

APPENDIX

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United States Court of Appeals
for the Armed Forces
Washington, D.C.

United States, USCA Dkt. No. 25-0011/AF
Appellee Crim.App. No. 40441

V.

ORDER

Zhuo H.
Zhong,
Appellant

On consideration of Issue III granted by this Court, 85 M.J. 269 (C.A.A.F. 2025), we conclude that any error was harmless. We have considered the remaining granted issues in the light of *United States v. Csiti*, __ M.J. __ (C.A.A.F. 2025), and *United States v. Johnson*, __ M.J. __ (C.A.A.F. 2025). Accordingly, it is, by the Court, this 25th day of July, 2025,

ORDERED:

That the decision of the United States Air Force Court of Criminal Appeals is hereby affirmed.

For the Court,

/s/ Malcolm H. Squires, Jr.
Clerk of the Court

2a

cc: The Judge Advocate General of the Air Force
Appellate Defense Counsel (Johnson)
Appellate Government Counsel (Wright)

United States Court of Appeals
for the Armed Forces
Washington, D.C.

United States, USCA Dkt. No. 25-0011/AF
Appellee Crim.App. No. 40441

V.

ORDER GRANTING REVIEW

Zhuo H.
Zhong,
Appellant

On consideration of the petition for grant of review of the decision of the United States Air Force Court of Criminal Appeals, it is, by the Court, this 16th day of December, 2024,

ORDERED:

That said petition is hereby granted on the following issues:

I. WHETHER THE U.S. COURT OF APPEALS FOR THE ARMED FORCES HAS STATUTORY AUTHORITY TO DECIDE WHETHER A CONVICTION IS FACTUALLY SUFFICIENT.

II. WHETHER APPELLANT'S CONVICTION FOR INDECENT RECORDING IS FACTUALLY SUFFICIENT WHERE THE EVIDENCE DOES NOT PROVE THAT A

VIDEO TAKEN ON THE CHARGED DATE DEPICTED A PRIVATE AREA OF T.M., AND APPELLANT HAD A REASONABLE MISTAKE OF FACT AS TO CONSENT.

III. WHETHER THE LOWER COURT ERRONEOUSLY INTERPRETED AND APPLIED THE AMENDED FACTUAL SUFFICIENCY STANDARD UNDER ARTICLE 66(d)(1)(B), UCMJ.

IV. WHETHER, IN LIGHT OF *UNITED STATES v. WILLIAMS*, __ M.J. __ (C.A.A.F. 2024), THE AIR FORCE COURT OF CRIMINAL APPEALS HAD JURISDICTION UNDER ARTICLE 66(d)(2), UCMJ, TO PROVIDE APPROPRIATE RELIEF FOR THE ERRONEOUS FIREARM PROHIBITION ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT.

V. WHETHER THE U.S. COURT OF APPEALS FOR THE ARMED FORCES HAS JURISDICTION AND AUTHORITY TO DIRECT MODIFICATION OF THE 18 U.S.C. § 922 PROHIBITION NOTED ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT.

VI. WHETHER REVIEW BY THE U.S. COURT OF APPEALS FOR THE ARMED FORCES OF THE 18 U.S.C. § 922 PROHIBITION ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT WOULD SATISFY THIS COURT'S PRUDENTIAL CASE OR CONTROVERSY DOCTRINES.

VII. AS APPLIED TO APPELLANT,
WHETHER THE GOVERNMENT CAN
PROVE THAT 18 U.S.C. § 922 IS
CONSTITUTIONAL IN LIGHT OF RECENT
PRECEDENT FROM THE SUPREME COURT
OF THE UNITED STATES.

No briefs will be filed under C.A.A.F. R. 25.

For the Court,

/s/ Malcolm H. Squires, Jr.
Clerk of the Court

cc: The Judge Advocate General of the Air Force
Appellate Defense Counsel (Johnson)
Appellate Government Counsel (Wright)

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

No. ACM 40441

UNITED STATES
Appellee

v.

Zhuo H. ZHONG
Staff Sergeant (E-5), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial
Judiciary

Decided 21 August 2024

Military Judge: Pilar G. Wennrich (arraignment);
Tyler B. Musselman.

Sentence: Sentence adjudged 14 December 2022 by
GCM convened at Seymour Johnson Air Force Base,
North Carolina. Sentence entered by military judge on
1 February 2023: Bad-conduct discharge, confinement
for 2 months, and reduction to E-1.

For Appellant: Major Kasey W. Hawkins, USAF;
Major Frederick J. Johnson, USAF.

For Appellee: Lieutenant Colonel J. Peter Ferrell,
USAF; Major Vanessa Barios, USAF; Major Olivia B.
Hoff, USAF; Captain Tyler L. Washburn, USAF; Mary
Ellen Payne, Esquire.

Before RICHARDSON, MASON, and KEARLEY,
Appellate Military Judges.

Senior Judge RICHARDSON delivered the opinion of the court, in which Judge MASON and Judge KEARLEY joined.

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.

RICHARDSON, Senior Judge:

A military judge sitting as a general court-martial convicted Appellant, contrary to his pleas, of one specification of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c.^{1,2} The military judge sentenced Appellant to a bad-conduct discharge, confinement for two months, and reduction to the grade of E-1.

Appellant raises four assignments of error: (1) whether the findings of guilt to the specification and charge are factually insufficient; (2) whether the record of trial is substantially incomplete; (3) whether the Government's submission of an incomplete record

¹ Unless otherwise noted, all references to the UCMJ, the Military Rules of Evidence (Mil. R. Evid.), and the Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.).

² Appellant was acquitted of two specifications of wrongful distribution of intimate visual images in violation of Article 117a, UCMJ, 10 U.S.C. § 917a.

to this court “tolls the presumption of post-trial delay;” and (4) whether the Government can prove the 18 U.S.C. § 922 firearms prohibition is constitutional as applied to Appellant and whether this court has jurisdiction to decide that issue. We have carefully considered issues (3) and (4) and conclude they warrant neither discussion nor relief. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987); *see also United States v. Vanzant*, ___ M.J. ___, No. ACM 22004, 2024 CCA LEXIS 215, at *23–25 (A.F. Ct. Crim. App. 28 May 2024) (holding the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate’s indorsement to the entry of judgment is beyond a Court of Criminal Appeals’ statutory authority to review). As to the remaining assignments of error, we find no error that materially prejudiced Appellant’s substantial rights.

