

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 124

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO THE MILITARY; AMENDING SECTION 46-1102, IDAHO CODE, TO REVISE
PROVISIONS REGARDING THE MODEL STATE CODE OF MILITARY JUSTICE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 46-1102, Idaho Code, be, and the same is hereby
amended to read as follows:

46-1102. MODEL STATE CODE OF MILITARY JUSTICE. The "Model State Code
of Military Justice" is hereby enacted into law and entered into by this
state with any other states legally joining therein in the form substan-
tially as follows:

MODEL STATE CODE OF MILITARY JUSTICE

PART I. GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS -- GENDER NEUTRALITY

(a) In this act, unless the context otherwise requires:

(1) ~~The term "accuser" means a person who signs and swears to charges,
any person who directs that charges nominally be signed and sworn to by
another, and any other person who has an interest other than an official
interest in the prosecution of the accused;~~

~~(2) The term "cadet," "candidate," or "midshipman" means a person who
is enrolled in or attending the United States military academy, the
United States air force academy, the United States coast guard academy,
officer candidate school, a state military academy, a regional train-
ing institute, or any other formal education program for the purpose of
becoming a commissioned officer in the state military forces;~~

~~(3) The term "classified information" means:~~

~~(A) Any information or material that has been determined by an of-
ficial of the United States or any state pursuant to law, an execu-
tive order, or regulation to require protection against unautho-
rized disclosure for reasons of national or state security; and~~

~~(B) Any restricted data, as defined in section 11(y) of the atomic
energy act of 1954, 42 U.S.C. section 2014(y);~~

~~(4) The term "code" means this act;~~

~~(5) The term "commanding officer" includes only commissioned officers
of the state military forces and shall include officers in charge only
when administering nonjudicial punishment under article 15 of this
code. The term "commander" has the same meaning as "commanding officer"
unless the context otherwise requires;~~

1 ~~(6) The term "convening authority" includes, in addition to the person~~
 2 ~~who convened the court, a commissioned officer commanding for the time~~
 3 ~~being or a successor in command to the convening authority;~~

4 ~~(7) The term "day" means calendar day and is not synonymous with the~~
 5 ~~term "unit training assembly." Any punishment authorized by this arti-~~
 6 ~~cle which is measured in terms of days shall, when served in a status~~
 7 ~~other than annual field training, be construed to mean succeeding duty~~
 8 ~~days;~~

9 ~~(8) The term "duty status other than state active duty" means any other~~
 10 ~~type of duty not in federal service and not full-time duty in the active~~
 11 ~~service of the state, under an order issued by authority of law and in-~~
 12 ~~cludes travel to and from such duty;~~

13 ~~(9) The term "enlisted member" means a person in an enlisted grade;~~

14 ~~(10) The term "judge advocate" means a commissioned officer of the or-~~
 15 ~~ganized state military forces who is a member in good standing of the bar~~
 16 ~~of the highest court of a state and is:~~

17 (A) Certified or designated as a judge advocate in the judge ad-
 18 vocate general's corps of the army, air force, navy, or the marine
 19 corps or designated as a law specialist as an officer of the coast
 20 guard, or a reserve component of one ~~(1)~~ of these; or

21 (B) Certified as ~~an~~ a nonfederally recognized judge advocate, un-
 22 der regulations promulgated pursuant to this provision, by the se-
 23 nior judge advocate of the commander of the force in the state mil-
 24 itary forces of which the accused is a member, as competent to per-
 25 form such military justice duties required by this code. If there
 26 is no such judge advocate available, then such certification may
 27 be made by such senior judge advocate of the commander of another
 28 force in the state military forces, as the convening authority di-
 29 rects;

30 ~~(11) The term "may" is used in a permissive sense. The phrase "no person~~
 31 ~~may..." means that no person is required, authorized or permitted to do~~
 32 ~~the act prescribed;~~

33 ~~(12) The term "military court" means a court-martial or a court of in-~~
 34 ~~quiry;~~

35 ~~(13) The term "military judge" means an official of a general or special~~
 36 ~~court-martial detailed in accordance with article 26 of this code;~~

37 ~~(14) The term "military offenses" means those offenses prescribed under~~
 38 ~~articles 77 (Principals), 78 (Accessory after the fact), 80 (Attempts),~~
 39 ~~81 (Conspiracy), 82 (Solicitation), 83 (Fraudulent enlistment, ap-~~
 40 ~~pointment, or separation), 84 (Unlawful enlistment, appointment, or~~
 41 ~~separation), 85 (Desertion), 86 (Absence without leave), 87 (Missing~~
 42 ~~movement), 88 (Contempt toward officials), 89 (Disrespect towards su-~~
 43 ~~perior commissioned officer), 90 (Assaulting or willfully disobeying~~
 44 ~~superior commissioned officer), 91 (Insubordinate conduct toward war-~~
 45 ~~rant officer, noncommissioned officer, or petty officer), 92 (Failure~~
 46 ~~to obey order or regulation), 93 (Cruelty and maltreatment), 94 (Mutiny~~
 47 ~~or sedition), 95 (Resistance, flight, breach of arrest, and escape),~~
 48 ~~96 (Releasing prisoner without proper authority), 97 (Unlawful de-~~
 49 ~~tention), 98 (Noncompliance with procedural rules), 99 (Misbehavior~~
 50 ~~before the enemy), 100 (Subordinate compelling surrender), 101 (Im-~~

1 proper use of countersign), 102 (Forcing a safeguard), 103 (Captured
 2 or abandoned property), 104 (Aiding the enemy), 105 (Misconduct as
 3 prisoner), 107 (False official statements), 108 (Military property --
 4 Loss, damage, destruction, or wrongful disposition), 109 (Property
 5 other than military property -- Waste, spoilage, or destruction), 110
 6 (Improper hazarding of vessel), 112 (Drunk on duty), 112a. (Wrongful
 7 use, possession, etc., of controlled substances), 113 (Misbehavior of
 8 sentinel), 114 (Dueling), 115 (Malingering), 116 (Riot or breach of
 9 peace), 117 (Provoking speeches or gestures), 132 (Frauds against the
 10 government), 133 (Conduct unbecoming an officer and a gentleman), and
 11 134 (General article) of this code;

12 ~~(15) The term "national security" means the national defense and for-~~
 13 ~~ign relations of the United States;~~

14 ~~(16) The term "officer" means a commissioned or warrant officer;~~

15 ~~(17) The term "officer in charge" means a member of the naval militia,~~
 16 ~~the navy, the marine corps, or the coast guard designated as such by ap-~~
 17 ~~propriate authority;~~

18 ~~(18) The term "record," when used in connection with the proceedings of~~
 19 ~~a court-martial, means:~~

20 ~~(A) An official written transcript, written summary or other~~
 21 ~~writing relating to the proceedings; or~~

22 ~~(B) An official audiotape, videotape, digital image or file, or~~
 23 ~~similar material from which sound, or sound and visual images, de-~~
 24 ~~picting the proceedings may be reproduced;~~

25 ~~(19) "Shall" is used in an imperative sense;~~

26 ~~(204) "State" means one of the several states, the District of Columbia,~~
 27 ~~the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands;~~

28 ~~(215) "State active duty" means full-time duty in the state military~~
 29 ~~forces under an order of the governor or otherwise issued by authority~~
 30 ~~of law, and paid by state funds, and includes travel to and from such~~
 31 ~~duty;~~

32 ~~(226) "Senior force judge advocate" means the senior judge advocate of~~
 33 ~~the commander of the same force of the state military forces as the ac-~~
 34 ~~cused and who is that commander's chief legal advisor;~~

35 ~~(237) "State military forces" means the national guard of the state of~~
 36 ~~Idaho, as defined in title 32, United States Code, the organized naval~~
 37 ~~militia of the state, and any other military force organized under the~~
 38 ~~constitution and laws of the state of Idaho, not to include the unorga-~~
 39 ~~nized militia, when not in a status subjecting them to exclusive juris-~~
 40 ~~isdiction under 10 U.S.C. chapter 47. The unorganized militia, state de-~~
 41 ~~fense force, state national guard, home guard or any other name of any~~
 42 ~~state force that does not meet this definition shall not be part of the~~
 43 ~~"state military forces" under this code;~~

44 ~~(24) The term "superior commissioned officer" means a commissioned of-~~
 45 ~~ficer superior in rank or command;~~

46 ~~(258) "Senior force commander" means the commander of the same force of~~
 47 ~~the state military forces as the accused;~~

48 (9) "Commanding officer" means only commissioned officers;

49 (10) "Superior commissioned officer" means a commissioned officer su-
 50 perior in rank, grade, or command;

1 (11) "Military" means any or all of the state military forces;

2 (12) "Accuser" means a person who signs and swears to charges, any
 3 person who directs that charges nominally be signed and sworn to by an-
 4 other, and any other person who has an interest other than an official
 5 interest in the prosecution of the accused;

6 (13) "Military judge" means an official of a general or special court-
 7 martial detailed in accordance with article 26;

8 (14) "Legal officer" means any commissioned officer designated as a
 9 judge advocate to perform legal duties for a command;

10 (15) "Record," when used in connection with the proceedings of a court-
 11 martial, means:

12 (A) An official written transcript, written summary, or other
 13 writing relating to the proceedings; or

14 (B) An official audiotape, videotape, or similar material from
 15 which sound, or sound and visual images, depicting the proceedings
 16 may be reproduced;

17 (16) "Classified information" means:

18 (A) Any information or material that has been determined by an of-
 19 ficial of the United States pursuant to law, an executive order, or
 20 regulation to require protection against unauthorized disclosure
 21 for reasons of national security; and

22 (B) Any restricted data, as defined in section 11(y) of the atomic
 23 energy act of 1954, 42 U.S.C. 2014(y);

24 (17) "National security" means the national defense and foreign rela-
 25 tions of the United States;

26 (18) "Military offenses" means those offenses prescribed under arti-
 27 cles 77 through 117, 123, 124a, 124b, and 131b through 134.

