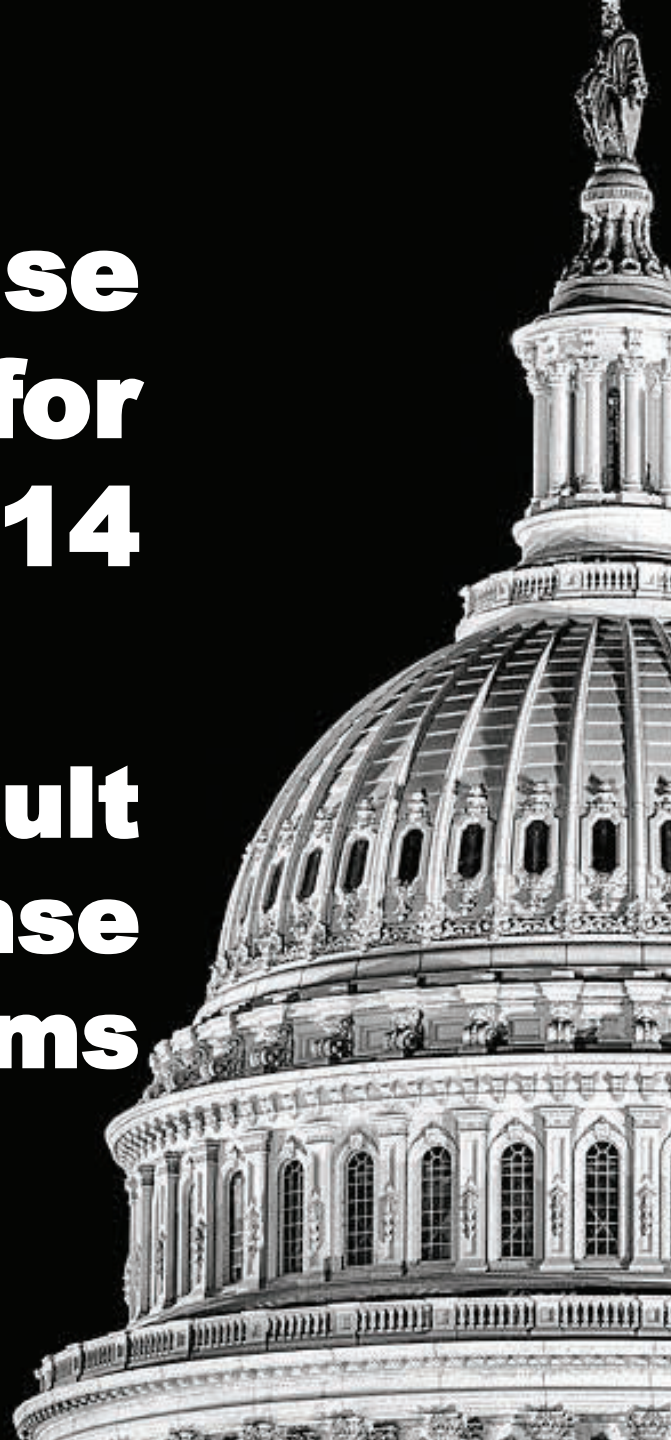
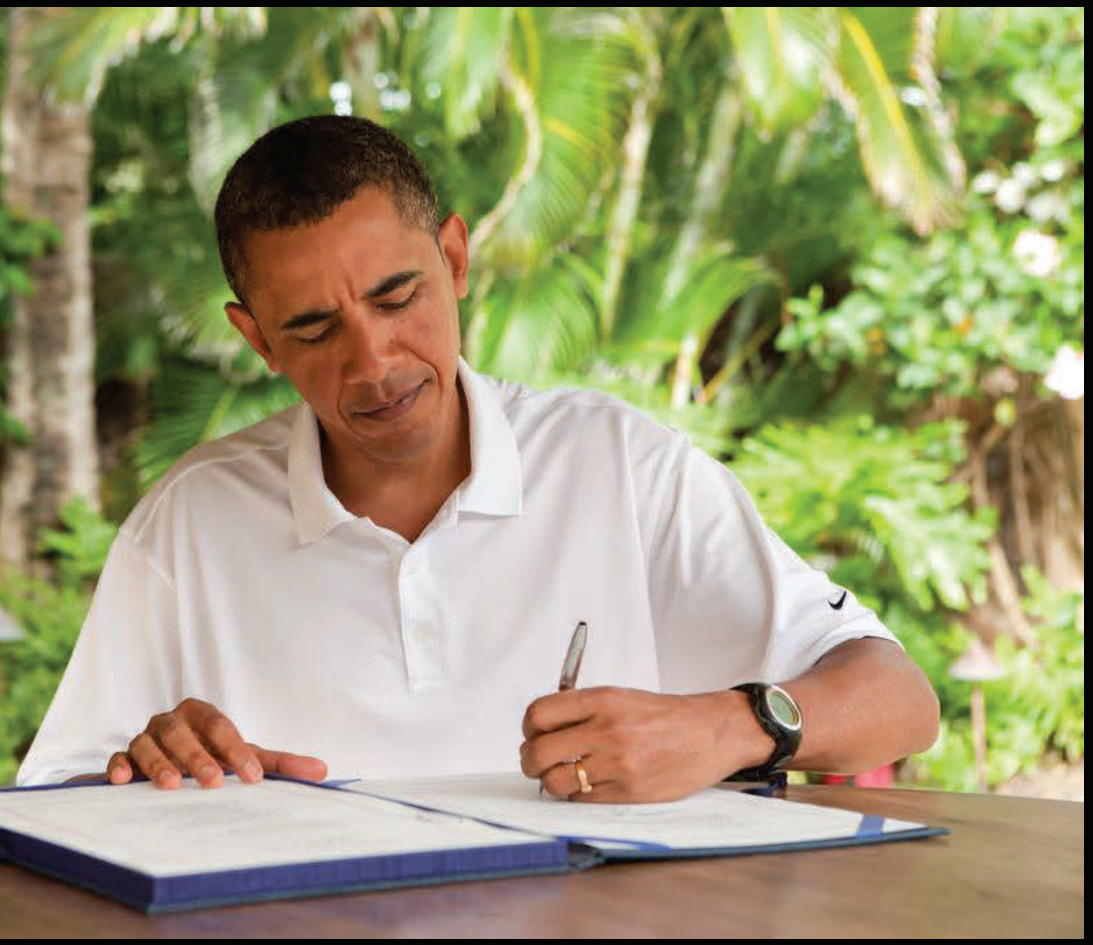
National Defense Authorization Act for Fiscal Year 2014