I. BACKGROUND

Appellant and TM met through a dating application. In April 2021, while having consensual sex, Appellant recorded TM. Appellant sent TM at least one of those recordings; she asked him to delete it because she did not like the way she looked. Thereafter, Appellant and TM interacted sporadically.

On 31 October 2021—the date of the convicted offense—TM went to Appellant’s home in Goldsboro, North Carolina. In a downstairs living area, they ate and watched a movie. They went upstairs to Appellant’s room and engaged in consensual sex. While engaged in sex with TM from behind, Appellant used his phone to record TM without her knowledge. TM suspected Appellant had recorded them having

sex, and asked Appellant to delete it. She demanded she see him delete it, and he did.

TM left Appellant's home and started her drive home. She was upset. She called a friend, then called the police. She told the police that she was having sex with someone and she thought he recorded her, she told him to delete it and he did, and she thought he had other nonconsensual recordings of her.

In November 2021, agents from the Air Force Office of Special Investigations (OSI) interviewed Appellant, after Appellant waived his Article 31, UCMJ, 10 U.S.C. § 831, rights. Appellant admitted he recorded TM during sex without her permission. The OSI coordinated with the local police to obtain a search warrant for Appellant's cell phone and laptop computer. They also received a warrant for Appellant's Snapchat records. The deleted video from October was not recovered.

II. DISCUSSION

A. Factual Sufficiency

Appellant asserts two deficiencies of proof. He asserts the evidence did not prove: (1) the recording was of a private area of TM, and (2) Appellant did not have a reasonable mistake of fact as to consent. We find the conviction factually sufficient.

1. Additional Background

TM testified that the videorecording she saw on 31 October 2021 showed her buttocks. On direct examination, TM explained to trial counsel how she discovered the recording after sexual intercourse with Appellant:

A. Before I left, [Appellant] was laying in the bed, fully immersed in whatever was on his phone screen. And, once again, I just felt something was off. So, before I left—because, I almost walked just straight out of his room. I'm by the door, and I'm just looking at him. He's still looking at his phone. And, I just said, "Delete it." When I said that his whole body froze, he frantically started moving things, and then, I was like, "No, because I want to see you delete it." And I started approaching him and then he just—he said, "It was only on Snapchat." And then by the time I got to him I saw a video—the video of me, from behind, and him deleting.

Q. So, you saw his screen?

A. Yes.

Q. And there was a video on the screen?

A. Yes.

Q. What portions of your body were captured in the video?

A. So, definitely me, in the position I was. So, laying down, so you could see my butt on the screen.

....

Q. But, your buttocks were visible?

A. Mm-hm.

Q. Unclothed or clothed?

A. Unclothed.

On cross-examination, TM testified she saw the video for “[t]hree to four seconds, so like a good amount of time” and could see it “[v]ery clear[ly].” At least four times she stated she recognized her own buttocks in the recording.

The Government introduced Prosecution Exhibit 7, the recording of OSI’s interview with Appellant around 23 November 2021. Appellant stated he recorded TM once with her permission, and once without. Regarding the nonconsensual occasion, he stated it was “a couple weeks ago,” probably on a weekend. He said he and TM got food, watched a movie, then went upstairs and had sex. He stated that on a whim, mid-sex in the “doggie” position, he picked up his phone and recorded TM for about ten seconds. He thought he used the camera application to record this occasion, and not Snapchat as he had in the past. When agents asked whether TM saw him recording, Appellant answered, “I guess she did” and “afterwards she told me to see it and then told me to delete it.” When asked what made him think recording TM on this occasion would be “alright” or if he thought she would not see it, Appellant answered: “I thought, I don’t know why, I thought it was alright since we recorded before.”

On cross-examination, trial defense counsel asked TM some details leading to her discovery of Appellant recording her. TM confirmed that on 31 October 2021 she and Appellant ate and watched a movie downstairs, then went upstairs and had sex. She confirmed she told OSI that they were in a “doggie-style” position. What she saw and heard during sex suggested to her Appellant had recorded her again. Before she left his room, TM told Appellant to “delete it,” to which Appellant reacted “like he was in shock.”

Appellant said, “It was only on Snapchat.” TM demanded she see him delete it, and she did.

The Defense made a motion under Rule for Courts-Martial (R.C.M.) 917 for findings of not guilty to all specifications of the two charges. Pertaining to the offense at issue here, the Specification of Charge II, the military judge asked the Defense:

[W]hat do you make of [Appellant]’s interview video, in which he tells OSI that he recorded her an additional time, without her permission, that it was a couple of weeks ago, that it was mid-sex, in the doggie-style position. The recording took 10 seconds, he recorded it on his phone. And then when asked later, “Did she see you,” he says, “I guess, because she asked to see it and then asked me [to] delete it.”

The military judge expanded on these facts when he denied the Defense’s motion in its entirety.

2. Law

In order to convict Appellant of indecent recording as charged in this case, the Government was required to prove that at or near Goldsboro, North Carolina, on or about 31 October 2021, without legal justification or lawful authorization: (1) Appellant knowingly recorded the private area of TM; (2) the recording was without TM’s consent; and (3) the recording was made under circumstances in which TM had a reasonable expectation of privacy. *See* 10 U.S.C. § 920c(a)(2); *Manual for Courts-Martial, United States* (2019 ed.) (MCM), pt. IV, ¶ 63.b.(2). “The term ‘private area’ means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.” 10 U.S.C. § 920c(d)(2). “The term ‘consent’ means a freely given

agreement to the conduct at issue by a competent person." *MCM*, pt. IV, ¶¶ 60.a.(g)(7)(A), 63.c.(2)(b). "A recording is a still or moving visual image captured or recorded by any means." *MCM*, pt. IV, ¶ 63.c.(2)(a).

Article 66(d)(1), UCMJ, provides:

(B) Factual sufficiency review.

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. § 866(d)(1), *Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*). The factual sufficiency standard applies to courts-martial in which every finding of guilty in the entry of judgment is for an offense occurring on or after 1 January 2021.

See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(e)(2), 134 Stat. 3388, 3612–13 (1 Jan. 2021).

A “specific showing of a deficiency in proof” is not the same standard courts apply for claims of legal insufficiency; that is, an appellant is not required to demonstrate the entire absence of evidence supporting an element of the offense. *See United States v. Harvey*, 83 M.J. 685, 691 (N.M. Ct. Crim. App. 2023), *rev. granted*, ___ M.J. ___, No. 23-0239, 2024 CAAF LEXIS 13 (C.A.A.F. 10 Jan. 2024). Rather, to challenge factual sufficiency, the statute requires an appellant to “identify a weakness in the evidence admitted at trial to support an element (or more than one element) and explain why, on balance, the evidence (or lack thereof) admitted at trial contradicts a guilty finding.” *Id.*

3. Analysis

Essentially, Appellant would have us find that TM’s testimony about the recording is not credible. Having reviewed TM’s testimony and the other evidence supporting the specification, and giving “appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence,” we decline. Article 66(d)(1)(B)(ii)(I), UCMJ (2024 *MCM*).