28 (b) The use of the masculine gender throughout this code shall also in-
 29 clude the feminine gender.

30 ARTICLE 2. PERSONS SUBJECT TO THIS CODE -- JURISDICTION

31 (a) This code applies to all members of the state military forces when
 32 serving in a title 32 status or state active duty status as defined in arti-
 33 cle 1(a) (235) of this code. This code does not apply to members serving in a
 34 title 10 status or members of the unorganized militia as defined in section
 35 46-102, Idaho Code.

36 (b) Subject matter jurisdiction is established if a nexus exists be-
 37 tween an offense, either military or nonmilitary, and the state military
 38 force, regardless of duty status. Courts-martial convened by the governor
 39 or his designated representative have primary jurisdiction of military of-
 40 fenses as defined in article 1(a) (148) of this code. A proper civilian court
 41 has primary jurisdiction of a nonmilitary offense when an act or omission
 42 violates both this code and local criminal law, foreign or domestic. In such
 43 a case, a court-martial may be initiated only after the civilian authority
 44 has declined to prosecute or dismissed the charge, provided jeopardy has not
 45 attached. Jurisdiction over attempted crimes, conspiracy crimes, sollicita-
 46 tion, and accessory crimes must be determined by the underlying offense.

ARTICLE 3. JURISDICTION TO TRY CERTAIN PERSONNEL

(a) Each person discharged from the state military forces who is later charged with having fraudulently obtained a discharge is, subject to article 43 of this code, subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in custody under the direction of the state military forces for that trial. Upon conviction of that charge that person is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge. Subject to article 43, a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service. Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to article 43, subject to trial by court-martial on that charge and is, after apprehension, subject to this chapter while in the custody of the state military forces for that trial. Upon conviction of that charge, he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of the state military forces who is subject to this chapter is not, by virtue of the termination of a period of active duty for training or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

ARTICLE 4. RESERVED DISMISSED OFFICER'S RIGHT TO TRIAL BY COURT-MARTIAL

(a) If any commissioned officer, dismissed by order of the governor or his designated representative, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the governor or his designated representative, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, the adjutant general shall substitute for the dismissal ordered by the governor or his designated representative a form of discharge authorized for administrative issue.

(b) If the governor or his designated representative fails to convene a general court-martial within six (6) months from the presentation of an ap-

1 plication for trial under this article, the adjutant general shall substi-
 2 tute for the dismissal ordered by the governor or his designated representa-
 3 tive a form of discharge authorized for administrative issue.

4 (c) If a discharge is substituted for a dismissal under this article,
 5 the governor or his designated representative alone may reappoint the offi-
 6 cer to such commissioned grade and with such rank as, in the opinion of the
 7 governor or his designated representative, that former officer would have
 8 attained had he not been dismissed. The reappointment of such a former offi-
 9 cer shall be without regard to the existence of a vacancy and shall affect the
 10 promotion status of other officers only insofar as the governor or his des-
 11 ignated representative may direct. All time between the dismissal and the
 12 reappointment shall be considered as actual service for all purposes, in-
 13 cluding the right to pay and allowances.

14 (d) If an officer is discharged from any armed force by administrative
 15 action or is dropped from the rolls by order of the governor or his designated
 16 representative, he has no right to trial under this article.

17 ARTICLE 5. TERRITORIAL APPLICABILITY OF THE CODE

18 (a) This code has applicability at all times and in all places subject
 19 to the personal jurisdiction as provided in article 2 of this code, or, if
 20 not in a duty status, that there is a nexus between the act or omission con-
 21 stituting the offense and the efficient functioning of the state military
 22 forces; however, this grant of military jurisdiction shall neither preclude
 23 nor limit civilian jurisdiction over an offense, which is limited only by the
 24 prohibition of double jeopardy.

25 (b) Courts-martial and courts of inquiry may be convened and held in
 26 units of the state military forces while those units are serving outside the
 27 state with the same jurisdiction and powers as to persons subject to this
 28 code as if the proceedings were held inside the state, and offenses commit-
 29 ted outside the state may be tried and punished either inside or outside the
 30 state.

31 ARTICLE 6. JUDGE ADVOCATES AND LEGAL OFFICERS

32 (a) The senior force judge advocates in each of the state's military
 33 forces or that judge advocate's delegates shall make frequent inspections in
 34 the field in supervision of the administration of military justice in that
 35 force.

36 (b) Convening authorities shall at all times communicate directly with
 37 their staff judge advocates or legal officers in matters relating to the ad-
 38 ministration of military justice. The staff judge advocate or legal officer
 39 of any command is entitled to communicate directly with the staff judge advo-
 40 cate or legal officer of a superior or subordinate command, or with the state
 41 judge advocate.

42 ~~(c) No person who has acted as member, military judge, trial counsel,~~
 43 ~~defense counsel, or investigating officer, or who has been a witness, in any~~
 44 ~~case may later act as a judge advocate to any reviewing authority upon the~~
 45 ~~same case.~~

1 (c) (1) No person who, with respect to a case, serves in a capacity spec-
 2 ified in paragraph (2) of this subsection, may later serve as a staff
 3 judge advocate or legal officer to any reviewing or convening authority
 4 upon the same case.

5 (2) The capacities referred to in paragraph (1) of this subsection are,
 6 with respect to the case involved, any of the following:

7 (A) Preliminary hearing officer, court member, military judge,
 8 military magistrate, or appellate judge; or

9 (B) Counsel who have acted in the same case or appeared in any pro-
 10 ceeding before a military judge, military magistrate, preliminary
 11 hearing officer, or appellate court.

12 ARTICLE 6a. RESERVED INVESTIGATION AND DISPOSITION OF
 13 MATTERS PERTAINING TO THE FITNESS OF MILITARY JUDGES

14 (a) The governor or his designee shall prescribe procedures for the
 15 investigation and disposition of charges, allegations, or information per-
 16 taining to the fitness of a military appellate judge, military judge, or
 17 military magistrate to perform the duties of the position involved.

18 (b) The governor or his designee shall transmit a copy of the proce-
 19 dures prescribed pursuant to this article to the appropriate committees of
 20 the Idaho senate and Idaho house of representatives.

21 ARTICLE 6b. RIGHTS OF THE VICTIM OF AN OFFENSE UNDER THIS CODE

22 (a) A victim of an offense under this code has the following rights:

23 (1) The right to be reasonably protected from the accused.

24 (2) The right to reasonable, accurate, and timely notice of any of the
 25 following:

26 (A) A public hearing concerning the continuation of confinement
 27 prior to trial of the accused;

28 (B) A preliminary hearing under article 32 relating to the of-
 29 fense;

30 (C) A court-martial relating to the offense;

31 (D) A public proceeding of the service clemency and parole board
 32 relating to the offense; and

33 (E) The release or escape of the accused, unless such notice may
 34 endanger the safety of any person.

35 (3) The right not to be excluded from any public hearing or proceed-
 36 ing described in paragraph (2) of this subsection unless the military
 37 judge or preliminary hearing officer, as applicable, after receiving
 38 clear and convincing evidence, determines that testimony by the victim
 39 of an offense under this chapter would be materially altered if the vic-
 40 tim heard other testimony at that hearing or proceeding.

41 (4) The right to be reasonably heard at any of the following:

42 (A) A public hearing concerning the continuation of confinement
 43 prior to trial of the accused;

44 (B) A sentencing hearing relating to the offense; and

45 (C) A public proceeding of the service clemency and parole board
 46 relating to the offense.

1 (5) The reasonable right to confer with the counsel representing the
2 government at any proceeding described in paragraph (2) of this subsec-
3 tion.

4 (6) The right to receive restitution as provided in law.

5 (7) The right to proceedings free from unreasonable delay.

6 (8) The right to be treated with fairness and with respect for the dig-
7 nity and privacy of the victim of an offense under this code.

8 (b) In this article, "victim of an offense under this code" means an in-
9 dividual who has suffered direct physical, emotional, or pecuniary harm as a
10 result of the commission of an offense under this code.

11 (c) In the case of a victim of an offense under this code who is under
12 eighteen (18) years of age but who is not a member of the state military
13 forces, incompetent, incapacitated, or deceased, the legal guardians of the
14 victim or the representatives of the victim's estate, family members, or any
15 other person designated as suitable by the military judge, may assume the
16 rights of the victim under this article.

17 (d) Enforcement by the Idaho state courts:

18 (1) If the victim of an offense under this chapter believes that an ar-
19 ticle 32 preliminary hearing ruling or a court-martial ruling violates
20 the rights of the victim afforded by the provisions of this article, in-
21 cluding provisions specified in subsection (a) (4) of this article, the
22 victim may petition the Idaho state courts in accordance with the appli-
23 cable rules of procedure of the Idaho state courts for a writ of mandamus
24 to require the preliminary hearing officer or the court-martial to com-
25 ply with the provisions of this article.

26 (2) Paragraph (1) of this subsection applies with respect to the pro-
27 tections afforded by the following:

28 (A) The provisions of this article;

29 (B) Military rule of evidence 513, relating to the psychothera-
30 pist-patient privilege;

31 (C) Military rule of evidence 514, relating to the victim advo-
32 cate-victim privilege; and

33 (D) Military rule of evidence 615, relating to the exclusion of
34 witnesses.

35 (e) Upon notice by counsel for the government to counsel for the accused
36 of the name of an alleged victim of an offense under this article who counsel
37 for the government intends to call as a witness at a proceeding under this ar-
38 ticle, counsel for the accused shall make any request to interview the victim
39 through the special victims' counsel or other counsel for the victim, if ap-
40 plicable.

