shall vote on whether the accused has proven lack of mental responsibility. If a majority of the members present concur that the accused has proven lack of mental responsibility by clear and convincing evidence, a finding of not guilty only by reason of lack of mental responsibility results. If the vote on lack of mental responsibility does not result in a finding of not guilty only by reason of lack of mental responsibility, then the defense of lack of mental responsibility has been rejected and the finding of guilty stands."

m. R.C.M. 924(b) is amended by inserting the following new sentence before the last sentence thereof: "Any finding of not guilty only by reason of lack of mental responsibility shall be reconsidered on the issue of the finding of guilty of the elements if more than one-third of the members vote for reconsideration, and on the issue of mental responsibility if a majority vote for reconsideration."

n. R.C.M. 1001(b)(2) is amended by striking out "all those records" in the second paragraph and inserting in lieu thereof "any records".

o. R.C.M. 1003(c) is amended --

(1) by redesignating subsection (3) as subsection (4); and

(2) by inserting the following new subsection after subsection (2):

"(3) *Based on reserve status in certain circumstances.*

"(A) *Restriction on liberty.* A member of a reserve component whose order to active duty is approved pursuant to Article 2(d)(5) may be required to serve any adjudged restriction on liberty during that period of active duty. Other members of a reserve component ordered to active duty pursuant to Article 2(d)(1) or tried by summary court-martial while on inactive duty training may not --

"(i) be sentenced to confinement; or

"(ii) be required to serve a court-martial punishment consisting of any other restriction on liberty except during subsequent periods of inactive-duty training or active duty.

"(B) *Forfeiture.* A sentence to forfeiture of pay of a member not retained on active duty after completion of disciplinary proceedings may be collected from active duty and inactive-duty training pay during subsequent periods of duty."

p. R.C.M. 1010(c) is amended to read as follows:

"(c) The right to apply for relief from the Judge Advocate General if the case is neither reviewed by a Court of Military Review nor reviewed by the Judge Advocate General under R.C.M. 1201(b)(1); and".

q. R.C.M. 1105(c) is amended by --

(1) amending subsection (1) to read as follows:

"(1) *General and special courts-martial.* After a general or special court-martial, the accused may submit matters under this rule within the later of 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer is served on the accused. If the accused shows that additional time is required for the accused to submit such matters, the convening authority may, for good cause, extend the 10-day period for not more than 20 additional days.";

(2) striking out subsection (2);

(3) redesignating subsections (3), (4) and (5) as subsections (2), (3) and (4) respectively; and

(4) amending the last sentence of redesignated subsection (2) to read as follows: "If the accused shows that additional time is required for the accused to submit such comments, the convening authority may, for good cause, extend the period in which comments may be submitted for up to 20 additional days.".

r. R.C.M. 1106(f)(5) is amended by striking out "5 days from receipt" and inserting in lieu thereof "10 days from service of the record of trial under R.C.M. 1104(b) or receipt of the recommendation, whichever is later,".

s. R.C.M. 1107(b)(5) is amended to read as follows:

"(5) *Action when accused lacks mental capacity.* The convening authority may not approve a sentence while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the convening authority may direct an examination of the accused in accordance with R.C.M. 706 before deciding whether the accused lacks mental capacity, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the post-trial proceedings. The convening authority may approve the sentence unless it is established, by a preponderance of the evidence -- including matters outside the record of trial -- that the accused does not have the requisite mental capacity. Nothing in this subsection shall prohibit the convening authority from disapproving the findings of guilty and sentence.".

t. R.C.M. 1109 is amended --

- (1) in subsection (c)(3) by striking out "probation" and inserting in lieu thereof "suspension";
- (2) in subsection (c)(4)(A) by inserting "in writing" after "notified";
- (3) in subsection (d)(1)(A) by striking out "probation" and inserting in lieu thereof "suspension";
- (4) in subsection (d)(1)(B) by inserting "in writing" after "notified";
- (5) in subsection (d)(1)(B)(iii) by striking out "probation" and inserting in lieu thereof "suspension";
- (6) in subsection (d)(1)(D) by inserting "written" before "recommendation concerning vacation";
- (7) in subsection (e)(4) by inserting "written" before "recommendation concerning vacation";  
and
- (8) in subsection (e)(5) by striking out "probation" and inserting in lieu thereof "suspension".

u. R.C.M. 1112 is amended --

- (1) in subsection (d) by adding the following new paragraph at the end thereof:

"Copies of the judge advocate's review under this rule shall be attached to the original and all copies of the record of trial. A copy of the review shall be forwarded to the accused."; and

- (2) in subsection (e) by striking out the last sentence.

v. R.C.M. 1113(d)(1) is amended to read as follows:

"(1) *Death.*

"(A) *Manner carried out.* A sentence to death which has been finally ordered executed shall be carried out in the manner prescribed by the Secretary concerned.