The evidence shows Appellant recorded his sexual interaction with TM on 31 October 2021, in his bedroom at his home in Goldsboro, North Carolina, without TM’s consent and while she had a reasonable expectation of privacy. TM testified numerous times that the recording showed her buttocks, a private area within the meaning of Article 120c, UCMJ. Appellant admitted to OSI that he recorded TM without her

permission around that time and from a sexual position behind TM.³

Appellant had no legal justification or lawful authorization for the recording, and did not have a reasonable mistake of fact as to TM's consent. Granted, the evidence indicated Appellant may have believed he had TM's consent to being recorded before he made the recording. He told the agents that he "thought it was alright since [they] recorded before." In a text to TM, Appellant said, "I'm sorry again for doing that without your permission. Guess I thought it was okay since we had before."

The issue here is whether that belief was reasonable. Appellant argues essentially that because Appellant recorded TM in the past, with her knowledge but without her express consent, it was reasonable to think she consented this time. However, the evidence indicates Appellant recorded TM this time without her knowledge, much less her consent. TM testified about Appellant's furtive behavior after their sexual encounter in October 2021 when she told him to "delete it," which is some indication he knew he made the recording without her knowledge. Additionally, Appellant's own words indicate he recorded TM without her consent or knowledge. When the OSI agents asked whether TM saw him recording, Appellant answered, "I guess she did" and "afterwards she told me to see it and then told me to delete it." We find it was not reasonable for Appellant to believe that

³ While not strictly "findings of fact entered into the record by the military judge" as contemplated in Article 66(d)(1)(B)(ii)(II), UCMJ (*Manual for Courts-Martial, United States* (2024 ed.)), the military judge was aware of these facts as evidenced by his explanation for denial of the Defense's R.C.M. 917 motion.

because TM may have consented to recording a sexual encounter about six months earlier, he received TM's consent this time.

Appellant repeats many of the same arguments he made before the factfinder. In closing argument, his trial defense counsel laid out five reasons the military judge should find Appellant not guilty of this specification, including, "there's no evidence beyond a reasonable doubt that the 31 October [2021] video was of a private area" and Appellant "had a reasonable mistake of fact as to consent." Again, we give "appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence." Article 66(d)(1)(B)(ii)(I), UCMJ (2024 *MCM*). We presume the trial court considered these arguments of counsel, encouraging him to view the testimony and other evidence through their lens. The court is not clearly convinced that the finding of guilty of this specification was against the weight of the evidence; the finding is factually sufficient. Article 66(d)(1)(B)(iii), UCMJ (2024 *MCM*).⁴

B. Contents of Record

Appellant asserts the "record of trial is substantially incomplete because some attachments to Appellate Exhibit II do not match the descriptions thereof on the record," specifically Attachments 1, 2,

⁴ Citing *United States v. Csiti*, No. ACM 40386, 2024 CCA LEXIS 160, at *2[3] (A.F. Ct. Crim. App. 29 Apr. 2024) (unpub. op.), Appellant asserts that "to set aside a conviction for factual insufficiency, [we] 'must be clearly convinced that the weight of the evidence does not support the conviction beyond a reasonable doubt.'" Even if we applied this factual sufficiency review standard, we would not grant relief as we are convinced of Appellant's guilt of the specification beyond a reasonable doubt.

and 4 of Appellate Exhibit II. As relief, he requests we remand the case for correction.⁵ The Government agrees. We do not.

1. Additional Background

Before entering pleas, Appellant moved to admit evidence under Mil. R. Evid 412.⁶ The Defense's written motion, marked Appellate Exhibit II, listed five attachments:

5 Attachments:

1. Snapchat Video, dated 8 April 2021, 1 file
2. Snapchat Video, dated 31 October 2021, 1 file
3. AFOSI Report of Investigation, undated, 2 pages
4. AFOSI Interview of Ms. T.M., dated 3 Nov 21, 2 files
5. AFOSI Interview of SSgt Zhou [sic] Zhong., dated 23 Nov 21, 2 files

The list of attachments did not indicate any attachment was on a disc.⁷ Pages 7, 8, 11, and 12 of Appellate Exhibit II are pages that relate to

⁵ Appellant also notes the charge sheet reflects the convening order as "Special Order-30," when the charges were referred to the court-martial convened in Special Order A-30. He urges us to direct correction of this error in our remand. We have considered this issue and conclude no relief is warranted.

⁶ The military judge ordered the filings and transcript relating to this motion sealed. We quote from these sealed materials as necessary to address this claimed error.

⁷ The listing for each attachment ended "[transmitted via DoD SAFE]." Department of Defense (DoD) Secure Access File Exchange (SAFE) is a web-based file transfer service.

Attachments 1, 2, 4, and 5, respectively, and each state “1 disc,” indicating the attachment is digital and not printed.

During the subsequent Mil. R. Evid. 412 hearing, the military judge tried to clarify what evidence was part of the defense motion.

Let me ask you this, Defense. When you initially filed your motion there were, you had attached that document and provided the [c]ourt a working copy of one—two Snapchat—what’s described as two Snapchat videos. So, two separate data files. You also provided the OSI interview of [TM], which was two separate data files, and also the OSI interview of [Appellant], which was two data files.

The Defense replied that Attachment 2 contained the wrong date—it was not 31 October 2021, and Attachments 1 and 2 were on a single disc; they did not state how many data files it contained. Then the military judge asked about “the OSI interview videos,” to which the Defense replied, “We do have copies on disc. Those were previously DoD-SAFEd. We do have discs for the court reporter as the originals.” The military judge asked how they were marked, and the Defense replied, “[W]e have a disc for Snapchat videos And then we have [a]ttachments for—numbers 4 and 5 for each, both, this victim and subject interviews.” The Defense did not assert how many data files were on the discs for Attachments 4 and 5.