41 (f) If requested by an alleged victim who is subject to a request for in-
42 terview under subsection (e) of this article, any interview of the victim by
43 counsel for the accused shall take place only in the presence of the counsel
44 for the government, a counsel for the victim, or, if applicable, a victim ad-
45 vocate.

46 PART II. APPREHENSION AND RESTRAINT

47 ARTICLE 7. APPREHENSION

1 (a) Apprehension is the taking of a person into custody.

2 (b) Any person authorized by this code or by 10 U.S.C. chapter 47, or by
3 regulations issued under either, to apprehend persons subject to this code,
4 any marshal of a court-martial appointed pursuant to the provisions of this
5 code, and any peace officer or civil officer having authority to apprehend
6 offenders under the laws of the United States or of a state, including, but
7 not limited to, section 46-1103, Idaho Code, may do so upon probable cause
8 that an offense has been committed and that the person apprehended committed
9 it.

10 (c) Commissioned officers, warrant officers, petty officers, and non-
11 commissioned officers have authority to quell quarrels, frays, and disor-
12 ders among persons subject to this code and to apprehend persons subject to
13 this code who take part therein.

14 (d) If an offender is apprehended outside the state, the offender's re-
15 turn to the area must be in accordance with normal extradition procedures or
16 by reciprocal agreement.

17 (e) No person authorized by this article to apprehend persons subject
18 to this code or the place where such offender is confined, restrained, held,
19 or otherwise housed may require payment of any fee or charge for so receiv-
20 ing, apprehending, confining, restraining, holding, or otherwise housing a
21 person except as otherwise provided by law.

22 ARTICLE 8. ~~RESERVED~~ APPREHENSION OF DESERTERS

23 Any civil officer having authority to apprehend offenders under the laws of
24 the United States or of a state, commonwealth, possession, or the District of
25 Columbia may summarily apprehend a deserter from the state military forces
26 and deliver him into the custody of those forces.

27 ARTICLE 9. IMPOSITION OF RESTRAINT

28 (a) Arrest is the restraint of a person by an order, not imposed as a
29 punishment for an offense, directing him to remain within certain specified
30 limits. Confinement is the physical restraint of a person.

31 (b) An enlisted member may be ordered into arrest or confinement by any
32 commissioned officer by an order, oral or written, delivered in person or
33 through other persons subject to this code. A commanding officer may autho-
34 rize warrant officers, petty officers, or noncommissioned officers to order
35 enlisted members of the commanding officer's command or subject to the com-
36 manding officer's authority into arrest or confinement.

37 (c) A commissioned officer, a warrant officer, or a civilian subject to
38 this code or to trial thereunder may be ordered into arrest or confinement
39 only by a commanding officer to whose authority the person is subject, by an
40 order, oral or written, delivered in person or by another commissioned offi-
41 cer. The authority to order such persons into arrest or confinement may not
42 be delegated.

43 (d) No person may be ordered into arrest or confinement except for prob-
44 able cause.

1 (e) This article does not limit the authority of persons authorized
 2 to apprehend offenders to secure the custody of an alleged offender until
 3 proper authority may be notified.

4 ARTICLE 10. RESTRAINT OF PERSONS CHARGED WITH OFFENSES

5 ~~Any person subject to this code charged with an offense under this code may~~
 6 ~~be ordered into arrest or confinement, as circumstances may require. When~~
 7 ~~any person subject to this code is placed in arrest or confinement prior to~~
 8 ~~trial, immediate steps shall be taken to inform the person of the specific~~
 9 ~~wrong of which the person is accused and diligent steps shall be taken to try~~
 10 ~~the person or to dismiss the charges and release the person~~

11 (a) In general.

12 (1) Subject to paragraph (2) of this subsection, any person subject to
 13 this chapter who is charged with an offense under this chapter may be or-
 14 dered into arrest or confinement as the circumstances require.

15 (2) When a person subject to this chapter is charged only with an of-
 16 fense that is normally tried by summary court-martial, the person ordi-
 17 narily shall not be ordered into confinement.

18 (b) Notification to accused and related procedures.

19 (1) When a person subject to this chapter is ordered into arrest or con-
 20 finement before trial, immediate steps shall be taken:

21 (A) To inform the person of the specific offense of which the per-
 22 son is accused; and

23 (B) To try the person or to dismiss the charges and release the
 24 person.

25 (2) To facilitate compliance with paragraph (1) of this subsection, the
 26 governor or his designee shall prescribe regulations setting forth pro-
 27 cedures relating to referral for trial, including procedures for prompt
 28 forwarding of the charges and specifications and, if applicable, the
 29 preliminary hearing report submitted under article 32.

30 ARTICLE 11. PLACE OF CONFINEMENT -- REPORTS AND RECEIVING OF PRISONERS

31 (a) If a person subject to this code is confined before, during, or af-
 32 ter trial, confinement shall be in a civilian or military confinement facil-
 33 ity.

34 (b) No person authorized to receive prisoners pursuant to subsection
 35 (a) of this article may refuse to receive or keep any prisoner committed to
 36 the person's charge by a commissioned officer of the state military forces,
 37 when the committing officer furnishes a statement, signed by such officer,
 38 of the offense charged against the prisoner, unless otherwise authorized by
 39 law.

40 (c) Every person authorized to receive prisoners pursuant to subsec-
 41 tion (a) of this article to whose charge a prisoner is committed shall,
 42 within twenty-four (24) hours after that commitment or as soon as the person
 43 is relieved from guard, report to the commanding officer of the prisoner the
 44 name of the prisoner, the offense charged against the prisoner, and the name
 45 of the person who ordered or authorized the commitment.

1 ARTICLE 12. CONFINEMENT WITH ENEMY PRISONERS PROHIBITED

2 No member of the state military forces may be placed in military confinement
3 in immediate association with enemy prisoners or other foreign nationals not
4 members of the armed forces. This article shall not apply to confinement of
5 state military forces in civilian confinement facilities.

6 ARTICLE 13. PUNISHMENT PROHIBITED BEFORE TRIAL

7 No person, while being held for trial or awaiting a verdict, may be subjected
8 to punishment or penalty other than arrest or confinement upon the charges
9 pending against the person, nor shall the arrest or confinement imposed upon
10 such person be any more rigorous than the circumstances required to ensure
11 the person's presence.

12 ARTICLE 14. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES

13 (a) A person subject to this code accused of an offense against civil
14 authority may be delivered, upon request, to the civil authority for trial or
15 confinement.

16 (b) When delivery under this article is made to any civil authority of
17 a person undergoing sentence of a court-martial, the delivery, if followed
18 by conviction in a civil tribunal, interrupts the execution of the sentence
19 of the court-martial, and the offender after having answered to the civil au-
20 thorities for the offense shall, upon the request of competent military au-
21 thority, be returned to the place of original custody for the completion of
22 the person's sentence.

23 PART III. NONJUDICIAL PUNISHMENT

24 ARTICLE 15. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

25 (a) Under such regulations as prescribed, any commanding officer (and
26 for purposes of this article, officers-in-charge) may impose disciplinary
27 punishments for minor offenses without the intervention of a court-martial
28 pursuant to this article. The governor, the adjutant general, or an officer
29 of a general or flag rank in command may delegate the powers under this arti-
30 cle to a principal assistant who is a member of the state military forces.

31 (b) Any commanding officer may impose upon enlisted members of the of-
32 ficer's command:

33 (1) An admonition;

34 (2) A reprimand;

35 (3) The withholding of privileges for not more than six (6) months;

36 (4) The forfeiture of pay of not more than seven (7) days' pay;

37 (5) A fine of not more than seven (7) days' pay;

38 (6) A reduction to the next inferior pay grade, if the grade from which
39 demoted is within the promotion authority of the officer imposing the
40 reduction or any officer subordinate to the one who imposes the reduc-
41 tion;

1 (7) Extra duties, including fatigue or other duties, for not more than
2 fourteen (14) days, which need not be consecutive; and

3 (8) Restriction to certain specified limits, with or without suspen-
4 sion from duty, for not more than fourteen (14) days, which need not be
5 consecutive.

6 (c) Any commanding officer of the grade of major or lieutenant comman-
7 der, or above, may impose upon enlisted members of the officer's command:

8 (1) Any punishment authorized in subsection (b) (1), (2) and (3) of this
9 article;

10 (2) The forfeiture of not more than one-half (1/2) of one (1) month's
11 pay per month for two (2) months;

12 (3) A fine of not more than one (1) month's pay;

13 (4) A reduction to the lowest or any intermediate pay grade, if the
14 grade from which demoted is within the promotion authority of the of-
15 ficer imposing the reduction or any officer subordinate to the one who
16 imposes the reduction, but an enlisted member in a pay grade above E-4
17 may not be reduced more than two (2) pay grades;

18 (5) Extra duties, including fatigue or other duties, for not more than
19 forty-five (45) days, which need not be consecutive; and

20 (6) Restriction to certain specified limits, with or without suspen-
21 sion from duty, for not more than sixty (60) days, which need not be con-
22 secutive.

23 (d) The governor, the adjutant general, an officer exercising general
24 court-martial convening authority, or an officer of a general or flag rank in
25 command may impose:

26 (1) Upon officers of the officer's command:

27 (A) Any punishment authorized in subsection (c) (1), (2), (3) and
28 (6) of this article; and

29 (B) Arrest in quarters for not more than thirty (30) days, which
30 need not be consecutive.

31 (2) Upon enlisted members of the officer's command:

32 (A) Any punishment authorized in subsection (c) of this article.

33 (e) Whenever any of those punishments are combined to run consec-
34 utively, the total length of the combined punishment cannot exceed the
35 authorized duration of the longest punishment in the combination, and there
36 must be an apportionment of punishments so that no single punishment in the
37 combination exceeds its authorized length under this article.