"(B) *Action when accused lacks mental capacity.* An accused lacking the mental capacity to understand the punishment to be suffered or the reason for imposition of the death sentence may not be put to death during any period when such incapacity exists. The accused is presumed to have such mental capacity. If a substantial question is raised as to whether the accused lacks capacity, the convening authority then exercising general court-martial jurisdiction over the accused shall order a hearing on the question. A military judge, counsel for the government, and counsel for the accused shall be detailed. The convening authority shall direct an examination of the accused in accordance with R.C.M. 706, but the examination may

be limited to determining whether the accused understands the punishment to be suffered and the reason therefor. The military judge shall consider all evidence presented, including evidence provided by the accused. The accused has the burden of proving such lack of capacity by a preponderance of the evidence. The military judge shall make findings of fact, which will then be forwarded to the convening authority ordering the hearing. If the accused is found to lack capacity, the convening authority shall stay the execution until the accused regains appropriate capacity."

w. R.C.M. 1114 is amended as follows:

(1) Subsection (b)(2) is amended by inserting the following at the end of the introductory paragraph thereof: "The subsequent action and the supplementary order may be the same document if signed personally by the appropriate convening or higher authority."; and

(2) Subsection (c) is amended to read as follows:

"(c) *Contents.*

"(1) *In general.* The order promulgating the initial action shall set forth: the type of court-martial and the command by which it was convened; the charges and specifications, or a summary thereof, on which the accused was arraigned; the accused's pleas; the findings or other disposition of each charge and specification; the sentence, if any; and the action of the convening authority, or a summary thereof. Supplementary orders shall recite, verbatim, the action or order of the appropriate authority, or a summary thereof.

"(2) *Dates.* The date of a promulgating order shall be the date of the action of the convening authority being promulgated, if any. An order promulgating an acquittal, a finding of not guilty only by reason of lack of mental responsibility, or a court-martial terminated before findings shall bear the date of its publication. A promulgating order shall state the date the sentence was adjudged, the date on which the acquittal or finding of not guilty only by reason of lack of mental responsibility was announced, or the date on which the proceedings were otherwise terminated."

x. R.C.M. 1201(b)(3)(A) is amended by striking out the comma after "a Court of Military Review" and inserting in lieu thereof "or by the Judge Advocate General under subsection (b)(1) of this rule,".

y. R.C.M. 1203(c) is amended by adding the following new subsection at the end thereof:

"(5) *Action when accused lacks mental capacity.* An appellate authority may not affirm the proceedings while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the appellate authority may direct that the record be forwarded to an appropriate authority for an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the appellate proceedings. The order of the appellate authority will instruct the appropriate authority as to permissible actions that may be taken to dispose of the

matter. If the record is thereafter returned to the appellate authority, the appellate authority may affirm part or all of the findings or sentence unless it is established, by a preponderance of the evidence -- including matters outside the record of trial -- that the accused does not have the requisite mental capacity. If the accused does not have the requisite mental capacity, the appellate authority shall stay the proceedings until the accused regains appropriate capacity, or take other appropriate action. Nothing in this subsection shall prohibit the appellate authority from making a determination in favor of the accused which will result in the setting aside of a conviction."

z. R.C.M. 1305(b)(2) is amended by striking out "number of previous convictions considered and the".

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 304(h) is amended by inserting the following new paragraph at the end thereof:

"(4) *Refusal to obey order to submit body substance.* If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

"(A) A charge of violating an order to submit such a sample; or

"(B) Any other charge on which the results of the chemical analysis would have been admissible."

b. Mil. R. Evid. 613(a) is amended by inserting "to him at that time, but on request the same shall be shown or disclosed" after "disclosed".

c. Mil. R. Evid. 902(1) is amended by striking out "exception" and inserting in lieu thereof "execution".

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 4 is amended in subparagraph c(5) by --

(1) adding "(e) Article 106a -- espionage" after subparagraph c(5)(d); and

(2) redesignating subparagraph c(5)(e) as subparagraph c(5)(f).

b. Paragraph 10 is amended in subparagraph c(9) by adding "and return" after "the hours of departure".

c. Paragraph 32 is amended --

(1) in subparagraph c(1) by striking out "military departments" and inserting in lieu thereof "armed forces"; and

(2) by amending subparagraphs d(1) through d(4) to read as follows:

"(1) *Sale or disposition of military property.*

"(a) Article 80 -- attempts

"(b) Article 134 -- sale or disposition of non-military government property

"(2) *Willfully damaging military property.*

"(a) Article 108 -- damaging military property through neglect

"(b) Article 109 -- willfully damaging non-military property

"(c) Article 80 -- attempts

"(3) *Willfully suffering military property to be damaged.*

"(a) Article 108 -- through neglect suffering military property to be damaged

"(b) Article 80 -- attempts

"(4) *Willfully destroying military property.*

"(a) Article 108 -- through neglect destroying military property

"(b) Article 109 -- willfully destroying non-military property

"(c) Article 108 -- willfully damaging military property

"(d) Article 109 -- willfully damaging non-military property

"(e) Article 108 -- through neglect damaging military property

"(f) Article 80 -- attempts".

d. Paragraph 35 is amended --

(1) in subparagraph a by striking out "manner," and inserting in lieu thereof "manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),";

