



# Unrest at the Capitol: Potential Violations of the Uniform Code of Military Justice

February 5, 2021

After the unrest at the U.S. Capitol on January 6, 2021, sources reported that [current](#) and [former](#) military servicemembers [were among](#) the participants in the unrest. These reports prompted [several Members](#) of Congress to ask the Department of Defense to investigate servicemembers' participation and take disciplinary action. The military [is investigating](#) whether any active-duty servicemembers participated in the unrest, and the Joint Chiefs of Staff [issued a memorandum](#) condemning the “violent riot” and actions “that were inconsistent with the rule of law.”

This Legal Sidebar examines potential violations of the Uniform Code of Military Justice (UCMJ), codified in Title 10 of the U.S. Code, those servicemembers may have committed. The Sidebar begins by discussing which current and former servicemembers are subject to the UCMJ. It then examines offenses under the UCMJ that current or former servicemembers may have committed on January 6, 2021, including potential sentences for each offense. It concludes with several considerations for Congress.

For information on federal criminal laws that may be relevant to the unrest at the Capitol, see CRS Legal Sidebar LSB10564, *Federal Criminal Law: January 6, 2021, Unrest at the Capitol*, by Michael A. Foster and Peter G. Berris. For general information on the military justice system and courts-martial, see CRS Report R46503, *Military Courts-Martial Under the Military Justice Act of 2016*, by Jennifer K. Elsea and Jonathan M. Gaffney.

## Individuals Subject to the UCMJ

[Article 2](#) of the UCMJ specifies which persons fall under the UCMJ's jurisdiction. Besides active-duty servicemembers, certain retired servicemembers, civilians, and enemy prisoners of war are also subject to the UCMJ. Three categories appear most relevant to the events of January 6, 2021:

- Active-duty servicemembers, including (1) members of a regular component of the Armed Forces, including those awaiting discharge; (2) cadets, aviation cadets, and midshipmen; and (3) members of the National Oceanic and Atmospheric Administration and Public Health Service, when assigned to and serving with the Armed Forces;

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- Retired members of a regular component of the Armed Forces who are entitled to pay; and
- Members of the [Fleet Reserve and Fleet Marine Corps Reserve](#)—enlisted members of the Navy and Marine Corps who (1) served more than twenty but fewer than thirty years; (2) are no longer on active duty; and (3) receive retainer pay.

In general, members of the reserve components and National Guard [are not subject](#) to the UCMJ unless called to federal duty.

## Potentially Relevant UCMJ Offenses

This section examines UCMJ offenses that current and former servicemembers may have committed during the unrest at the Capitol. It divides these offenses into six broad categories: (1) crimes against government authority; (2) crimes against persons; (3) property crimes; (4) crimes concerning public safety; (5) offenses unique to the military; and (6) subsequent criminal acts. Although not discussed in this Sidebar, the UCMJ also prohibits inchoate offenses like [attempts](#), [conspiracy](#), and [solicitation](#) to commit the offenses examined below, as well as subsequent actions like [evading arrest](#), [making false statements](#), and [obstructing justice](#). Unless otherwise noted, each offense may be punished “as a court-martial may direct,” [which could include](#) a fine, imprisonment, a reduction in pay grade, or a punitive discharge.

### Crimes Against Government Authority

The UCMJ prohibits a number of crimes against government authority:

- **Mutiny or Sedition**—[Article 94](#) of the UCMJ prohibits (1) mutiny; (2) sedition; and (3) the failure to prevent, suppress, or report mutiny or sedition. As relevant to the unrest at the Capitol, a person who, “with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition.” In addition, any person who “fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence” or fails to report to the proper officer a mutiny or sedition “which he knows or has reason to believe is taking place” is guilty of a failure to report or suppress a mutiny or sedition. Article 94 authorizes imposition of the death penalty for mutiny, sedition, and failure to suppress or report a mutiny or sedition.
- **Contempt Toward Officials**—[Article 88](#) of the UCMJ prohibits commissioned officers—but not enlisted servicemembers—from using “contemptuous words” of certain officials, including the President, Vice President, and Congress as an institution ([but not](#) individual Members). Contemptuous words [do not include](#) “adverse criticism . . . in the course of a political discussion, even though emphatically expressed.”
- **Public Records Offenses**—[Article 104](#) of the UCMJ prohibits public records offenses, including the willful and unlawful alteration, removal, mutilation, obliteration, or destruction of public records, as well as the taking of a public record with the intent to take any of those actions.
- **Offenses Concerning Government Computers**—Under [Article 123](#) of the UCMJ, it is an offense to intentionally or knowingly access a government computer, with an unauthorized purpose, and thereby obtain classified or other protected information. Given [reports](#) that participants in the unrest accessed congressional computers, it is possible that they may have accessed classified or sensitive information.