38 (f) Except in the case of a member attached to or embarked in a vessel,
39 punishment under this article may not be imposed on any member under this ar-
40 ticle if the member has, before the imposition of such punishment, demanded
41 trial by court-martial in lieu of such punishment.

42 (g) The officer who imposes the punishment, or the successor in com-
43 mand, may, at any time, suspend, set aside, mitigate, or remit any part or
44 amount of the punishment and restore all rights, privileges, and property
45 affected. The officer also may:

46 (1) Mitigate reduction in grade to forfeiture of pay;

47 (2) Mitigate arrest in quarters to restriction; or

48 (3) Mitigate extra duties to restriction.

49 The mitigated punishment shall not be for a greater period than the punish-
50 ment mitigated. When mitigating reduction in grade to forfeiture of pay, the

1 amount of the forfeiture shall not be greater than the amount that could have
2 been imposed initially under this article by the officer who imposed the pun-
3 ishment mitigated.

4 (h) A person punished under this article who considers the punishment
5 unjust or disproportionate to the offense may, through the proper channel,
6 appeal to the next superior authority within fifteen (15) days after the pun-
7 ishment is either announced or sent to the accused, as the commander may de-
8 termine. The appeal shall be promptly forwarded and decided, but the person
9 punished may in the meantime be required to undergo the punishment adjudged.
10 The superior authority may exercise the same powers with respect to the pun-
11 ishment imposed as may be exercised under subsection (g) of this article by
12 the officer who imposed the punishment. Before acting on an appeal from a
13 punishment, the authority that is to act on the appeal may refer the case to a
14 judge advocate for consideration and advice.

15 (i) The imposition and enforcement of disciplinary punishment under
16 this article for any act or omission is not a bar to trial by court-martial
17 or a civilian court of competent jurisdiction for a serious crime or offense
18 growing out of the same act or omission and not properly punishable under
19 this article; but the fact that a disciplinary punishment has been enforced
20 may be shown by the accused upon trial and, when so shown, it shall be consid-
21 ered in determining the measure of punishment to be adjudged in the event of
22 a finding of guilty.

23 (j) Whenever a punishment of forfeiture of pay is imposed under this ar-
24 ticle, the forfeiture may apply to pay accruing before, on, or after the date
25 that punishment is imposed.

26 (k) Regulations may prescribe the form of records to be kept of proceed-
27 ings under this article and may prescribe that certain categories of those
28 proceedings shall be in writing.

29 PART IV. COURT-MARTIAL JURISDICTION

30 ARTICLE 16. COURTS-MARTIAL CLASSIFIED

31 The three (3) kinds of courts-martial in the state military forces are:

32 (1) General courts-martial, consisting of:

33 (A) A military judge and not less than five (5) members; or

34 (B) Only a military judge, if before the court is assembled the accused,
35 knowing the identity of the military judge and after consultation with
36 defense counsel, requests orally on the record or in writing a court
37 composed only of a military judge and the military judge approves;

38 (2) Special courts-martial, consisting of:

39 (A) A military judge and not less than three (3) members; or

40 (B) Only a military judge, if one ~~(1)~~ has been detailed to the court, and
41 the accused under the same conditions as those prescribed in subsection

42 (1) (B) of this article so requests; and

43 (3) Summary courts-martial, consisting of one (1) commissioned offi-
44 cer.

45 ARTICLE 17. JURISDICTION OF COURTS-MARTIAL IN GENERAL

1 Each component of the state military forces has court-martial jurisdiction
2 over all members of the particular component who are subject to this code.
3 Additionally, the army and air national guard state military forces have
4 court-martial jurisdiction over all members subject to this code.

5 ARTICLE 18. JURISDICTION OF GENERAL COURTS-MARTIAL

6 Subject to article 17 of this code, general courts-martial have jurisdiction
7 to try persons subject to this code for any offense made punishable by this
8 code, and may, under such limitations as the governor may prescribe, adjudge
9 any punishment not forbidden by this code.

10 ARTICLE 19. JURISDICTION OF SPECIAL COURTS-MARTIAL

11 Subject to article 17 of this code, special courts-martial have jurisdic-
12 tion to try persons subject to this code for any offense made punishable by
13 this code, and may, under such limitations as the governor may prescribe,
14 adjudge any punishment not forbidden by this code except dishonorable dis-
15 charge, dismissal, confinement for more than one (1) year, forfeiture of pay
16 exceeding two-thirds (2/3) pay per month, or forfeiture of pay for more than
17 one (1) year.

18 ARTICLE 20. JURISDICTION OF SUMMARY COURTS-MARTIAL

19 (a) Subject to article 17 of this code, summary courts-martial have
20 jurisdiction to try persons subject to this code, except officers, cadets,
21 candidates, and midshipmen, for any offense made punishable by this code
22 under such limitations as the governor may prescribe.

23 (b) No person in the rank of E-7 or above may be brought to trial before
24 a summary court-martial if that person objects thereto. If objection to
25 trial by summary court-martial is made by an accused in the rank of E-7 or
26 above, trial by special or general court-martial may be ordered, as may be
27 appropriate. Members in the rank of E-6 and below do not have the right to
28 reject trial before a summary court-martial. Summary courts-martial may,
29 under such limitations as the governor may prescribe, adjudge any punishment
30 not forbidden by this code except dismissal, dishonorable or bad-conduct
31 discharge, confinement for more than one (1) month, restriction to specified
32 limits for more than two (2) months, or forfeiture of more than two-thirds
33 (2/3) of one (1) month's pay.

34 (c) A summary court-martial is a noncriminal forum. A finding of guilty
35 at a summary court-martial does not constitute a criminal conviction.

36 ARTICLE 21. RESERVED

37 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

38 ARTICLE 22. WHO MAY CONVENE GENERAL COURTS-MARTIAL

39 (a) General courts-martial may be convened by:

40 (1) The governor;

- 1 (2) The adjutant general;
2 (3) The commanding officer of a force of the state military forces;
3 (4) The commanding officer of a division or a separate brigade; or
4 (5) The commanding officer of a separate wing.

5 (b) If any such commanding officer is an accuser, the court shall be
6 convened by superior competent authority and may in any case be convened by
7 such superior authority if considered desirable by such authority.

8 ARTICLE 23. WHO MAY CONVENE SPECIAL COURTS-MARTIAL

9 (a) Special courts-martial may be convened by:

10 (1) Any person who may convene a general court-martial;

11 (2) The commanding officer of a garrison, fort, post, camp, station,
12 air national guard base, or naval base or station;

13 (3) The commanding officer of a brigade, regiment, detached battalion,
14 or corresponding unit of the army;

15 (4) The commanding officer of a wing, group, separate squadron, or cor-
16 responding unit of the air force; or

17 (5) The commanding officer or officer in charge of any other command
18 when empowered by the adjutant general.

19 (b) If any such officer is an accuser, the court shall be convened by
20 superior competent authority and may in any case be convened by such superior
21 authority if considered desirable by such authority.

22 ARTICLE 24. WHO MAY CONVENE SUMMARY COURTS-MARTIAL

23 (a) Summary courts-martial may be convened by:

24 (1) Any person who may convene a general or special court-martial;

25 (2) The commanding officer of a detached company or other detachment,
26 or corresponding unit of the army;

27 (3) The commanding officer of a detached squadron or other detachment,
28 or corresponding unit of the air force; or

29 (4) The commanding officer or officer in charge of any other command
30 when empowered by the adjutant general.

31 (b) When only one (1) commissioned officer is present with a command
32 or detachment, that officer shall be the summary court-martial of that com-
33 mand or detachment and shall hear and determine all summary court-martial
34 cases. Summary courts-martial may, however, be convened in any case by supe-
35 rior competent authority if considered desirable by such authority.

36 ARTICLE 25. WHO MAY SERVE ON COURTS-MARTIAL

37 (a) Any commissioned officer of the state military forces is eligible
38 to serve on all courts-martial for the trial of any person subject to this
39 code.

40 (b) Any warrant officer of the state military forces is eligible to
41 serve on general and special courts-martial for the trial of any person sub-
42 ject to this code, other than a commissioned officer.

43 ~~(c) Any enlisted member of the state military forces who is not a member~~
44 ~~of the same unit as the accused is eligible to serve on general and special~~

1 ~~courts-martial for the trial of any enlisted member subject to this code, but~~
2 ~~that member shall serve as a member of a court only if, before the conclu-~~
3 ~~sion of a session called by the military judge under article 39(a) of this~~
4 ~~code prior to trial or, in the absence of such a session, before the court~~
5 ~~is assembled for the trial of the accused, the accused personally has re-~~
6 ~~quested orally on the record or in writing that enlisted members serve on~~
7 ~~it. After such a request, the accused may not be tried by a general or spe-~~
8 ~~cial court-martial the membership of which does not include enlisted members~~
9 ~~in a number comprising at least one-third (1/3) of the total membership of~~
10 ~~the court, unless eligible enlisted members cannot be obtained on account~~
11 ~~of physical conditions or military exigencies. If such members cannot be~~
12 ~~obtained, the court may be assembled and the trial held without them, but~~
13 ~~the convening authority shall make a detailed written statement, to be ap-~~
14 ~~pende to the record, stating why they could not be obtained. In this arti-~~
15 ~~cle, "unit" means any regularly organized body of the state military forces~~
16 ~~not larger than a company, a squadron, a division of the naval militia, or a~~
17 ~~body corresponding to one (1) of them~~

18 (c) (1) Any enlisted member of the state military forces is eligible to
19 serve on a general or special court-martial for the trial of any other
20 enlisted member.