The military judge announced he was “going to try to summarize to clear everything up.” He ascertained that Attachments 1 and 2 were on the same disc. He then described Appellate Exhibit II as the defense

motion, a 12-page document, dated 22 September 2022, with three disc attachments. He stated, “The first disc contains two Snapchat videos, so that’s two data files.” He then appeared to read from the attachment listing, stating, “The second disc contains the OSI interview of [TM]. That disc contains two data files. And there is a third disc that is the OSI interview of [Appellant], it is two data files.” He also distinguished these attachments from Appellate Exhibit III, supplemental evidence also on a disc. He asked, “Anything, else to correct or clarify, Defense Counsel?” The trial circuit defense counsel—not the defense counsel who filed the defense motion—responded, “No, your Honor.” Ultimately, the military judge granted the Defense’s motion in its entirety.

In the record of trial, the disc with Attachments 1 and 2 contains three video files—the same as contained in Prosecution Exhibit 6. The disc for Attachment 4 contains only one file, but appears to be a complete OSI interview of TM; the recording lasts 1 hour, 51 minutes, and 48 seconds. The disc for Attachment 5 contains two files, and appears to be a complete OSI interview of Appellant; the first file ends after two hours and the second ends after less than two hours.

A recording of TM’s interview with OSI is an attachment to the First Indorsement to the Charge Sheet. It is one file contained on one disc; the recording lasts 1 hour, 51 minutes, and 48 seconds.

2. Law

A “complete record of proceedings and testimony” must be prepared when the sentence at a court-martial includes a punitive discharge. Article 54(c)(2), UCMJ, 10 U.S.C. § 854(c)(2); *see also* R.C.M.

1114(a)(1) (requiring a certified verbatim transcript when the judgment entered includes a discharge). The President prescribes the other contents of the record of trial. Article 54(c)(1), UCMJ, 10 U.S.C. § 854(c)(1). In addition to the court-martial proceedings, the record of trial shall include, *inter alia*, “any appellate exhibits.” R.C.M. 1112(b)(6). Whether a record of trial is complete is a question of law we review *de novo*. *United States v. Davenport*, 73 M.J. 373, 376 (C.A.A.F. 2014) (citation omitted).

“A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the Government must rebut.” *United States v. Miller*, 82 M.J. 204, 207 (C.A.A.F. 2022) (alteration omitted) (quoting *United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000)). However, “[i]nsubstantial omissions from a record of trial do not raise a presumption of prejudice or affect that record’s characterization as a complete one.” *Henry*, 53 M.J. at 111. We approach the question of what constitutes a substantial omission on a case-by-case basis. *United States v. Abrams*, 50 M.J. 361, 363 (C.A.A.F. 1999) (citation omitted). “In assessing either whether a record is complete . . . the threshold question is ‘whether the omitted material was “substantial,” either qualitatively or quantitatively.’” *Davenport*, 73 M.J. at 377 (quoting *United States v. Lashley*, 14 M.J. 7, 9 (C.M.A. 1982)) (additional citation omitted).

3. Analysis

We begin by noting that the record of trial contains Appellate Exhibit II and its attachments. The issue here is whether Appellate Exhibit II nevertheless is incomplete. Appellant asserts “omission of part or all

of three attachments means [Appellate Exhibit] II was not included in its entirety.”

From our review of the record, it appears Appellate Exhibit II is complete but mislabeled. The trial defense counsel listed Attachment 4 as containing the victim interview; it does, albeit in one file and not two as stated on the defense motion’s attachment listing. Similarly, Attachments 1 and 2 contain Snapchat videos, but in three files and not two as stated. We can discern nothing missing from what the Defense provided in Appellate Exhibit II. Rather, it seems the Defense made an error in its attachment listing regarding the number of files on each disc, and did not correct the military judge when he repeated that error during the hearing.

Appellant asserted this claimed “omission is substantial because it prevents a complete assessment of, *inter alia*, the Mil. R. Evid. 412 motion, the military judge’s ruling, and the performance of trial defense counsel.” However, Appellant does not claim Attachment 4 is missing any part of the victim interview, or Attachments 1 and 2 do not contain those Snapchat videos. Moreover, these were attachments to a defense motion on which the Defense prevailed. Although they may be used to critique other aspects of trial defense counsel’s performance, they are part of the record for purposes of Mil. R. Evid. 412 evidence. The record of trial here is sufficient for counsel and this court to review Appellant’s case on appeal. *See* R.C.M. 1116(b)(1), (A) (directing the certified record of trial and required attachments be provided to the Court of Criminal Appeals, and a copy to appellate defense counsel). We find no substantial omission relating to Appellate Exhibit II.

III. CONCLUSION

The findings and the sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d) (2024 *MCM*). Accordingly, the findings and the sentence are **AFFIRMED**.

FOR THE COURT



Carol K. Joyce
CAROL K. JOYCE
Clerk of the Court

BY ORDER OF THE
SECRETARY OF THE
AIR FORCE

*DEPARTMENT OF
THE AIR FORCE
INSTRUCTION 51-201*

14 APRIL 2022

LAW

*ADMINISTRATION
OF MILITARY
JUSTICE*



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RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAJM

Certified by: AF/JAJ
(Brigadier General
Rebecca R. Vernon)

Supersedes: AFI 51-201,
18 January 2019

Pages: 246

Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ).

20.39. General Provision. The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see **Section 23F**. In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111 (e)(1) and R.C.M. 1105.

20.40. Preparing the EoJ.

20.40.1. Minimum Contents. Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0)**. Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance with R.C.M. 1104 (b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0)**. Practitioners must use the format and checklists for the EoJ that is posted on the VMJD.

20.40.2. Expurgated and Unexpurgated Copies of the EoJ. In cases with both an expurgated and

unexpurgated Statement of Trial Results, both an expurgated and an unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer **to paragraph 20.8** to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

20.41. First Indorsement to the EoJ. After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See Chapter 29 for further information on this requirement. Templates are located on the VMJD. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.42. Distributing the EoJ. The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD within five duty days of completion.

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Section 21C—Correcting the EoJ

21.7. Contents of the EoJ. The template EoJ form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes SSNs, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

21.8. Errors Identified in the EoJ. Errors identified in the EoJ may only be corrected in accordance with R.C.M. 1111(c) and 1112(d). **(T-0)**. If such errors are not corrected or are outside the scope of R.C.M. 1111(c), the errors may render the Record of Trial defective.

21.8.1. The military judge who presided over the trial has a limited ability to correct errors on the EoJ for 14 days after completion of the EoJ in accordance with R.C.M. 1111(c).

21.9. More than 14 Days after Initial Completion of the EoJ.

21.9.1. The Chief Trial Judge has been delegated the authority to modify EoJs in accordance with R.C.M. 1111(c)(2), and may detail a subordinate trial judge to modify an EoJ in a particular case.