Title XVII—Sexual Assault Prevention and Response and Related Reforms



Passed by Congress: December 19, 2013



Signed by President: December 26, 2013

Title XVII—Sexual Assault Prevention and Response and Related Reforms

36 sections

Prevention & Response

- §1711 – Prevention of entry into service of convicted sex offenders
- §1722 – Shortened RSP deadline
- §1725 – Min. requirements for SAPR personnel
- §1725 – SANE availability at MTFs
- §1746 – Service Academy initial SAPR training
- §1731 – Additional RSP duties
- §1733 – Review of SAPR training
- §1741 – Report to Congress on need for specific UCMJ article regarding prohibited relationships with recruits and trainees
- §1726 – Added DOD SAPRO responsibilities
- §1741 – Regs on inappropriate conduct with recruits and trainees (mandatory separation processing)
- §1735 – SecDef review of how sexual harassment is handled (EO vs. SAPRO?)
- §1734 – SecDef review of retention of, and access to, evidence and records relating to sexual assault
- §1721 – Verification of command climate surveys
- §1747 – Completion of SF 86 by sexual assault victims

All phases of a court-martial

- §1701 – Add Crime Victims' Rights Act to UCMJ
- §1704 – DC must go through TC to interview victim
- §1716 – Special Victims Counsel requirement
- §1701 – Crime Victims' Rights Act implementing regulations
- §1703 – Eliminate SOL for sexual assault and sexual assault of a child
- §1707 – Repeal of consensual sodomy