21 (2) Before a court-martial with a military judge and members is assem-
22 bled for trial, an enlisted member who is an accused may personally re-
23 quest, orally on the record or in writing, that:

24 (A) The membership of the court-martial be comprised entirely of
25 officers; or

26 (B) Enlisted members comprise at least one-third (1/3) of the mem-
27 bership of the court-martial, regardless of whether enlisted mem-
28 bers have been detailed to the court-martial.

29 (3) Except as provided in paragraph (4) of this subsection, after such
30 a request, the accused may not be tried by a general or special court-
31 martial if the membership of the court-martial is inconsistent with the
32 request.

33 (4) If, because of physical conditions or military exigencies, a suf-
34 ficient number of eligible officers or enlisted members, as the case may
35 be, is not available to carry out the provisions of paragraph (2) of this
36 subsection, the trial may nevertheless be held. In that event, the con-
37 vening authority shall make a detailed written statement of the reasons
38 for nonavailability. The statement shall be appended to the record.

39 ~~(d) When it can be avoided, no person subject to this code may be tried~~
40 ~~by a court-martial any member of which is junior to the accused in rank or~~
41 ~~grade.~~

42 (d) (1) The accused in a court-martial with a military judge and members
43 may, after the findings are announced and before any matter is presented
44 in the sentencing phase, request, orally on the record or in writing,
45 sentencing by members.

46 (2) The convening authority shall detail not less than the number of
47 members necessary to impanel the court-martial under article 29.

48 (e) When convening a court-martial, the convening authority shall de-
49 tail as members thereof such members of the state military forces as, in the
50 convening authority's opinion, are best qualified for the duty by reason of

1 age, education, training, experience, length of service, and judicial tem-
2 perament. No member of the state military forces is eligible to serve as a
3 member of a general or special court-martial when that member is the accuser,
4 a witness, or has acted as investigating officer or as counsel in the same
5 case.

6 (f) Before a court-martial is assembled for the trial of a case, the
7 convening authority may excuse a member of the court from participating in
8 the case. The convening authority may delegate the authority under this sub-
9 section to a judge advocate or to any other principal assistant.

10 ARTICLE 25a. RESERVED

11 ARTICLE 26. MILITARY JUDGE OF A GENERAL OR SPECIAL COURT-MARTIAL

12 (a) A military judge shall be detailed to each general and special
13 court-martial. ~~The military judge shall preside over each open session of~~
14 ~~the court-martial to which the military judge has been detailed.~~

15 (b) A military judge shall be:

16 (1) An active or retired commissioned officer of an organized state
17 military force and qualified, by reason of education, training, experi-
18 ence, and judicial temperament, for duty;

19 (2) A member in good standing of the bar of the highest court of a state
20 or a member of the bar of a federal court for at least five (5) years; and

21 (3) Certified as ~~qualified for duty as~~ a military judge by the senior
22 force judge advocate which is the same force as the accused; and

23 (4) Certified as qualified, by reason of education, training, experi-
24 ence, and judicial temperament, for duty.

25 (c) In the instance when a military judge is not a member of the bar of
26 the highest court of the state, the military judge shall be deemed admitted
27 pro hac vice, subject to filing a certificate with the senior force judge ad-
28 vocate which is the same force as the accused setting forth such qualifica-
29 tions provided in subsection (b) of this article.

30 (d) The military judge of a general or special court-martial shall be
31 designated by the senior force judge advocate which is the same force as the
32 accused, or a designee, for detail by the convening authority. Neither the
33 convening authority nor any staff member of the convening authority shall
34 prepare or review any report concerning the effectiveness, fitness, or ef-
35 ficiency of the military judge so detailed, which relates to performance of
36 duty as a military judge.

37 (e) No person is eligible to act as military judge in a case if that per-
38 son is the accuser or a witness, or has acted as investigating preliminary
39 hearing officer or a counsel in the same case.

40 (f) The military judge of a court-martial may not consult with the mem-
41 bers of the court except in the presence of the accused, trial counsel, and
42 defense counsel, nor vote with the members of the court.

43 (g) A military judge may be detailed under subsection (a) of this arti-
44 cle to a court-martial or a proceeding under article 30 that is convened in a
45 different armed force, when so permitted by the senior force judge advocate
46 of the armed force of which the military judge is a member.

1 ARTICLE 26a. MILITARY MAGISTRATES

2 (a) A military magistrate will be a commissioned officer of the state
3 military forces who:

4 (1) Is a member of the bar of a federal court or a member of the bar of the
5 highest court of a state; and

6 (2) Is certified to be qualified, by reason of education, training, ex-
7 perience, and judicial temperament, for duty as a military magistrate
8 by the state judge advocate.

9 (b) In accordance with regulations promulgated by the governor or his
10 designee, in addition to duties when designated under this code, a military
11 magistrate may be assigned to perform other duties of a nonjudicial nature.

12 ARTICLE 27. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL

13 (a) General provision:

14 (1) For each general and special court-martial, the authority conven-
15 ing the court shall detail trial counsel, defense counsel, and such as-
16 sistants as are appropriate.

17 ~~(2) No person who has acted as investigating officer, military judge,~~
18 ~~witness or court member in any case may act later as trial counsel, with~~
19 ~~respect to a case, has served as a preliminary hearing officer, court~~
20 ~~member, military judge, military magistrate, or appellate judge may~~
21 ~~later serve as trial counsel, assistant trial counsel, or, unless ex-~~
22 ~~pressly requested by the accused, as defense counsel or assistant or~~
23 ~~associate defense counsel in the same case. No person who has acted for~~
24 ~~the prosecution may act later in the same case for the defense nor may~~
25 ~~any person who has acted for the defense act later in the same case for~~
26 ~~the prosecution.~~

27 (b) Except as provided in subsection (c) of this article, trial coun-
28 sel, ~~or~~ defense counsel, ~~or~~ assistant defense counsel detailed for a general
29 or special court-martial must be:

30 (1) A judge advocate as defined in article 1 (a) ~~(403)~~ of this code; and

31 ~~(2) In the case of trial counsel, a~~ member in good standing of the bar
32 of the highest court of the state where the court-martial is held.

33 ~~(c) In the instance when a defense counsel is not a member of the bar of~~
34 ~~the highest court of the state, the defense counsel shall be deemed admitted~~
35 ~~pro hac vice, subject to filing a certificate with the military judge setting~~
36 ~~forth the qualifications that counsel is:~~

37 ~~(1) A commissioned officer of the armed forces of the United States or a~~
38 ~~component thereof; and~~

39 ~~(2) A member in good standing of the bar of the highest court of a state;~~
40 ~~and~~

41 ~~(3) Certified as a judge advocate in the judge advocate general's corps~~
42 ~~of the army, air force, navy, or the marine corps; or~~

43 ~~(4) A judge advocate as defined in article 1 (a) (10) of this code~~

44 Defense counsel and assistant defense counsel detailed for a special or
45 general court-martial shall have the qualifications set forth in subsection
46 (b) of this article.

1 (d) Trial counsel, assistant trial counsel, defense counsel, and as-
 2 sistant defense counsel detailed for a special court-martial must be deter-
 3 mined to be competent to perform such duties by the senior force judge advo-
 4 cate, under such rules as the governor or his designee may prescribe.

5 ARTICLE 28. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS

6 Under such regulations as may be prescribed, the convening authority of a
 7 general or special court-martial or court of inquiry shall detail or employ
 8 qualified court reporters, who shall record the proceedings of and testimony
 9 taken before that court and may detail or employ interpreters who shall in-
 10 terpret for the court.

11 ARTICLE 29. ~~ABSENT AND ADDITIONAL ASSEMBLY AND IMPANEL-~~
 12 ING OF MEMBERS -- ~~DETAIL OF NEW MEMBERS AND MILITARY JUDGES~~

13 ~~(a) No member of a general or special court-martial may be absent or ex-~~
 14 ~~cused after the court has been assembled for the trial of the accused unless~~
 15 ~~excused as a result of a challenge, excused by the military judge for physi-~~
 16 ~~eal disability or other good cause, or excused by order of the convening au-~~
 17 ~~thority for good cause The military judge shall announce the assembly of a~~
 18 ~~general or special court-martial with members. After such a court-martial~~
 19 ~~is assembled, no member may be absent, unless the member is excused:~~

20 (1) As a result of a challenge;

21 (2) Under subsection (b) (1) (B) of this article; or

22 (3) By order of the military judge or the convening authority for dis-
 23 ability or other good cause.

24 ~~(b) Whenever a general court-martial, other than a general court-mar-~~
 25 ~~tial composed of a military judge only, is reduced below five (5) members,~~
 26 ~~the trial may not proceed unless the convening authority details new members~~
 27 ~~sufficient in number to provide not less than the applicable minimum number~~
 28 ~~of five (5) members. The trial may proceed with the new members present after~~
 29 ~~the recorded evidence previously introduced before the members of the court~~
 30 ~~has been read to the court in the presence of the military judge, the accused,~~
 31 ~~and counsel for both sides Impaneling.~~

32 (1) Under rules prescribed by the governor or his designated represen-
 33 tative, the military judge of a general or special court-martial with
 34 members shall:

35 (A) After determination of challenges, impanel the court-mar-
 36 tial; and

37 (B) Excuse the members who, having been assembled, are not impan-
 38 eled.

39 (2) In a general court-martial, the military judge shall impanel eight
 40 (8) members.

41 (3) In a special court-martial, the military judge shall impanel four
 42 (4) members.

43 ~~(c) Whenever a special court-martial, other than a special court-mar-~~
 44 ~~tial composed of a military judge only, is reduced below three (3) members,~~
 45 ~~the trial may not proceed unless the convening authority details new members~~
 46 ~~sufficient in number to provide not less than three (3) members. The trial~~

1 shall proceed with the new members present as if no evidence had been intro-
2 duced previously at the trial, unless a verbatim record of the evidence pre-
3 viously introduced before the members of the court or a stipulation thereof
4 is read to the court in the presence of the military judge, the accused, and
5 counsel for both sides In addition to members under subsection (b) of this
6 article, the military judge shall impanel alternate members, if the conven-
7 ing authority authorizes alternate members.