21.9.2. The detailed military judge may make modifications to the EoJ consistent with the purposes of the remand.

21.9.3. TJAG, AFCCA, and Court of Appeals for the Armed Forces (CAAF) may also modify a judgment in the performance of their duties and responsibilities.

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Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. § 921-922, Definitions; 27 C.F.R. § 478.11)

29.29. General Provision. 18 U.S.C. § 922, Unlawful acts, prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person who fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and 922 (g)(1), respectively, as applied by DoDI 6400.06. For further guidance, see AFMAN 71-102. Persons who are prohibited from purchase, possession, or receipt of a firearm are indexed in the National Instant Background Check System (NICS).

29.30. Categories of Prohibition (18 U.S.C. §§ 922(g), 922(n); 27 C.F.R. § 478.11; AFMAN 71-102, Chapter 4).

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year.

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. Note: This category of prohibition would not apply to convictions in a special

court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(12).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, Definitions. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 USC 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18

U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD. Note: This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See paragraph 29.33.2. The original notification via AF Form 177, Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives, and subsequent service of the Certification of Final Review or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). Note: Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note: Exceptions to this

definition can be located at 18 USC § 921(g)(33). See also 27 CFR 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562; DoDI 6400.07.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under Section 29B.

29.31. Notification to the Accused of Firearms Prohibition. When a service member becomes

ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. Form of Notice. A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. SJA Responsibility to Notify. In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA must be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177

should be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 may be provided to the accused for completion as part of the posttrial paperwork. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the referral paperwork.

29.31.3. Practitioners are encouraged to deconflict with the local investigating DAF law enforcement agency in cases where law enforcement is also responsible for ensuring notification (i.e., where multiple prohibitions attached and law enforcement may be providing notification of any prohibition).

29.31.4. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.5. Any notification made to the accused may be made through the accused's counsel.

29.31.6. If the accused declines to sign, this should be annotated on the form.

29.31.7. After completion of the form, the SJA must provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: daf.cjic@us.af.mil. The SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement. The legal office will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained as part of the official record. See AFMAN 71-102, Chapter 4.

29.32. STR and EoJ. In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. Note: If the accused is convicted of a crime of domestic violence as defined in paragraph 29.30.7.1 and 18 U.S.C. § 922, both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

29.33. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §§ 921-922 is appropriately handled. Because the EoJ may differ from the

adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local responsible DAF investigative agency and DAF-CJIC within five duty days of completion of the EoJ. Templates for the STR, EoJ, and first indorsement are located on the VMJD. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See Section 29E for further distribution guidance.

29.34. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of the conviction on the accused's ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense of misdemeanor domestic violence (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

DAFI 51-201_DAFGM2023-01
28 SEPTEMBER 2023

MEMORANDUM FOR DISTRIBUTION C
MAJCOMs/FLDCOMs/FOAs/
DRUs

FROM: HQ USAF/JA
1420 Air Force Pentagon
Washington, DC 20330-1420

SUBJECT: Department of the Air Force Guidance
Memorandum to Department of the Air
Force Instruction (DAFI) 51-201,
Administration of Military Justice

By Order of the Secretary of the Air Force, this Department of the Air Force Guidance Memorandum (DAFGM) immediately changes DAFI 51-201, Administration of Military Justice. Compliance with this Memorandum is mandatory. To the extent its directions are inconsistent with other Department of the Air Force publications, the information herein prevails, in accordance with Department of the Air Force Instruction (DAFI) 90-160, Publications and Forms Management and Department of the Air Force Manual (DAFMAN) 90-161, Publishing Processes and Procedures.

This DAFGM updates the requirement for commanders at the installation level to publish the nature and results of all disciplinary actions related to sexual misconduct and disseminate this information to Airmen and Guardians every 60 days through a website.

This Memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon incorporation by interim change to, or rewrite of DAFI 51-201, whichever is earlier.

CHARLES L. PLUMMER
Lieutenant General, USAF
The Judge Advocate General

Attachment:
Guidance Changes

BY ORDER OF THE
SECRETARY OF THE
AIR FORCE

*DEPARTMENT OF
THE AIR FORCE
INSTRUCTION 51-201*

14 APRIL 2022

LAW

*ADMINISTRATION
OF MILITARY
JUSTICE*



**COMPLIANCE WITH THIS PUBLICATION IS
MANDATORY**

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

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAJM

Certified by: AF/JAJ
(Brigadier General
Rebecca R. Vernon)

Supersedes: AFI 51-201,
18 January 2019

Pages: 246

Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ).

20.39. General Provision. The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see **Section 23F**. In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111 (e)(1) and R.C.M. 1105.

20.40. Preparing the EoJ.

20.40.1. Minimum Contents. Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0)**. Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance with R.C.M. 1104 (b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0)**. Practitioners must use the format and checklists for the EoJ that is posted on the VMJD.

20.40.2. Expurgated and Unexpurgated Copies of the EoJ. In cases with both an expurgated and

unexpurgated Statement of Trial Results, both an expurgated and an unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer **to paragraph 20.8** to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

20.41. First Indorsement to the EoJ. After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See **Chapter 29** for further information on this requirement. Templates are located on the VMJD. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.42. Distributing the EoJ. The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD within five duty days of completion.

.....

Section 21C—Correcting the EoJ

21.7. Contents of the EoJ. The template EoJ form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes SSNs, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

21.8. Errors Identified in the EoJ. Errors identified in the EoJ may only be corrected in accordance with R.C.M. 1111(c) and 1112(d). **(T-0)**. If such errors are not corrected or are outside the scope of R.C.M. 1111(c), the errors may render the Record of Trial defective.

21.8.1. The military judge who presided over the trial has a limited ability to correct errors on the EoJ for 14 days after completion of the EoJ in accordance with R.C.M. 1111(c).

21.9. More than 14 Days after Initial Completion of the EoJ.

21.9.1. The Chief Trial Judge has been delegated the authority to modify EoJs in accordance with R.C.M. 1111(c)(2), and may detail a subordinate trial judge to modify an EoJ in a particular case.

21.9.2. The detailed military judge may make modifications to the EoJ consistent with the purposes of the remand.

21.9.3. TJAG, AFCCA, and Court of Appeals for the Armed Forces (CAAF) may also modify a judgment in the performance of their duties and responsibilities.

....

Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. § 921-922, Definitions; 27 C.F.R. § 478.11)

29.29. General Provision. 18 U.S.C. § 922, Unlawful acts, prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person who fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and 922 (g)(1), respectively, as applied by DoDI 6400.06. For further guidance, see AFMAN 71-102. Persons who are prohibited from purchase, possession, or receipt of a firearm are indexed in the National Instant Background Check System (NICS).

29.30. Categories of Prohibition (18 U.S.C. §§ 922(g), 922(n); 27 C.F.R. § 478.11; AFMAN 71-102, Chapter 4).

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year.

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. Note: This category of prohibition would not apply to convictions in a special

court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(12).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, Definitions. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 USC 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18

U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD. Note: This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See paragraph 29.33.2. The original notification via AF Form 177, Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives, and subsequent service of the Certification of Final Review or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). Note: Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note: Exceptions to this

definition can be located at 18 USC § 921(g)(33). See also 27 CFR 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562; DoDI 6400.07.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under Section 29B.

29.31. Notification to the Accused of Firearms Prohibition. When a service member becomes

ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. Form of Notice. A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. SJA Responsibility to Notify. In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA must be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177

should be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 may be provided to the accused for completion as part of the posttrial paperwork. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. Note: If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the referral paperwork.

29.31.3. Practitioners are encouraged to deconflict with the local investigating DAF law enforcement agency in cases where law enforcement is also responsible for ensuring notification (i.e., where multiple prohibitions attached and law enforcement may be providing notification of any prohibition).

29.31.4. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.5. Any notification made to the accused may be made through the accused's counsel.

29.31.6. If the accused declines to sign, this should be annotated on the form.

29.31.7. After completion of the form, the SJA must provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: daf.cjic@us.af.mil. The SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement. The legal office will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained as part of the official record. See AFMAN 71-102, Chapter 4.

29.32. STR and EoJ. In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. Note: If the accused is convicted of a crime of domestic violence as defined in paragraph 29.30.7.1 and 18 U.S.C. § 922, both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

29.33. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §§ 921-922 is appropriately handled. Because the EoJ may differ from the

adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local responsible DAF investigative agency and DAF-CJIC within five duty days of completion of the EoJ. Templates for the STR, EoJ, and first indorsement are located on the VMJD. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See Section 29E for further distribution guidance.

29.34. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of the conviction on the accused's ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense of misdemeanor domestic violence (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

BY ORDER OF THE
SECRETARY OF THE
AIR FORCE

*DEPARTMENT OF
THE AIR FORCE
INSTRUCTION 51-201*

24 January 2024



*ADMINISTRATION
OF MILITARY
JUSTICE*

LAW

**COMPLIANCE WITH THIS PUBLICATION IS
MANDATORY**

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

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAJM

Certified by: AF/JAJ
(Brig Gen Gail E.
Crawford)

Supersedes: DAFI 51-
201_DAFGM2023-01, 28
September 2023

Pages: 264

Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ)

20.39. General Provision. The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see Section 23F. In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings (to include discharge in lieu of court-martial), an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111(e)(1) and R.C.M. 1105.

20.40. Preparing the EoJ.

20.40.1. Minimum Contents. Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. (T-0) Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance with R.C.M. 1104(b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. (T-0) Practitioners must use the format and checklists for the EoJ that is posted on the VMJD and AF/JAJM Teams page.

20.40.2. Expurgated and Unexpurgated Copies of the EoJ. In cases with both an expurgated and unexpurgated Statement of Trial Results, both an expurgated and unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer **to paragraph 20.8** to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

20.41. First Indorsement to the EoJ. After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. § 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See **Chapter 29** for further information on this requirement. Templates are located on the VMJD and AF/JAJM Teams page. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

20.42. Distributing the EoJ. The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page within five duty days of completion.

....

SECTION 21C—Correcting THE EoJ

21.7. Contents of the EoJ. The template EoJ form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes SSNs, rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions.

21.8. Errors Identified in the EoJ. Errors identified in the EoJ may only be corrected in accordance with R.C.M. 1111(c) and 1112(d). (T-0) If such errors are not corrected or are outside the scope of R.C.M. 1111(c), the errors may render the ROT defective.

21.8.1. The military judge who entered a judgment may issue a modified EoJ to correct any errors prior to certification of the record under R.C.M. 1112 in accordance with R.C.M. 1111(c).

21.9. After Certification of the Record.

21.9.1. The detailed military judge may make modifications to the EoJ consistent with the purposes of the remand.

21.9.2. TJAG, the Chief Trial Judge, the AFCCA, and the CAAF may also modify a judgment in the performance of their duties and responsibilities in accordance with R.C.M. 1111(c)(2).

21.10. First Indorsement. The SJA may make corrections to the first indorsement at any time. Corrections require redistribution of the EOJ and first indorsement in accordance with **Section 21D**.

....

Section 29D—POSSESSION OR PURCHASE OF FIREARMS PROHIBITED (18 U.S.C. §§ 921-922, DEFINITIONS; UNLAWFUL ACTS; 27 C.F.R. § 478.11)

29.29. General Provision. The National Instant Criminal Background Check System (NICS) is a nationwide database of persons who are prohibited from shipping, transporting, receiving, and possessing firearms, ammunition, and explosives, in or affecting interstate or foreign commerce, under 18 U.S.C. §922(g) and (n).

29.29.1. 18 U.S.C. §925(a)(1), *Exceptions: Relief from Disabilities*, allows persons prohibited under 18 U.S.C. §§922(g) and (n), except for those convicted of misdemeanor crimes of domestic violence who are subject to the prohibition of 18 U.S.C. §922(g)(9), to transport, ship, receive, and possess government-owned firearms, ammunition, and explosives for official government business.

29.29.2. In accordance with DoDI 6400.06, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, Section 9, persons convicted of felony crimes of domestic violence (i.e., those crimes punishable by more than one year confinement, tried by a general or special court-martial, which otherwise meet the definition of a misdemeanor crime of domestic violence), are also prohibited from transporting, shipping, receiving, and possessing government-owned firearms, ammunition, and explosives for official government business.

29.29.3. In accordance with DoDI 6400.06, Section 9, personnel with a qualifying conviction for a crime of misdemeanor or felony domestic violence are not prohibited from working with: (1) major military

weapons systems; or (2) crew-served military weapons and ammunition (e.g., tanks, missiles, and aircraft).

29.30. Categories of Prohibition. 18 U.S.C. §§922(g) and (n) detail ten categories that prohibit persons from shipping, transporting, receiving, or possessing firearms, ammunition, and explosives, in or affecting interstate or foreign commerce. See 18 U.S.C. §§922(g) and (n), 27 C.F.R. §478.11, and AFMAN 71-102, Chapter 4. The categories and their criteria are set forth below.

