

# President approves changes to Manual for Courts-Martial

By Paul Stone

*American Forces Press Service*

President Clinton recently signed an executive order making four significant changes to the Manual for Courts-Martial.

The new rules are designed to bring the military court system in line with changes made in federal laws in recent years, according to Air Force Col. Robert Reed, associated deputy general counsel in the Office of the General Counsel. The changes will be effective for any crimes committed after Monday.

## The four changes:

- Allow evidence to be presented during the sentencing phase of a trial that a violent crime was a hate crime.

- Provide special protections and procedures for cases in which there are allegations of child abuse and children are called to testify.

- Provide that most statements between a patient and psychotherapist are privileged and cannot be entered into evidence.

- Create the offense of "reckless endangerment" as a crime under the Uniform Code of Military Justice.

Reed said the changes have been under consideration since 1997 and are the result of an annual DoD-level reviews of the Manual for Courts-Martial. The Manual for Courts-Martial is the guiding force for prosecuting crimes in the Uniform Code of Military Justice.

The reviews are conducted by the Joint Service Committee on Military Justice. The committee includes a representative from each service, DoD's Office of the General Counsel and a member from the Court of Appeals of the Armed Services.

After a lengthy review process, drafting of proposed changes and coordination with other federal agencies, the changes are then submitted to the President for his approval, Reed explained.

Reed said the hate crimes provision specifically states that a judge may consider whether an offense was "motivated by the victim's race, color, religion, national origin, ethnicity, gender or sexual orientation" when weighing punishment for a violent crime.

"Federal sentencing guidelines include this provision and we thought it was appropriate the military court system include it as well," he said.

"During the sentencing phase of trial, prosecutors will now be able to present evidence that the crime was a hate crime in hopes of obtaining a stiffer penalty."

The special protection for children allows them to testify from a remote location, usually using a two-way closed circuit television system. Reed said this is not an automatic protection, but will be determined by judges on a case-by-case basis.

"This protection is most likely to come into play when a judge determines that a child who was a victim of abuse would have difficulty testifying in front of the accused or would be traumatized by the event," Reed explained.

Additionally, instead of the child testifying from a remote location, the change also allows for the defendant to be excused from the trial while the child is testifying. But Reed emphasized that the request to be excused must come from the defendant.

"Both avenues are designed to reduce the possibility of further trauma to children and are similar to provisions applied in most civilian courts," Reed said.

The protection for communication between a patient

and psychotherapist is an extension of other communication protections already recognized by the military court system.

"The military recognizes a privilege for communication between attorneys and clients, clergyman and clients and husbands and wives," Reed said. "But up to now there hasn't been one for those seeking psychotherapy."

He emphasized, however, that the protection is limited to psychotherapist-client communication that might be entered into courts-martial proceedings.

"This is really intended as a victim's rights protection," he explained. The goal, he said, was to give crime victims the freedom to seek psychological counseling without concern that what they discussed would be brought out in court.

There is no privilege for routine psychotherapist-client communication that could affect administrative actions. Other exceptions include:

- When the communication is evidence of spouse or child abuse and neglect, or when one spouse is charged with a crime against the other.

- When a psychotherapist believes the patient's mental or emotional condition makes the patient a danger to any person, including the patient.

- When the communication indicates the patient is considering committing a crime in the future.

- When necessary to ensure the safety and security of military personnel, family members, property, classified information or the accomplishment of military missions.

"While recognizing there are unique circumstances in which confidentiality should prevail, this change also recognizes the special needs of the military and our obligation to protect national security," Reed said.

## Promotion test dates released

AFPC has announced the CY 2000 enlisted promotion testing dates. Although the test windows are smaller for every cycle, this change does not affect the promotion eligibility cutoff date for any grade. While there is a possibility that the shorter test windows could result in earlier promotion releases, specific release dates are not being announced at this time.

The testing dates for Calendar Year 2000 are:

Cycle	New testing dates
00E6 (TSgt)	Feb. 1 - March 15
00E7 (MSgt)	Feb. 1 - March 15
00E5 (SSgt)	April 1 - April 30
01E8 (SMSgt)	Nov. 1 - Nov. 10
00E9 (CMSgt)	Sep. 5 - Sep. 8

In addition, rescheduling must be kept to an absolute minimum to ensure everyone can be tested within the testing window. Individuals who will depart TDY during the testing window must test prior to their departure.

Commanders, support staffs and base testing offices should work closely together to ensure compliance with AFI 36-2605, Para a10.10.3.3. If an individual is going to be TDY during the entire testing window they will be tested prior to the publicized testing window if the test booklet is available. Members, who decline testing when given the opportunity to test, become ineligible for promotion for the remainder of the cycle.

For information, call the testing office at 963-4542. (Submitted by the MPP)



### Hot Stuff

Members of the Shaw AFB Fire Prevention Flight put their firefighting skills to use as they train at the Charleston AFB fire pit. Until Shaw AFB's fire pit is certified, Shaw AFB firefighters train at Charleston, which provides firefighting certification and annual training for bases without their own facility. More than 400 firefighters have trained at Charleston AFB's fire pit in the past six months.

Senior Airman Corey Clements