8 (d) If the military judge of a court-martial composed of a military
9 judge only is unable to proceed with the trial because of physical disabil-
10 ity, as a result of a challenge, or for other good cause, the trial shall
11 proceed, subject to any applicable conditions of article 16(1)(B) or (2)(B)
12 of this code, after the detail of a new military judge as if no evidence had
13 previously been introduced, unless a verbatim record of the evidence previ-
14 ously introduced or a stipulation thereof is read in court in the presence of
15 the new military judge, the accused, and counsel for both sides Detail of new
16 members.

17 (1) If, after members are impaneled, the membership of the court-mar-
18 tial is reduced to fewer than twelve (12) members with respect to a
19 general court-martial in a capital case, fewer than six (6) members with
20 respect to a general court-martial in a noncapital case, or fewer than
21 four (4) members with respect to a special court-martial, the trial may
22 not proceed unless the convening authority details new members and,
23 from among the members so detailed, the military judge impanels new
24 members sufficient in number to provide the membership specified in
25 paragraph (2) of this subsection.

26 (2) Membership shall be as follows:

27 (A) At least six (6) but not more than eight (8) members with re-
28 spect to a general court-martial; and

29 (B) Four (4) members with respect to a special court-martial.

30 (e) If the military judge is unable to proceed with the trial because of
31 disability or otherwise, a new military judge shall be detailed to the court-
32 martial.

33 (f) Evidence.

34 (1) In the case of new members under subsection (d) of this article, the
35 trial may proceed with the new members present after the evidence pre-
36 viously introduced is read or, in the case of audiotape, videotape, or
37 similar recording, is played, in the presence of the new members, the
38 military judge, the accused, and counsel for both sides.

39 (2) In the case of a new military judge under subsection (e) of this ar-
40 ticle, the trial shall proceed as if no evidence had been introduced,
41 unless the evidence previously introduced is read or, in the case of au-
42 diotape, videotape, or similar recording, is played, in the presence of
43 the new military judge, the accused, and counsel for both sides.

44 PART VI. PRE-TRIAL PROCEDURE

45 ARTICLE 30. CHARGES AND SPECIFICATIONS

1 (a) ~~In general. Charges and specifications shall be signed by a person~~
 2 ~~subject to this code under oath before a commissioned officer authorized by~~
 3 ~~article 136(a) of this code to administer oaths and shall state:~~

4 (1) ~~That the signer has personal knowledge of, or has investigated, the~~
 5 ~~matters set forth therein~~ May be preferred only by a person subject to
 6 this chapter; and

7 (2) ~~That they are true in fact to the best of the signer's knowledge and~~
 8 ~~belief~~ Shall be preferred by presentment in writing, signed under oath
 9 before a commissioned officer of the state military forces who is autho-
 10 rized to administer oaths.

11 (b) ~~Upon the preferring of charges, the proper authority shall take im-~~
 12 ~~mediate steps to determine what disposition should be made thereof in the in-~~
 13 ~~terest of justice and discipline, and the person accused shall be informed of~~
 14 ~~the charges as soon as practicable~~ The writing under subsection (a) of this
 15 article shall state that:

16 (1) The signer has personal knowledge of, or has investigated, the mat-
 17 ters set forth in the charges and specifications; and

18 (2) The matters set forth in the charges and specifications are true, to
 19 the best of the knowledge and belief of the signer.

20 (c) When charges and specifications are preferred under subsection (a)
 21 of this article, the proper authority shall, as soon as practicable:

22 (1) Inform the person accused of the charges and specifications; and

23 (2) Determine what disposition should be made of the charges and speci-
 24 fications in the interest of justice and discipline.

25 ARTICLE 31. COMPULSORY SELF-INCRIMINATION PROHIBITED

26 (a) No person subject to this code may compel any person to incriminate
 27 himself or to answer any question, the answer to which may tend to incrimi-
 28 nate him.

29 (b) No person subject to this code may interrogate or request any state-
 30 ment from an accused or a person suspected of an offense without first in-
 31 forming that person of the nature of the accusation and advising that person
 32 that the person does not have to make any statement regarding the offense of
 33 which the person is accused or suspected and that any statement made by the
 34 person may be used as evidence against the person in a trial by court-mar-
 35 tial.

36 (c) No person subject to this code may compel any person to make a state-
 37 ment or produce evidence before any military court if the statement or evi-
 38 dence is not material to the issue and may tend to degrade the person.

39 (d) No statement obtained from any person in violation of this article
 40 or through the use of coercion, unlawful influence, or unlawful inducement
 41 may be received in evidence against the person in a trial by court-martial.

42 ARTICLE 32. INVESTIGATION

43 (a) ~~No charge or specification may be referred to a general court-mar-~~
 44 ~~tial for trial until a thorough and impartial investigation of all the mat-~~
 45 ~~ters set forth therein has been made. This investigation shall include in-~~
 46 ~~quiry as to the truth of the matter set forth in the charges, consideration of~~

1 ~~the form of charges, and a recommendation as to the disposition that should~~
 2 ~~be made of the case in the interest of justice and discipline~~ In general.

3 (1) (A) Except as provided in subparagraph (B) of this paragraph,
 4 a preliminary hearing shall be held before referral of charges and
 5 specifications for trial by general court-martial. The prelimi-
 6 nary hearing shall be conducted by an impartial hearing officer,
 7 detailed by the convening authority in accordance with subsection
 8 (b) of this article.

9 (B) Under regulations prescribed by the governor or his desig-
 10 nated representative, a preliminary hearing need not be held if
 11 the accused submits a written waiver to the convening authority
 12 and the convening authority determines that a hearing is not re-
 13 quired.

14 (2) The purpose of the preliminary hearing shall be limited to deter-
 15 mining the following:

16 (A) Whether or not the specification alleges an offense under this
 17 chapter;

18 (B) Whether or not there is probable cause to believe that the ac-
 19 cusd committed the offense charged;

20 (C) Whether or not the convening authority has court-martial ju-
 21 risdiction over the accused and over the offense; and

22 (D) A recommendation as to the disposition that should be made of
 23 the case.

24 (b) ~~The accused shall be advised of the charges against the accused and~~
 25 ~~of the right to be represented at that investigation by counsel. The accused~~
 26 ~~has the right to be represented at that investigation as provided in arti-~~
 27 ~~cle 38 of this code and in regulations prescribed under that article. At that~~
 28 ~~investigation, full opportunity shall be given to the accused to cross-ex-~~
 29 ~~amine witnesses against the accused, if they are available, and to present~~
 30 ~~anything the accused may desire in the accused's own behalf, either in de-~~
 31 ~~fense or mitigation, and the investigating officer shall examine available~~
 32 ~~witnesses requested by the accused. If the charges are forwarded after the~~
 33 ~~investigation, they shall be accompanied by a statement of the substance of~~
 34 ~~the testimony taken on both sides and a copy thereof shall be given to the ac-~~
 35 ~~cusd Hearing officer.~~

36 (1) A preliminary hearing under this article shall be conducted by an
 37 impartial hearing officer who:

38 (A) Whenever practicable, shall be a judge advocate who is certi-
 39 fied under article 27 (b); or

40 (B) When it is not practicable to appoint a judge advocate because
 41 of exceptional circumstances, is not a judge advocate so certi-
 42 fied.

43 (2) In the case of a hearing officer under paragraph (1) (B) of this sub-
 44 section, a judge advocate who is certified under article 27 (b) shall be
 45 available to provide legal advice to the hearing officer.

46 (3) Whenever practicable, the hearing officer shall be equal in grade
 47 or senior in grade to military counsel who are detailed to represent the
 48 accused or the government at the preliminary hearing.

49 (c) ~~If an investigation of the subject matter of an offense has been~~
 50 ~~conducted before the accused is charged with the offense, and if the accused~~

1 was present at the investigation and afforded the opportunities for repre-
 2 sentation, cross-examination, and presentation prescribed in subsection
 3 (b) of this article, no further investigation of that charge is necessary
 4 under this article unless it is demanded by the accused after the accused is
 5 informed of the charge. A demand for further investigation entitles the ac-
 6 cused to recall witnesses for further cross-examination and to offer any new
 7 evidence in the accused's own behalf Report to convening authority. After a
 8 preliminary hearing under this article, the hearing officer shall submit to
 9 the convening authority a written report, accompanied by a recording of the
 10 preliminary hearing, that includes the following:

11 (1) For each specification, a statement of the reasoning and conclu-
 12 sions of the hearing officer with respect to determinations under sub-
 13 section (a) (2) of this article, including a summary of relevant witness
 14 testimony and documentary evidence presented at the hearing and any ob-
 15 servations of the hearing officer concerning the testimony of witnesses
 16 and the availability and admissibility of evidence at trial;

17 (2) Recommendations for any necessary modifications to the form of the
 18 charges or specifications;

19 (3) An analysis of any additional information submitted after the hear-
 20 ing by the parties or by a victim of an offense, that under such rules as
 21 the governor or his designated representative may prescribe, is rele-
 22 vant to disposition under articles 30 and 34; and

23 (4) A statement of action taken on evidence adduced with respect to un-
 24 charged offenses, as described in subsection (d) of this article.

25 (d) If evidence adduced in an investigation under this article indi-
 26 cates that the accused committed an uncharged offense, the investigating of-
 27 ficer may investigate the subject matter of that offense without the accused
 28 having first been charged with the offense if the accused:

29 (1) Is present at the investigation;

30 (2) Is informed of the nature of each uncharged offense investigated;
 31 and

32 (3) Is afforded the opportunities for representation, cross-examina-
 33 tion, and presentation prescribed in subsection (b) of this article. A
 34 declination under this paragraph shall not serve as the sole basis for
 35 ordering a deposition under article 49.