Reporting

- §1724 – NG & Reserve access to SARCs
- §1751 – Sense of Congress on command climate free of retaliation for allegations of sexual assault
- §1712 – Expedited transfer for USCG
- §1715 – IG investigation of retaliation claims in sexual assault and sexual harassment cases
- §1743 – SecDef policy on use of 8-day incident report for alleged sexual assaults
- §1714 – Expanded whistleblower protection (e.g., broadens unfavorable personnel actions and covered communications)
- §1713 – Guidance on transfer of an accused following an allegation of sexual assault
- §1709 – Service regulations to prohibit retaliation against members who report a criminal offense
- §1723 – 50 year retention of restricted reports
- §1709 – Report due on establishing a new punitive article for retaliation offenses

Investigation

- §1732 – SecDef review of MCIO investigative practices
- §1742 – Immediate referral of sexual assault allegations to MCIO

Pre-Trial

- §1752 – Sense of Congress on disposition of sex offenses via court-martial
- §1753 – Sense of Congress on discharge in lieu of court-martial
- §1708 – Elimination of "character and military service of accused" as a factor in disposition decision
- §1702 – Complete revision of Article 32 (now a probable cause "preliminary hearing")
- §1744 – Review of decisions not to refer sexual assaults

Trial

- §1705 – Mandatory GCM jurisdiction for penetration offenses
- §1705 – Mandatory dismissal for DD for penetration offense convictions

Post-trial

- §1702 – Complete revision to commander's authority to take post-trial action
- §1706 – Victim participation in clemency phase
- §1745 – Inclusion and command review of records of sex-related offenses

Effective dates

- Immediate
- 25 Apr 14 (120 days)
- 24 Jun14 (180 days)
- June 2014
- 26 Dec 14 (1 year)

Two major themes

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- Enhanced victims' rights

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- Constrained convening authority power and discretion

16 substantive revisions to military justice system

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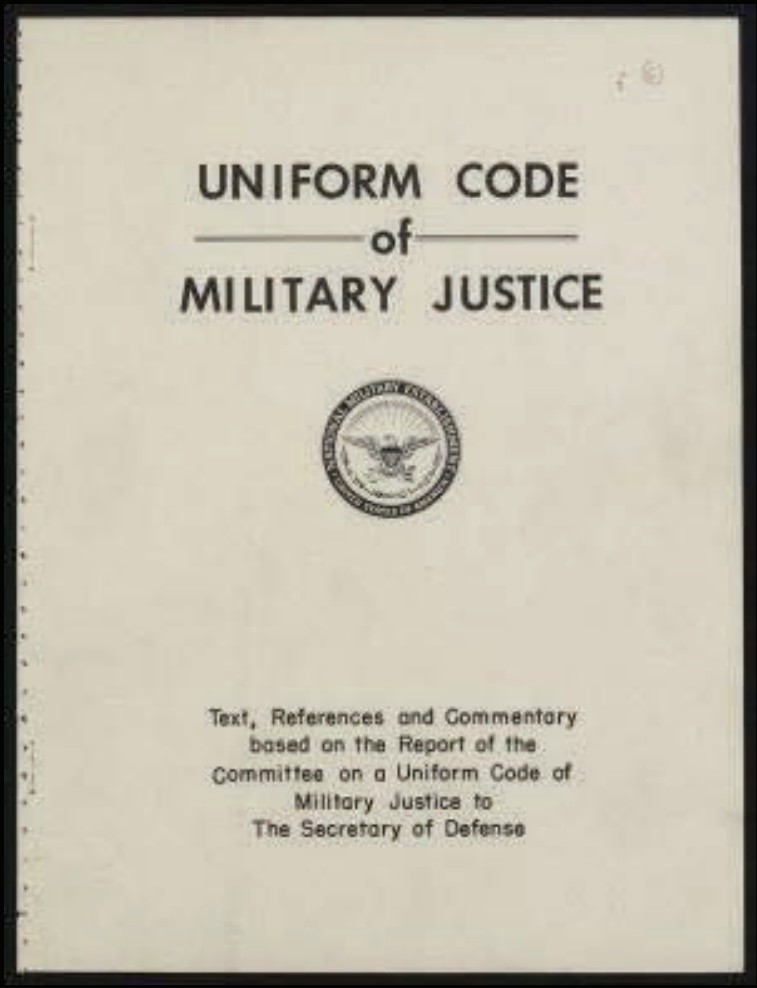
- Some applicable only to sexual offense cases, some applicable to all cases

