

(i) A capital offense for which there is prescribed a mandatory punishment beyond the punitive power of a special court-martial shall not be referred to such a court-martial.

(ii) Other than offenses described in (C)(i):

(I) a general court-martial convening authority over the command that includes the accused may permit any capital offense to be referred to a special court-martial for trial.

(II) a special trial counsel exercising authority over a capital offense may refer such an offense to a special court-martial for trial.

(III) The Secretary concerned may authorize, by regulation, special court-martial convening authorities to refer capital offenses to trial by a special court-martial without first obtaining the consent of the general court-martial convening authority.”

(h) R.C.M. 301 is amended to read as follows:

“Rule 301. Report of offense

(a) *Who may report.* Any person may report an offense subject to trial by court-martial.

(b) *To whom reports are conveyed.* Ordinarily, any military authority who receives a report of an offense shall forward as soon as practicable the report and any accompanying information to the immediate commander of the suspect. Competent authority superior to that commander may direct otherwise.

(c) *Special trial counsel.* All reports of covered offenses shall be forwarded promptly to a special trial counsel. A special trial counsel shall have the authority to determine whether a reported offense is a covered, known, or related offense in accordance with R.C.M. 303A.”

(i) R.C.M. 302(b)(1) is amended to read as follows:

“(1) *Military law enforcement officials.* Persons designated by proper authorities to perform military criminal investigative, guard, or police duties, whether subject to the UCMJ or not, when in each of the foregoing instances, the official making the apprehension is in the execution of law enforcement duties;”

(j) R.C.M. 302(c) is amended to read as follows:

“(c) *Grounds for apprehension.* A person subject to the UCMJ or trial thereunder may be apprehended for an offense triable by court-martial upon probable cause to apprehend. Probable cause to apprehend exists when there is a reasonable belief that an offense has been or is being committed and the person to be apprehended committed or is committing it. Persons authorized to apprehend under R.C.M. 302(b)(2) may also apprehend persons subject to the UCMJ who take part in quarrels, frays, or disorders, wherever they occur.”

(k) R.C.M. 303 is amended to read as follows:

“Rule 303. Preliminary inquiry into reported offenses

Except for covered offenses as defined by Article 1(17), upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses. A commander who receives a report of a covered offense shall promptly forward the report to a special trial counsel in accordance with R.C.M. 301(c) and regulations prescribed by the Secretary concerned.”

(l) A new R.C.M. 303A is inserted immediately after R.C.M. 303 to read as follows:

“Rule 303A. Determination by special trial counsel to exercise authority

(a) *Initial determination.* A special trial counsel has the exclusive authority to determine if a reported offense is a covered offense.