

“(A) *Inadmissibility of certain evidence.* In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that the alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim’s sexual predisposition is not admissible at a preliminary hearing unless—

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(1) or (2);

and

(ii) the evidence is not cumulative and is necessary to a determination of the issues under subsection (a) of this rule.”

(i) R.C.M. 405(j)(3) is amended to read as follows:

“(3) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible, whether conducted in person or via remote means. If there is an overriding interest that outweighs the value of an open preliminary hearing, the convening authority or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Any restriction or closure must be narrowly tailored to protect the overriding interest involved. Before ordering any restriction or closure, a convening authority or preliminary hearing officer must determine whether any reasonable alternatives to such restriction or closure exist, or if some lesser means can be used to protect the overriding interest in the case. The convening authority or preliminary hearing officer shall make specific findings of fact in writing that support the restriction or closure. The written findings of fact shall be included in the preliminary hearing report.”

(j) R.C.M. 405(j)(4) is amended to read as follows:

“(4) *Presence of accused.* The accused shall be present for the preliminary hearing.

(A) *Remote presence of the accused.* The convening authority that directed the

preliminary hearing may authorize the use of audio-visual technology between the parties and the preliminary hearing officer. In such circumstances the “presence” requirement of the accused is met only when the accused has a defense counsel physically present at the accused’s location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused shall be considered to have waived the right to be present at the preliminary hearing if the accused:

(i) After being notified of the time and place of the proceeding is voluntarily absent; or

(ii) After being warned by the preliminary hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct that is such as to justify exclusion from the proceeding.”

(k) A new R.C.M. 406(c) is inserted immediately after R.C.M. 406(b) to read as follows:

“(c) *Distribution.* A copy of the advice of the staff judge advocate shall be provided to the defense if charges are referred to trial by general court-martial.”

(l) R.C.M. 703(d) is amended to read as follows:

“(d) *Employment of expert witnesses and consultants.*

(1) *Experts for the prosecution.* When the employment of a prosecution expert witness or consultant is considered necessary, counsel for the Government shall, in advance of employment of the expert, and with notice to the defense, submit a request for funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(2) *Experts for the defense.* When the employment of a defense expert witness or