16 substantive revisions to military justice system

- Some applicable only to sexual offense cases, some applicable to all cases
- Some changes effective immediately, others phased in

The most extensive UCMJ revision since the Military Justice Act of 1968



UNIFORM CODE
of
MILITARY JUSTICE

Text, References and Commentary
based on the Report of the
Committee on a Uniform Code of
Military Justice to
The Secretary of Defense

Reforms

1. Enacted crime victims' rights article within the UCMJ (Article 6b) (effective immediately)

Reforms

Article 6b generally mirrors civilian Crime Victims' Rights Act

Article 6b

- Right to be reasonably protected from the accused
- Right to notice of Article 32 proceedings, court-martial proceedings, clemency and parole board proceedings, and escape or release of accused
- Right not to be excluded from public proceedings (with a narrow exception)

Article 6b

- Right to be heard at public confinement review hearing, sentencing hearing, and clemency and parole board hearing
- Right to confer with prosecutor
- Right to receive restitution as provided by law
- Right to be treated with fairness and with respect for privacy and dignity

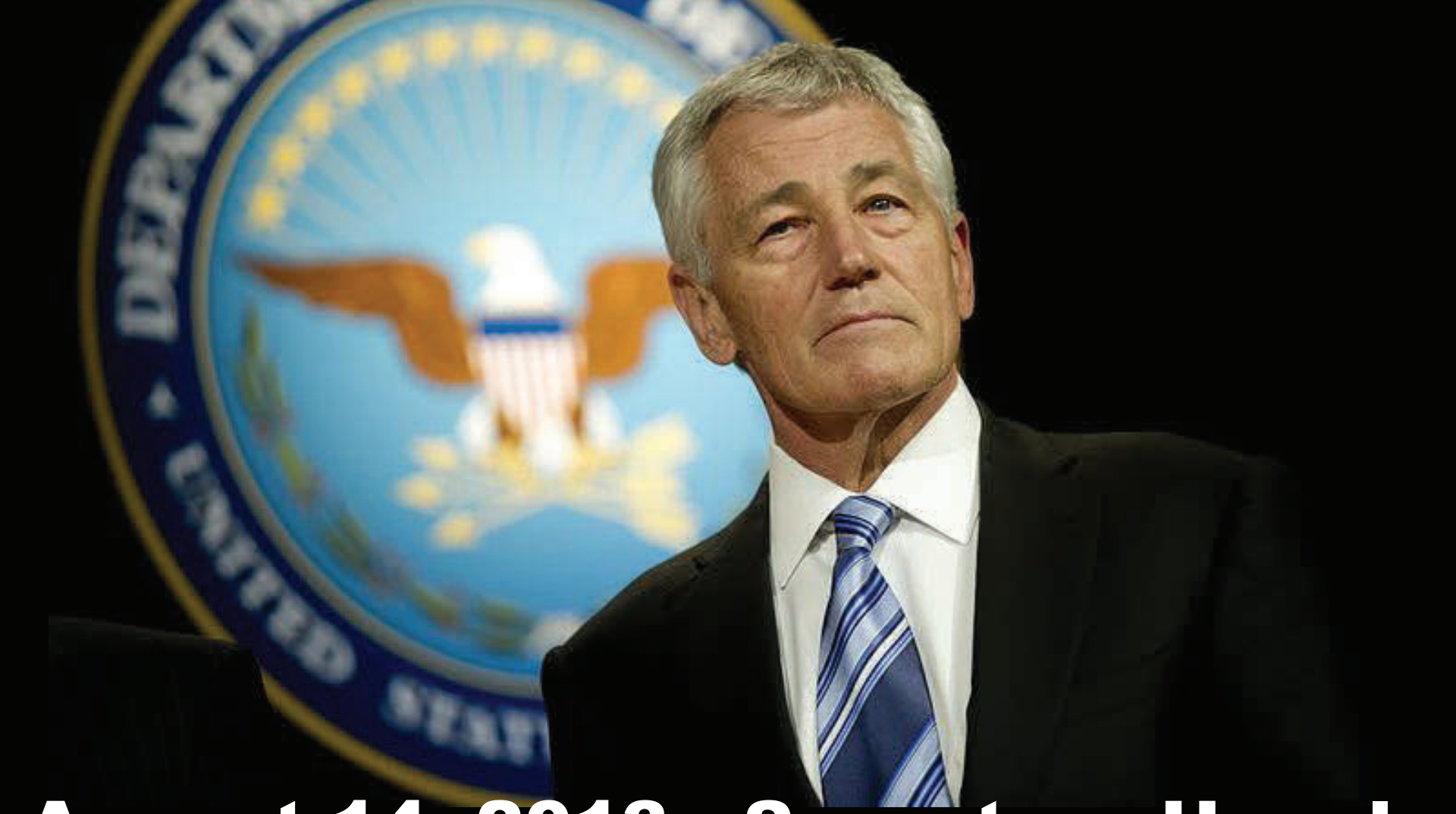
Article 6b

- **Secretary of Defense required to propose implementing <u>Manual for Courts-Martial</u> amendments and regulations by December 26, 2014**
- **Military justice system already provides means to redress some violations of victims' rights**

Reforms

2. Requires military legal assistance programs to represent victims of certain offenses (effective June 24, 2014)

January 2013: Air Force established pilot special victims' counsel program



August 14, 2013: Secretary Hagel ordered all Services to provide counsel to sexual assault victims

Section 1716 of NDAA for FY 2014

Requires SVC representation for more offenses than previously required within DoD (includes not only sexual assaults of adults, but also victims of stalking, voyeurism, forcible pandering, indecent exposure, and child sexual offenses)

Represents victims of all offenses upon request

5 reforms to pretrial process

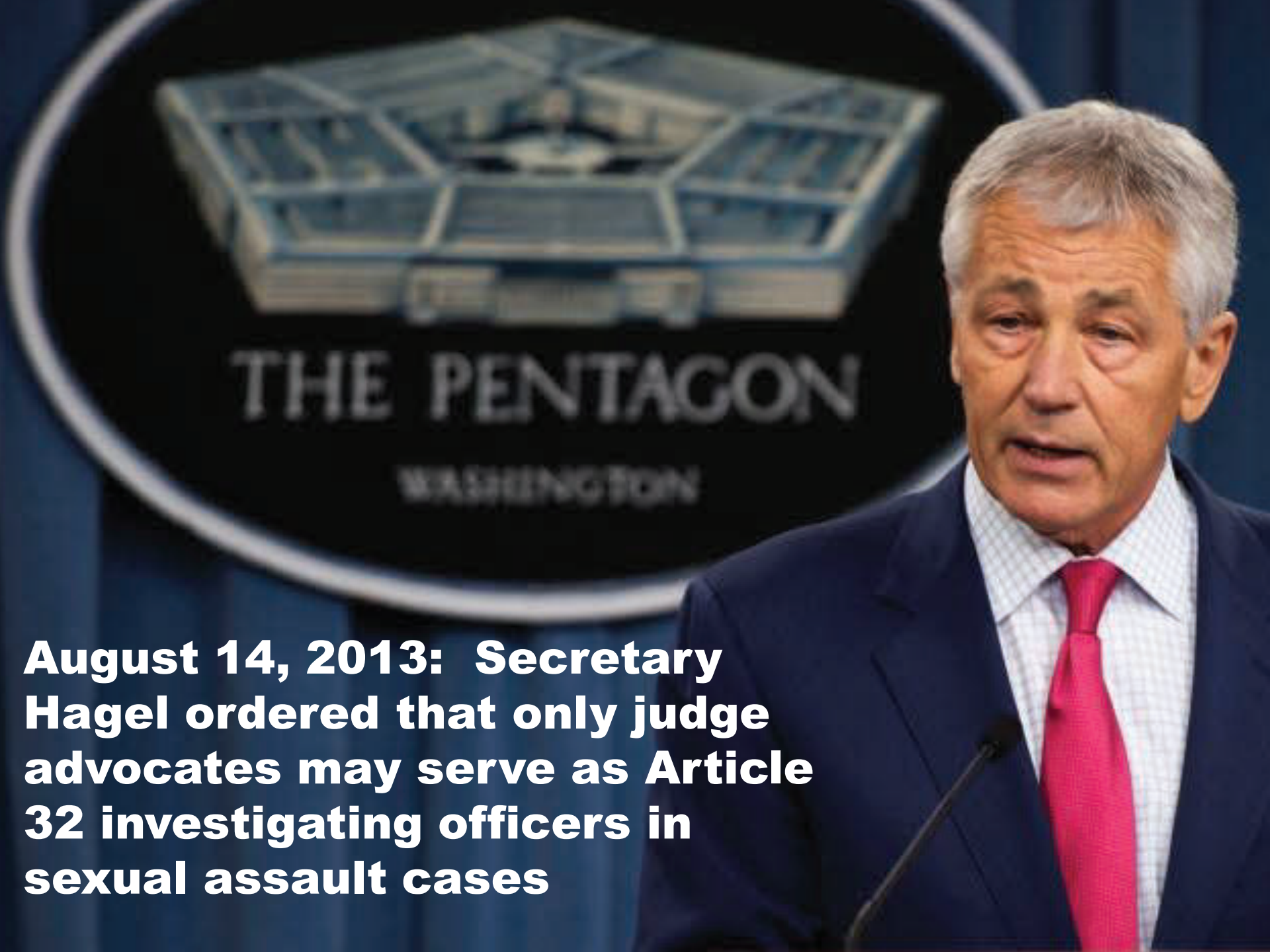
Reforms
(Pretrial process)