36 (e) The requirements of this article are binding on all persons admin-
 37 istering this code, but failure to follow them does not constitute jurisdic-
 38 tional error under such rules as the governor or his designated representa-
 39 tive may prescribe.

40 (f) A defect in a report under subsection (c) of this article is not a
 41 basis for relief if the report is in substantial compliance with subsection
 42 (c).

43 ARTICLE 33. FORWARDING OF CHARGES DISPOSITION GUIDANCE

44 When a person is held for trial by general court-martial, the commanding of-
 45 ficer shall within eight (8) days after the accused is ordered into arrest or
 46 confinement, if practicable, forward the charges, together with the inves-
 47 tigation and allied papers, to the person exercising general court-martial
 48 jurisdiction. If that is not practicable, the commanding officer shall re-

1 ~~port in writing to that person the reasons for delay~~ The governor or his des-
 2 ~~ignated representative shall issue nonbinding guidance regarding factors~~
 3 ~~that commanders, convening authorities, staff judge advocates, and judge~~
 4 ~~advocates should take into account when exercising their duties with respect~~
 5 ~~to disposition of charges and specifications in the interest of justice and~~
 6 ~~discipline under articles 30 and 34. Such guidance shall take into account,~~
 7 ~~with appropriate consideration of military requirements, the principles of~~
 8 ~~fair and evenhanded administration of Idaho and federal criminal law.~~

9 ARTICLE 34. ~~ADVICE OF JUDGE ADVOCATE AND REFER-~~
 10 ~~ENCE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL~~

11 (a) ~~Before directing the trial of any charge by general court-martial,~~
 12 ~~the convening authority shall refer it to a judge advocate for consideration~~
 13 ~~and advice. The convening authority may not refer a specification under a~~
 14 ~~charge to a general court-martial for trial unless the convening authority~~
 15 ~~has been advised in writing by a judge advocate~~ Staff judge advocate advice
 16 required before referral. Before referral of charges and specifications to
 17 a general court-martial for trial, the convening authority shall submit the
 18 matter to the staff judge advocate for advice, which the staff judge advocate
 19 shall provide to the convening authority in writing. The convening author-
 20 ity may not refer a specification under a charge to a general court-martial
 21 unless the staff judge advocate advises the convening authority in writing
 22 that:

23 (1) ~~The specification alleges an offense under this code chapter;~~

24 (2) ~~The specification is warranted by the evidence indicated in the re-~~
 25 ~~port of investigation under article 32 of this code, if there is such a~~
 26 ~~report~~ There is probable cause to believe that the accused committed the
 27 offense charged; and

28 (3) ~~A court-martial would have jurisdiction over the accused and the~~
 29 ~~offense.~~

30 (b) ~~The advice of the judge advocate under subsection (a) of this ar-~~
 31 ~~ticle with respect to a specification under a charge shall include a writ-~~
 32 ~~ten and signed statement by the judge advocate:~~ Staff judge advocate recom-
 33 mendation as to disposition. Together with the written advice provided un-
 34 der subsection (a) of this article, the staff judge advocate shall provide
 35 a written recommendation to the convening authority as to the disposition
 36 that should be made of the specification in the interest of justice and dis-
 37 cipline.

38 ~~(1) Expressing conclusions with respect to each matter set forth in~~
 39 ~~subsection (a) of this article; and~~

40 ~~(2) Recommending action that the convening authority take regarding~~
 41 ~~the specification. If the specification is referred for trial, the rec-~~
 42 ~~ommendation of the judge advocate shall accompany the specification.~~

43 (c) ~~If the charges or specifications are not correct formally or do not~~
 44 ~~conform to the substance of the evidence contained in the report of the in-~~
 45 ~~vestigating officer, formal corrections, and such changes in the charges and~~
 46 ~~specifications as are needed to make them conform to the evidence, may be~~
 47 ~~made~~ Staff judge advocate advice and recommendation to accompany referral.
 48 When a convening authority makes a referral for trial by general court-mar-

1 tial, the written advice of the staff judge advocate under subsection (a) of
 2 this article and the written recommendation of the staff judge advocate un-
 3 der subsection (b) of this article with respect to each specification shall
 4 accompany the referral.

5 (d) Special court-martial; convening authority consultation with
 6 judge advocate. Before referral of charges and specifications to a special
 7 court-martial for trial, the convening authority shall consult a judge advo-
 8 cate on relevant legal issues.

9 (e) General and special courts-martial; correction of charges and
 10 specifications before referral. Before referral for trial by general
 11 court-martial or special court-martial, changes may be made to charges and
 12 specifications:

13 (1) To correct errors in form; and

14 (2) When applicable, to conform to the substance of the evidence con-
 15 tained in a report under article 32(c).

16 (f) Referral defined. In this article, the term "referral" means the
 17 order of a convening authority that charges and specifications against an
 18 accused be tried by a specified court-martial.

19 ARTICLE 35. SERVICE OF CHARGES -- COMMENCEMENT OF TRIAL

20 The trial counsel shall serve or caused to be served upon the accused a copy
 21 of the charges. No person may, against the person's objection, be brought
 22 to trial before a general court-martial case within a period of five (5) days
 23 after the service of charges upon the accused, or in a special court-martial
 24 within a period of three (3) days after the service of charges upon the ac-
 25 used

26 (a) In general. Trial counsel detailed for a court-martial under ar-
 27 ticle 27 shall cause to be served upon the accused a copy of the charges and
 28 specifications referred for trial.

29 (b) Commencement of trial.

30 (1) Subject to paragraphs (2) and (3) of this subsection, no trial or
 31 other proceeding of a general court-martial or a special court-martial,
 32 including any session under article 39(a), may be held over the objec-
 33 tion of the accused:

34 (A) With respect to a general court-martial, from the time of ser-
 35 vice through the fifth day after the date of service; or

36 (B) With respect to a special court-martial, from the time of ser-
 37 vice through the third day after the date of service.

38 (2) An objection under paragraph (1) of this subsection may be raised
 39 only at the first session of the trial or other proceeding and only if
 40 the first session occurs before the end of the applicable period under
 41 paragraph (1) (A) or (1) (B) of this subsection. If the first session oc-
 42 urs before the end of the applicable period, the military judge shall,
 43 at that session, inquire as to whether the defense objects under this
 44 subsection.

45 (3) This subsection shall not apply in time of war.

46 PART VII. TRIAL PROCEDURE

1 ARTICLE 36. GOVERNOR OR THE ADJUTANT GENERAL MAY PRESCRIBE RULES

2 Pretrial, trial, and ~~post-trial~~ posttrial procedures, including modes of
3 proof, for courts-martial cases arising under this code, and for courts of
4 inquiry, may be prescribed by the governor or the adjutant general by regu-
5 lations, or as otherwise provided by law, which shall apply the principles
6 of law and the rules of evidence generally recognized in military criminal
7 cases in the courts of the armed forces but which may not be contrary to or in-
8 consistent with this code.

9 ARTICLE 37. UNLAWFULLY INFLUENCING ACTION OF COURT

10 (a) No authority convening a general, special, or summary court-mar-
11 tial, nor any other commanding officer, or officer serving on the staff
12 thereof, may censure, reprimand, or admonish the court or any member, the
13 military judge, or counsel thereof, with respect to the findings or sentence
14 adjudged by the court or with respect to any other exercise of its or their
15 functions in the conduct of the proceedings. No person subject to this code
16 may attempt to coerce or, by any unauthorized means, influence the action of
17 a court-martial or court of inquiry or any member thereof, in reaching the
18 findings or sentence in any case, or the action of any convening, approving,
19 or reviewing authority with respect to their judicial acts. The foregoing
20 provisions of this subsection shall not apply with respect to: (1) general
21 instructional or informational courses in military justice if such courses
22 are designed solely for the purpose of instructing members of a command in
23 the substantive and procedural aspects of courts-martial; or (2) to state-
24 ments and instructions given in open court by the military judge, summary
25 court-martial officer, or counsel.

26 (b) In the preparation of an effectiveness, fitness, or efficiency re-
27 port, or any other report or document used in whole or in part for the purpose
28 of determining whether a member of the state military forces is qualified to
29 be advanced in grade, or in determining the assignment or transfer of a mem-
30 ber of the state military forces, or in determining whether a member of the
31 state military forces should be retained on active status, no person subject
32 to this code may, in preparing any such report: (1) consider or evaluate the
33 performance of duty of any such member as a member of a court-martial or wit-
34 ness therein; or (2) give a less favorable rating or evaluation of any coun-
35 sel of the accused because of zealous representation before a court-martial.

36 ARTICLE 38. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL

37 (a) The trial counsel of a general or special court-martial shall be a
38 member in good standing of the state bar and shall prosecute in the name of
39 the state and shall, under the direction of the court, prepare the record of
40 the proceedings.

41 (b) Defense counsel:

42 (1) The accused has the right to be represented in defense before a gen-
43 eral or special court-martial or at an investigation under article 32 of
44 this code as provided in this subsection.

1 (2) The accused may be represented by civilian counsel at the provision
2 and expense of the accused.

3 (3) The accused may be represented:

4 (A) By military counsel detailed under article 27 of this code; or

5 (B) By military counsel of the accused's own selection if that
6 counsel is reasonably available as determined under paragraph (7)
7 of this subsection.

8 (4) If the accused is represented by civilian counsel, military counsel
9 detailed or selected under paragraph (3) of this subsection shall act as
10 associate counsel unless excused at the request of the accused.

11 (5) Except as provided under paragraph (6) of this subsection, if the
12 accused is represented by military counsel of his own selection under
13 paragraph (3) (B) of this subsection, any military counsel detailed un-
14 der paragraph (3) (A) of this subsection shall be excused.