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year. See 18 U.S.C. §922(g)(1).

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. **Note:** This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(2).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, *Definitions*. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the

power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the armed forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 U.S.C. § 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the armed forces under dishonorable conditions. 18 U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD and AF/JAJM Teams page. **Note:** This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See **paragraph 29.33.2**. The original notification via AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*, and subsequent service of the CFR or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note:** Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with the victim. **Note:** Exceptions to this definition can be located at 18 U.S.C. § 921(a)(33). See also 27 C.F.R. 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-

by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562, *Database on domestic violence incidents*; DoDI 6400.07, *Standards for Victim Assistance Services in the Military Community*.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a GCM. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under **Section 29B**.

29.31. Notification to the Accused of Firearms Prohibition. When a service member becomes ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. Form of Notice. A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. SJA Responsibility to Notify. In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA should be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN

71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is directly responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177 must be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 must be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need

only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 must be provided to the accused for completion as part of the referral paperwork.

29.31.3. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.4. Any notification made to the accused may be made through the accused's counsel in order to secure the accused's signature on required documentation.

29.31.5. If the accused declines to sign, this should be annotated on the form.

29.31.6. After completion of the form, the SJA must provide the completed AF Form 177 to DAF-CJIC within 24 hours of completion, in accordance with the provisions of AFMAN 71-102. SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement.

29.32. STR and EoJ. In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or

more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. **Note:** If the accused is convicted of a crime of domestic violence as defined in **paragraph 29.30.7.1** and 18. U.S.C. § 922, both the “Firearms Prohibition” and “Domestic Violence Conviction” blocks should be marked “yes.”

29.33. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §922 is appropriately handled.

29.33.1. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local responsible DAF investigative agency and DAF-CJIC within three duty days of completion of the EoJ. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See **Section 29E** for further distribution guidance.

29.33.2. In cases where a CFR is created after completion of appellate review, the CFR must be distributed to the local responsible DAF investigative agency and DAF-CJIC within three duty days of completion. See **Chapter 27**.

29.34. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of a conviction on the accused’s ability to handle firearms or ammunition as part of their official duties in accordance with 18 U.S.C. §925(a)(1) and

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DoDI 6400.06, Section 9; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of a felony or misdemeanor crime of domestic violence in accordance with 18 U.S.C. §922(g)(1) and (g)(9) (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

BY ORDER OF THE
SECRETARY OF THE
AIR FORCE



*AIR FORCE
MANUAL 71-102*

21 July 2020

*Special
Investigations*

*AIR FORCE
CRIMINAL INDEXING*

**COMPLIANCE WITH THIS PUBLICATION IS
MANDATORY**

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

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: SAF/IGX

Certified by: SAF/IGX
(Colonel Christopher S.
Church)

Pages: 62

Table 1.1. Disposition Documentation Requirements.

Proceeding	Before 1 Jan 2019	After 1 Jan 2019	OPR
.....			
General and special court-martial (SPCM)	Report of Results of Trial (RRoT)	Statement of Trial Results + first indorsement	SJA
General and special court-martial	Court-Martial Order (CMO)	Entry of Judgement + first indorsement	SJA
.....			

Chapter 4

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

4.1. NICS. NICS is a database system for the indexing of persons with a qualifying prohibition for the shipment, transportation, receipt and possession of firearms and ammunition in or affecting interstate or foreign commerce. The FBI maintains the NICS system on behalf of the DOJ. The Brady Handgun Violence Prevention Act of 1993 requires the reporting of the categories below to the FBI for purposes of prohibiting firearm purchases and possession. Refer to Paragraph 4.4 for reporting procedures.

.....

4.4. Reporting Qualifying Prohibitions. Reporting of persons qualifying for NICS prohibition

is an immediate denial of the individual's ability to exercise his or her constitutional right to possess a firearm. Due to the restrictions imposed by a NICS entry, care must be taken to ensure an individual meets the strict qualifications and supporting documentation is available.

4.4.1. All requests and supporting documentation for entry of persons with a qualifying prohibition into NICS will be sent to the DAF-CJIC via email at daf.cjic@us.af.mil. **(T-1)**

4.4.2. The following information is required for reporting a prohibited person in NICS: full name (last, first, middle); Social Security Number; date of birth (YYYYMMDD format); Gender; Race; agency case number. **(T-0)** These data points are documented on the AF Form 177. Reference Section 4.6 of this manual. See **paragraphs 4.4.4 through paragraph 4.4.12** for additional requirements for each prohibitive category.

4.4.3. Category 1: Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (or a misdemeanor crime punishable by imprisonment over two years) will be indexed in accordance with **paragraph 4.4.2 (T-0)**

4.4.3.1. Requests for submission to NICS must be accompanied by documentation in accordance with **Table 1.1**, or civilian equivalent. Any actions taken by the convening authority or as the result of appellate review will be transmitted to DAF-CJIC in accordance with **paragraph 4.4.2 (T-1)**

4.4.4. Category 2: Persons who are fugitives from justice will be indexed in accordance

with **paragraph 4.4.2 (T-0)**

4.4.4.1. Requests for submission to NICS must be accompanied by a corresponding DD Form 553. **(T-1)**

4.4.4.2. Requests for removal from NICS must be accompanied by DD Form 616, *Report of Return of Absentee*. **(T-1)**

4.4.5. Category 3: Persons who are unlawful users of, or addicted to, any controlled substance will be indexed in accordance with **paragraph 4.4.2**. Requests for submission to NICS under the substance abuser prohibition must include the following for subject: **(T-0)**

4.4.5.1. Date of qualifying action(s) (admission, urinalysis, and/or possession date). **(T-0)**

4.4.5.2. One of the following supporting documents:

4.4.5.2.1. A confirmation positive urinalysis result using mass spectrometry. **(T-0)**

4.4.5.2.2. Positive drug identification lab result. **(T-0)**

4.4.5.2.3. Agency case file documentation reflecting drug identification in accordance with **paragraph 4.3.1.3.3.2 (T-0)**

4.4.5.2.4. Agency case file documentation reflecting admission to a law enforcement officer of the use or possession of a controlled substance by name, including street names and common vernacular. **(T-0)**

4.4.5.3. Documentation in accordance with **Table 1.1** or civilian equivalent. Any actions taken by the convening authority or appellate review will be

transmitted to DAF-CJIC in accordance with **paragraph 4.4.2 (T-0)**

4.4.5.3.1. In any case where administrative, nonjudicial or judicial action was taken, supporting documentation in accordance with **Table 1.1**, or civilian equivalent, must be submitted. **(T-0)**