(2) in subparagraph b(2) by striking out "; or" and inserting in lieu thereof a comma and by striking out "manner." and inserting in lieu thereof "manner, or that the accused was impaired by a substance described in article 112a(b) while operating the vehicle.";

(3) in subparagraph c by amending subparagraph (3) to read as follows:

"(3) *Drunk or impaired.* "Drunk" and "impaired" mean any intoxication which is sufficient sensibly to impair the rational and full exercise of the mental or physical faculties. Whether the drunkenness or impairment was caused by liquor or drugs is immaterial."; and

(4) in subparagraph f by inserting "[while impaired by XXX ]" after "[while drunk]".

e. Paragraph 42 is amended in subparagraph d by --

(1) deleting subparagraph d(1); and

(2) striking out "(2)".

f. Paragraph 46 is amended --

(1) in subparagraph b(1) by adding the following at the end thereof:

"[Note: If the property is alleged to be military property, as defined in paragraph 32c(1), add the following element]

"(e) That the property was military property.";

(2) by amending subparagraph d to read as follows:

"d. *Lesser included offenses.*

"(1) *Larceny.*

"(a) Article 121 -- wrongful appropriation

"(b) Article 80 -- attempts

"(2) *Larceny of military property.*

"(a) Article 121 -- wrongful appropriation

"(b) Article 121 -- larceny of property other than military property

"(c) Article 80 -- attempts

"(3) *Wrongful appropriation.* Article 80 -- attempts";

(3) by amending subparagraph e to read as follows:

"e. *Maximum Punishment.*

"(1) *Larceny.*

"(a) *Military property of a value of \$100 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

"(b) *Property other than military property of a value of \$100 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

"(c) *Military property of a value of more than \$100 or of any military motor vehicle, aircraft, vessel, firearm, or explosive.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

"(d) *Property other than military property of a value of more than \$100 or any motor vehicle, aircraft, vessel, firearm, or explosive not included in subparagraph e(1)(c).* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years."; and

(4) in subparagraph f(1) by adding "(military property)" after "steal XXXXX ,".

g. Paragraph 89 is amended in subparagraph d to read as follows:

"d. *Lesser included offenses*

"(1) Article 117 -- provoking speeches

"(2) Article 80 -- attempts".

Sec. 4. Part V of the Manual for Courts-Martial, United States, 1984, is amended in paragraph 5 by --

- a. Redesignating subparagraph "e" as subparagraph "g"; and
- b. Inserting the following new subparagraphs after subparagraph d:

"e. *Punishments imposed on reserve component personnel while on inactive-duty training.* When a punishment under Article 15 amounting to a deprivation of liberty (for example, restriction, correctional custody, extra duties, or arrest in quarters) is imposed on a member of a reserve component during a period of inactive-duty training, the punishment may be served during one or both of the following:

"(1) a normal period of inactive-duty training; or

"(2) a subsequent period of active duty (not including a period of active duty under Article 2(d) (1), unless such active duty was approved by the Secretary concerned).

"Unserviced punishments may be carried over to subsequent periods of inactive-duty training or active duty. A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty.

"f. *Punishments imposed on reserve component personnel when ordered to active duty for disciplinary purposes.* When a punishment under Article 15 is imposed on a member of a reserve component during a period of active duty to which the reservist was ordered pursuant to R.C.M. 204 and which constitutes a deprivation of liberty (for example, restriction, correctional custody, extra duties, or arrest in quarters), the punishment may be served during any or all of the following:

"(1) that period of active duty to which the reservist was ordered pursuant to Article 2(d), but only where the order to active duty was approved by the Secretary concerned;

"(2) a subsequent normal period of inactive-duty training; or

"(3) a subsequent period of active duty (not including a period of active duty pursuant to R.C.M. 204 which was not approved by the Secretary concerned).

"Unserviced punishments may be carried over to subsequent periods of inactive-duty training or active duty. A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty."

Sec. 5. These amendments shall take effect on March 12, 1987, subject to the following:

- a. The addition of Rule for Courts-Martial 204, the amendments made to Rules for Courts-Martial 707 and 1003(c), and the amendments made to paragraph 5 of Part V, shall apply to any offense committed on or after March 12, 1987.
- b. The amendments made to Rules for Courts-Martial 701(b), 706(c)(2), 916(b), 916(k), 920, 921, and 922 shall apply to any offense committed on or after November 14, 1986.
- c. The amendments made to Rules for Courts-Martial 503 and 903 shall apply only in cases in which arraignment has been completed on or after March 12, 1987.
- d. The amendments made to Rules for Courts-Martial 1105 and 1106 shall apply only in cases in which the sentence is adjudged on or after March 12, 1987.
- e. Except as provided in section 5.b, nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to March 12, 1987, which was not punishable when done or omitted.
- f. The maximum punishment for an offense committed prior to March 12, 1987 shall not exceed the applicable maximum in effect at the time of the commission of such offense.
- g. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to March 12, 1987, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 6. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with Section 836 of title 10 of the United States Code. \$/s/Ronald Reagan

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THE WHITE HOUSE,

March 3, 1987.

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