3. Article 32 investigations transformed into "preliminary hearings"

   (applies to offenses committed on or after December 26, 2014)

Article 32 reform

- Scope of the hearing limited
- Military victims given option not to testify
- Hearing must be recorded; upon request, victim will be given access to the recording
- Preliminary hearing officer usually must be judge advocate and equal to or senior in grade to detailed government and defense counsel



August 14, 2013: Secretary Hagel ordered that only judge advocates may serve as Article 32 investigating officers in sexual assault cases

Reforms
(Pretrial Process)

4. Defense counsel required to seek interview of sexual assault victim through the trial counsel (effective immediately)

5. Character and military service of the accused required to be eliminated from Manual for Courts-Martial as factors commanders should consider in disposition decisions (implementation required by June 24, 2014)

Reforms
(Pretrial Process)

6. Jurisdiction over charges of rape, sexual assault, forcible sodomy, or attempts to commit those offenses limited to GCMs (applies to offenses committed on or after June 24, 2014)

7. GCM convening authorities' decisions not to refer charges for those offenses subjected to higher-level review

Sentencing reform

Reforms (Sentencing)

8. Punitive discharge required for convictions of rape, sexual assault, rape or sexual assault of a child, forcible sodomy, or attempts to commit those offenses (applies to offenses committed on or after June 24, 2014)

4 reforms to post-trial process

Reforms
(Post-trial Process)

9. Victim given right to make post-trial submission to the convening authority

10. Convening authority prohibited from considering information about the victim's character that was not admitted at trial

Reforms
(Post-trial Process)

11. Convening authorities' power to set aside court-martial convictions limited to certain minor offenses (applies to offenses committed on or after June 24, 2014)

Reforms
(Post-trial Process)

12. Convening authorities' power to reduce sentences to confinement for more than six months or a punitive discharge severely limited other than to comply with a pretrial agreement; convening authorities generally prohibited from eliminating punitive discharge from sex offense sentences (applies to offenses committed on or after June 24, 2014)

4 reforms to criminal law

Reforms
(Criminal law)

13. Statute of limitations eliminated for sexual assault and sexual assault of a child (applies to offenses committed on or after December 26, 2013)

14. Consensual sodomy repealed as an offense (effective immediately)

Reforms
(Criminal law)

15. Regulations enforceable under Article 92 required to prohibit retaliation against an alleged victim or a non-victim who reports an offense (regulations required no later than April 26, 2014)

Reforms
(Criminal law)

16. Service regulations enforceable under UCMJ required to prohibit relationships between those in entry-level processing and training and those who exercise control over them