## Crimes Against Persons

The UCMJ also prohibits crimes against persons:

- **Murder and Manslaughter**—Articles 118 and 119 of the UCMJ prohibit murder and manslaughter, respectively. The UCMJ authorizes imposition of the death penalty for premeditated murder and for murder committed in the course of other crimes, including burglary, sexual assault, and aggravated arson.
- **Assault**—Article 128 of the UCMJ prohibits assault—unlawful bodily harm to another person with force or violence, as well as an attempt or offer to do the same—and aggravated assault—an assault committed with a dangerous weapon, that inflicts substantial or grievous harm, or by strangulation or suffocation.
- **Endangerment**—Article 114 of the UCMJ prohibits various types of endangerment, including (1) “wrongful and reckless or wanton” conduct that “is likely to produce death or grievous bodily harm to another person”; (2) discharge of a firearm “under circumstances such as to endanger human life”; and (3) unlawfully carrying a concealed weapon.

## Property Crimes

The UCMJ includes offenses that involve the theft or destruction of property:

- **Waste, Spoilage, or Destruction of Non-Military Property**—Under Article 109 of the UCMJ, it is an offense to willfully and wrongfully destroy or damage any property that is not the military property of the United States. Article 109 also prohibits the willful or reckless waste or spoilage of property.
- **Larceny, Wrongful Appropriation, and Robbery**—Articles 121 and 122 of the UCMJ prohibit larceny, wrongful appropriation, and robbery. These offenses all involve the wrongful taking of something of value—such as money or property—from a person. An offender who intends only to temporarily deprive or defraud the person of the thing of value commits wrongful appropriation, while an offender who intends to do so permanently commits larceny. An offender who uses force, violence, or fear to take the thing of value commits robbery.
- **Burglary and Unlawful Entry**—Article 129 of the UCMJ prohibits any person from unlawfully entering another person’s real property or personal property used as a structure for habitation or storage (such as a tent). In addition, it prohibits *burglary*—breaking and entering a building or structure with the intent to commit another offense.

## Crimes Concerning Public Safety

In addition to offenses against the government and specific persons or property, the UCMJ also prohibits several offenses that threaten public safety:

- **Communicating Threats**—Article 115 of the UCMJ prohibits the wrongful communication of a threat to injure a person or a person’s property or reputation, including threats—both real and false—to use explosives, biological or chemical agents, or weapons of mass destruction.
  - **Riot or Breach of Peace**—Under Article 116 of the UCMJ, it is an offense to cause or participate in a riot or breach of the peace.
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- **Provoking Speeches or Gestures**—[Article 117](#) of the UCMJ prohibits the use of provoking or reproachful words or gestures toward any other person subject to the UCMJ.

## Offenses Unique to the Military

In addition to the offenses above, which have civilian analogues, the UCMJ contains several offenses unique to the military:

- **Conduct Unbecoming An Officer and A Gentleman**—Under [Article 133](#), it is an offense for commissioned officers, cadets, and midshipmen to take an action or engage in behavior that [dishonors or disgraces](#) the officer in such a way as to seriously compromise the officer’s character or standing as an officer. Examples of unbecoming conduct [include](#) crimes of [moral turpitude](#) and theft, and can include offenses separately punishable under the UCMJ. This article does not apply to enlisted servicemembers.
- **The General Article**—[Article 134](#) of the UCMJ prohibits “all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital.” [Courts-martial may](#), at their discretion, punish such acts “according to the nature and degree of the offense.” Prohibited actions under this Article include [other federal crimes](#) and—in [certain circumstances](#)—crimes under state laws. In addition, the Rules for Court-Martial specify additional offenses falling under Article 134, including (1) [disloyal statements](#); (2) [disorderly conduct and drunkenness](#); and (3) [negligent homicide](#).

## Considerations for Congress

Congress established the UCMJ under its constitutional authority in [Article I, Section 8, clause 14](#) “[t]o make Rules for the Government and Regulation of the land and naval Forces.” Accordingly, should Congress wish to amend any UCMJ provision, it may do so legislatively. If Congress chooses to amend the UCMJ in response to the unrest at the U.S. Capitol, it should consider whether any such amendment constitutes a [bill of attainder](#) or [ex post facto law](#).

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