

# APPENDIX B



**Appendix 12D - List of Sentencing Criteria Offenses**

<b>UCMJ Article</b>	<b>Title</b>
82	Solicitation to desert (in time of war)
83	Malingering (in time of war or in hostile fire pay zone)
85	Desertion (in time of war)
89	Striking, drawing, or lifting up a weapon or offering any violence to superior commissioned officer in execution of office (in time of war)
90	Willfully disobeying a lawful order of superior commissioned officer (in time of war)
94	Mutiny or sedition
95	Offenses by sentinel or lookout (in time of war or while receiving special pay under 37 U.S.C. 310)
98	Misconduct as prisoner
99	Misbehavior before the enemy
100	Subordinate compelling surrender
101	Improper use of countersign
102	Forcing a safeguard
103b	Aiding the enemy
108a	Captured or abandoned property (looting or pillaging)
110	Improper hazarding of vessel or aircraft (willfully and wrongfully)
133	Conduct unbecoming an officer
134	General article
134	Self-injury without intent to avoid service (in time of war or in a hostile fire pay zone)

## SENTENCING CRITERIA

The military judge shall consider the sentencing criteria established for the following offenses:

### **Article 82. Solicitation to desert (*in time of war*).**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

### **Article 83. Malingering (*in time of war or in hostile fire pay zone*).**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully

and substantially endangered the life of one or more persons;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 85. Desertion (*in time of war*).**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense was committed while the accused was under charges, investigation, or adverse action;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in a way or under circumstances such that the location from which the accused absented himself or remained absent was a territory in which the United States or an ally of the United States was then an occupying power or in

which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 89. Striking, drawing, or lifting up a weapon or offering any violence to superior commissioned officer in execution of office (*in time of war*).**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense was committed before or in the presence of other members of the accused's or the superior commissioned officer's unit;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

The status of the superior commissioned officer and command relationship to the accused;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The nature or extent of any injuries suffered by the victim;

Whether the offense was committed in a way that created, or under circumstances

creating, a substantial risk of bodily harm or death to any person:

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 90. Willfully disobeying a lawful order of superior commissioned officer (*in time of war*).**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense was committed before or in the presence of other members of the accused's or the superior commissioned officer's unit;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

The status of the superior commissioned officer and command relationship to the accused;

Whether the accused abused a position of trust or authority, or used

specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense was committed in a way that created, or under circumstances creating, a substantial risk of bodily harm or death to any person;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 94. Mutiny or sedition.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The accused's relationship to the military or civil authority against which the accused committed the mutiny or sedition;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the



offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The nature or extent of any injuries suffered by any victims of the offense;

The nature or extent of any public or private property damage related to the offense;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense involved the conscious or reckless disregard of a risk of serious damage to public or private property; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 95. Offenses by sentinel or lookout (*in time of war or while the accused was receiving special pay under 37 U.S.C 310*).**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any

organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 98. Misconduct as prisoner.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

The nature of any maltreatment inflicted on other prisoners;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The nature or extent of any injuries suffered by any victims of the offense;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

The nature of any benefits or improvements enjoyed by the accused as a result of his or her conduct; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 99. Misbehavior before the enemy.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization.

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense was committed in a way that created, or under circumstances creating, a substantial risk of bodily harm or death to any person; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

**Article 100. Subordinate compelling surrender.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The nature of the conflict or hostilities in which the accused's unit was engaged;

Whether the offense was committed in the immediate presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense impacted the operations of any organization in addition to the unit of the accused;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense was committed for the purpose of receiving money or a thing of value;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense; and

Whether the accused was a minimal or minor participant in the offense.

**Article 101. Improper use of countersign.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense; and

Whether the offense was committed for the purpose of receiving money or a thing of value.

**Article 102. Forcing a safeguard.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

That nature of the person or persons, place, or property intended to be protected by the safeguard;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense was committed for the purpose of receiving money or a thing of value;

Whether any person or persons, place, or property intended to be protected by the safeguard was injured or damaged;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused actually knew of the safeguard;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense; and

Whether the accused was a minimal or minor participant in the offense.

**Article 103b. Aiding the enemy**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the accused intended to cause damage to national security;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed

Forces were then engaged in a contingency operation or active hostilities.

**Article 108a. Captured or abandoned property (*looting or pillaging*)**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of serious



damage to public or private property;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The value and nature of the captured or abandoned property; and

The amount of restitution, if any, paid by the accused.

**Article 110. Improper hazarding of vessel or aircraft (*willfully and wrongfully*).**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The position, responsibility, and authority of the accused at the time of the offense;

Whether the offense caused damage to the vessel or aircraft and the amount and type of damage;

Whether the accused committed the offense with the intent to prevent the vessel's or aircraft's deployment, movement, or departure;

Whether the offense occurred in a time of active hostilities;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the accused was an organizer, leader, manager, or supervisor in the offense

and the number of other participants in the offense; and

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major.

**Article 133. Conduct unbecoming an officer.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The sentencing parameter for the most analogous enumerated offense;

The grade of the accused;

Whether the offense occurred in a time of active hostilities;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense involved a severe lack of integrity and judgment;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person; and

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense.

**Article 134. General article.**

(A) For offenses under Article 134's "disorders and neglects to the prejudice of good order and discipline" or "conduct of a nature to bring discredit upon the armed forces" clause that are not listed in Part IV of the Manual for Courts-Martial:

(1) For offenses for which the maximum punishment is calculated pursuant to

Rule for Courts-Martial 1003(c)(1)(B)(i), the sentencing parameter for the offense that provided the maximum punishment.

(2) For offenses for which the maximum punishment is calculated by reference to a provision of the United States Code pursuant to Rule for Courts-Martial 1003(c)(1)(B)(ii), the Federal Sentencing Guideline range for the offense that provided the maximum punishment.

(3) For offenses for which the maximum punishment is calculated by reference to a custom of the applicable service pursuant to Rule for Courts-Martial 1003(c)(1)(B)(ii), the sentencing parameter for the most analogous enumerated offense.

(B) For offenses under Article 134's "crimes and offenses not capital" clause, the Federal Sentencing Guideline range for the underlying offense.

**Article 134. Self-injury without intent to avoid service in a time of war or in a hostile fire pay zone.**

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities."