4.4.6. Category 4: Persons who have been adjudicated as mental defectives or who have been committed to a mental institution will be indexed in accordance with **paragraph 4.4.2 (T-0)**. Requests for submission to NICS must be accompanied by documentation in accordance with **table 1.1** or civilian equivalent. **(T-1)** Any actions taken by the convening authority or as a result of appellate review will be transmitted to DAF-CJIC in accordance with **paragraph 4.4.2 (T-1)**

4.4.6.1. For instances when an individual is involuntarily committed to a treatment facility, a corresponding court order signed by a court-appointed judge must be provided. **(T-0)**

4.4.6.2. For instances when a service member is officially declared mentally incompetent for pay matters, in accordance with AFMAN 65-116v1, para. 50.2, the pertinent documents specified in paras. 50.2.1 or 50.2.3 must be provided. The items in paras. 50.2.2 and 50.2.4 are not Air Force records. It is the responsibility of the owning agencies to accomplish those NICS entries; however, the SJA and commander must still provide the member with AF Form 177 in accordance with section 4.6.

4.4.7. Category 5: Persons who have been discharged from the United States Armed Forces

under dishonorable conditions or who have received a dismissal will be indexed in accordance with **paragraph 4.4.2 (T-0)**

4.4.7.1. Requests for submission to NICS must be accompanied by a corresponding DD Form 214. **(T-1)**

4.4.8. Category 6: Persons who, having been citizens of the United States, have renounced their U.S. citizenship will not be indexed by the AF because NICS submissions under this prohibition are outside the purview of the AF. **(T-0)** When referring these matters to the appropriate civilian agency, follow that agency's specific guidance for the referral.

4.4.9. Category 7: Persons convicted in any court of a MCDV will be indexed in accordance with **paragraph 4.4.2 (T-0)**

4.4.9.1. Requests for submission to NICS under the MCDV prohibition must include the following for subjects **(T-0)**:

4.4.9.1.1. UCMJ or civilian (federal/state/local) statute for which the individual was convicted. **(T-0)**

4.4.9.1.2. Relationship between the victim and the subject, if any of the following relationships are indicated:

4.4.9.1.2.1. Subject is current or former spouse of victim (can be same sex). **(T-0)**

4.4.9.1.2.2. Subject is parent/step-parent of victim. **(T-0)**

4.4.9.1.2.3. Subject is guardian of victim. **(T-0)**

4.4.9.1.2.4. Subject has a child in common with victim (child must be born). **(T-0)**

4.4.9.1.2.5. Subject is cohabiting or has cohabited as spouse of victim (can be same sex). **(T-0)**

4.4.9.1.2.6. Subject is cohabiting or has cohabited as parent of victim. **(T-0)**

4.4.9.1.2.7. Subject is cohabiting or has cohabited as guardian of victim. **(T-0)**

4.4.9.1.2.8. Subject is similarly situated to spouse of victim (can be same sex). **(T-0)**

4.4.9.1.2.9. Subject is similarly situated to parent of victim. **(T-0)**

4.4.9.1.2.10. Subject is similarly situated to guardian of victim. **(T-0)**

4.4.9.1.3. Requests for submission to NICS must be accompanied by documentation in accordance with **Table 1.1**, or civilian equivalent, and agency case file documentation identifying the relationship. **(T-0)** Any actions taken by the convening authority or appellate review will be transmitted to DAF-CJIC in accordance with **paragraph 4.4.2 (T-1)**

4.4.10. Category 8, Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year will be indexed in accordance with **paragraph 4.4.2 (T-0)**

4.4.10.1. Requests for submission to NICS under the indictment prohibition must include the following for subjects:

4.4.10.1.1. Expected date of trial or date charges were referred if the court date is unknown. **(T-0)**

4.4.10.1.2. Referred DD Form 458 or equivalent civilian (federal/state/local) court documentation. **(T-0)**

4.4.11. Category 9: Persons who are an alien and are illegally or unlawfully in the United States will not be indexed by the AF because NICS submissions under this prohibition are outside the purview of the AF. **(T-0)** Follow agency specific guidance regarding referral of these matters to the appropriate civilian agency.

4.4.12. Category 10: Persons who are subject to qualifying protection/restraining order (MPOs do not qualify for this prohibition) will be indexed in accordance with **paragraph 4.4.2 (T-0)**

4.4.12.1. Requests for submission to NICS under the protection order prohibition must include a signed CPO with expiration date. **(T-0)**

ENTRY OF JUDGMENT
IN THE CASE OF

United States v.

Date: **Sentence/Acquittal Date:**

Name of Accused: _____ **Grade:** _____ **SSN:** _____

Organization:

Convening Command:

Court-Martial Type:

Sentencing Forum: Military Judge

Enlisted Members:

Findings and Sentence (as modified by the convening authority action or other court ruling, if any):

Charge(s)	Arraigned Offenses	P	F
Confinement			Fine
Term	Concurrent With	Consecutive With	

Total Confinement:

Total Fine:

Days of Pretrial Confinement Credit:

Days of Judicially Ordered Credit:

Punitive Discharge:

Reduction in Pay Grade:

Forfeitures of Pay and/or Allowances:

Hard Labor without Confinement:

Restriction:

Deferments:

Waiver of Automatic Forfeitures:

Convening Authority Action on Military Judge Suspension Recommendation:

Reprimand:

This judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders, if any, and is hereby entered into the record on (date).

JANE T. DOE, Colonel, USAF
Military Judge

XX Attachments:

1. Statement of Trial Results, dated
2. Additional attachments as directed by the military judge

1st Ind., Entry of Judgment, Name and Rank of Accused, dated XX XXX XX.

FROM: <<Staff Judge Advocate Office Symbol>>
DATE

MEMORANDUM FOR: ALL REVIEWING AUTHORITIES

The following criminal indexing is required, following Entry of Judgment, according to the references listed:

DNA Processing Required Under 10 U.S.C. § 1565 and DoDI 5505.14:

Firearm Prohibition Triggered Under 18 U.S.C. § 922:
Domestic Violence Conviction Under 18 U.S.C. § 922(g)(9):

Sex Offender Notification in accordance with DoDI 1325.07:

Fingerprint Card and Final Disposition in accordance with DoDI 5505.11:

LAWYER A. PERSON, Colonel, USAF
Staff Judge Advocate

Distribution:
List All Required Parties