15 (6) The accused is not entitled to be represented by more than one mil-
16 itary counsel. However, the person authorized under regulations pre-
17 scribed under article 27 of this code to detail counsel, in that per-
18 son's sole discretion:

19 (A) May detail additional military counsel as assistant defense
20 counsel; and

21 (B) If the accused is represented by military counsel of the ac-
22 cused's own selection under paragraph (3) (B) of this subsection,
23 may approve a request from the accused that military counsel de-
24 tailed under paragraph (3) (A) of this subsection act as associate
25 defense counsel.

26 (7) The senior force judge advocate of the same force of which the ac-
27 cused is a member shall determine whether the military counsel selected
28 by an accused is reasonably available.

29 (c) In any court-martial proceeding resulting in a conviction, the de-
30 fense counsel:

31 (1) May forward for attachment to the record of proceedings a brief of
32 such matters as counsel determines should be considered in behalf of the
33 accused on review, including any objection to the contents of the record
34 which counsel considers appropriate; and

35 (2) ~~May assist the accused in the submission of any matter under article~~
36 ~~60 of this code; and~~

37 ~~(3) May take other action authorized by this code.~~

38 ARTICLE 39. SESSIONS

39 (a) At any time after the service of charges which have been referred
40 for trial to a court-martial composed of a military judge and members, the
41 military judge may, subject to article 35 of this code, call the court into
42 session without the presence of the members for the purpose of:

43 (1) Hearing and determining motions raising defenses or objections
44 which are capable of determination without trial of the issues raised by
45 a plea of not guilty;

46 (2) Hearing and ruling upon any matter which may be ruled upon by the
47 military judge under this code, whether or not the matter is appropriate
48 for later consideration or decision by the members of the court;

1 (3) Holding the arraignment and receiving the pleas of the accused; ~~and~~
2 (4) Conducting a sentencing proceeding and sentencing the accused in
3 noncapital cases unless the accused requests sentencing by members un-
4 der article 25; and
5 (5) Performing any other procedural function which does not require the
6 presence of the members of the court under this code. These proceedings
7 shall be conducted in the presence of the accused, the defense counsel,
8 and the trial counsel and shall be made a part of the record. These pro-
9 ceedings may be conducted notwithstanding the number of court members
10 and without regard to article 29.

11 (b) When the members of a court-martial deliberate or vote, only the
12 members may be present. All other proceedings, including any other consul-
13 tation of the members of the court with counsel or the military judge, shall
14 be made a part of the record and shall be in the presence of the accused, the
15 defense counsel, the trial counsel, and the military judge.

16 ARTICLE 40. CONTINUANCES

17 The military judge of a court-martial or a summary court-martial may, for
18 reasonable cause grant a continuance to any party for such time and as often
19 as may appear to be just.

20 ARTICLE 41. CHALLENGES

21 (a) Challenges generally.

22 (1) The military judge and members of a general or special court-mar-
23 tial may be challenged by the accused or the trial counsel for cause
24 stated to the court. The military judge or the court shall determine
25 the relevancy and validity of challenges for cause and may not receive a
26 challenge to more than one (1) person at a time. Challenges by the trial
27 counsel shall ordinarily be presented and decided before those by the
28 accused are offered.

29 (2) If exercise of a challenge for cause reduces the court below the
30 ~~minimum~~ number of members required by article 16 of this code, all par-
31 ties shall, notwithstanding article 29 of this code, either exercise or
32 waive any challenge for cause then apparent against the remaining mem-
33 bers of the court before additional members are detailed to the court.
34 However, peremptory challenges shall not be exercised at that time.

35 (b) Preemptory challenges.

36 (1) Each accused and the trial counsel are entitled initially to one (1)
37 preemptory challenge of members of the court. The military judge may
38 not be challenged except for cause.

39 (2) If exercise of a preemptory challenge reduces the court below the
40 minimum number of members required by article 16 of this code, the par-
41 ties shall, notwithstanding article 29 of this code, either exercise
42 or waive any remaining preemptory challenge, not previously waived,
43 against the remaining members of the court before additional members
44 are detailed to the court.

45 (3) Whenever additional members are detailed to the court, and after
46 any challenges for cause against such additional members are presented

1 and decided, each accused and the trial counsel are entitled to one (1)
2 peremptory challenge against members not previously subject to peremp-
3 tory challenge.

4 ARTICLE 42. OATHS OR AFFIRMATIONS

5 (a) Before performing their respective duties, military judges, gen-
6 eral and special courts-martial members, trial counsel, defense counsel,
7 reporters, and interpreters shall take an oath or affirmation in the pres-
8 ence of the accused to perform their duties faithfully. The form of the
9 oath or affirmation, the time and place of the taking thereof, the manner
10 of recording the same, and whether the oath or affirmation shall be taken
11 for all cases in which these duties are to be performed or for a particular
12 case, shall be as prescribed in regulation or as provided by law. These reg-
13 ulations may provide that an oath or affirmation to perform faithfully the
14 duties as a military judge, trial counsel, or defense counsel may be taken
15 at any time by any judge advocate or other person certified or designated to
16 be qualified or competent for the duty, and if such an oath or affirmation
17 is taken, it need not again be taken at the time the judge advocate or other
18 person is detailed to that duty.

19 (b) Each witness before a court-martial shall be examined under oath or
20 affirmation.

21 ARTICLE 43. STATUTE OF LIMITATIONS

22 (a) Except as otherwise provided in this article, a person charged with
23 any offense is not liable to be tried by court-martial or punished under ar-
24 ticle 15 of this code if the offense was committed more than three (3) years
25 before the receipt of sworn charges and specifications by an officer exer-
26 cising court-martial jurisdiction over the command or before the imposition
27 of punishment under article 15 of this code.

28 (b) Periods in which the accused is absent without authority or flee-
29 ing from justice shall be excluded in computing the period of limitation pre-
30 scribed in this article.

31 (c) Periods in which the accused was absent from territory in which the
32 state has the authority to apprehend him, or in the custody of civil authori-
33 ties, or in the hands of the enemy, shall be excluded in computing the period
34 of limitation prescribed in this article.

35 (d) When the United States is at war, the running of any statute of limi-
36 tations applicable to any offense under this code:

37 (1) Involving fraud or attempted fraud against the United States, any
38 state, or any agency of either in any manner, whether by conspiracy or
39 not;

40 (2) Committed in connection with the acquisition, care, handling, cus-
41 tody, control, or disposition of any real or personal property of the
42 United States or any state; or

43 (3) Committed in connection with the negotiation, procurement, award,
44 performance, payment, interim financing, cancellation, or other termi-
45 nation or settlement, of any contract, subcontract, or purchase order
46 which is connected with or related to the prosecution of the war, or with

1 any disposition of termination inventory by any war contractor or gov-
 2 ernment agency;
 3 is suspended until two (2) years after the termination of hostilities as pro-
 4 claimed by the president or by a joint resolution of congress.

5 (e) Exception.

6 (1) If charges or specifications are dismissed as defective or insuffi-
 7 cient for any cause and the period prescribed by the applicable statute
 8 of limitations:

9 (A) Has expired; or will be met.

10 (B) Will expire within one hundred eighty (180) days after the
 11 date of dismissal of the charges and specifications, trial and
 12 punishment under new charges and specifications are not barred by
 13 the statute of limitations if the conditions specified in para-
 14 graph (2) of this subsection are met.

15 (2) The conditions referred to in paragraph (1) of this subsection are
 16 that the new charges and specifications must:

17 (A) Be received by an officer exercising summary court-martial
 18 jurisdiction over the command within one hundred eighty (180) days
 19 after the dismissal of the charges or specifications; and

20 (B) Allege the same acts or omissions that were alleged in the dis-
 21 missed charges or specifications (or allege acts or omissions that
 22 were included in the dismissed charges or specifications).

23 (f) Fraudulent enlistment or appointment. A person charged with fraud-
 24 ulent enlistment or fraudulent appointment under article 104a(1) may be
 25 tried by court-martial if the sworn charges and specifications are received
 26 by an officer exercising summary court-martial jurisdiction with respect to
 27 that person, as follows:

28 (1) In the case of an enlisted member, during the period of the enlist-
 29 ment or five (5) years, whichever provides a longer period.

30 (2) In the case of an officer, during the period of the appointment or
 31 five (5) years, whichever provides a longer period.

32 (g) DNA evidence. If DNA testing implicates an identified person in
 33 the commission of an offense punishable by confinement for more than one (1)
 34 year, no statute of limitations that would otherwise preclude prosecution of
 35 the offense shall preclude such prosecution until a period of time following
 36 the implication of the person by DNA testing has elapsed that is equal to the
 37 otherwise applicable limitation period.

38 ARTICLE 44. FORMER JEOPARDY

39 (a) No person may, without his consent, be tried a second time for the
 40 same offense.

41 (b) No proceeding in which an accused has been found guilty by a court-
 42 martial upon any charge or specification is a trial in the sense of this arti-
 43 cle until the finding of guilty has become final after review of the case has
 44 been fully completed.

45 ~~(c) A proceeding which, after the introduction of evidence but before a~~
 46 ~~finding, is dismissed or terminated by the convening authority or on motion~~
 47 ~~of the prosecution for failure of available evidence or witnesses without~~
 48 ~~any fault of the accused is a trial in the sense of this article.~~

1 (1) Shall be similar to that which courts of the state of Idaho or courts
 2 of the United States having criminal jurisdiction may issue;

3 (2) Shall be executed in accordance with regulations prescribed by the
 4 governor or his designated representative; and

5 (3) Shall run to any part of the United States and to the commonwealths
 6 and possessions of the United States.

7 (c) Subpoena and other process for witnesses. A subpoena or other
 8 process may be issued to compel a witness to appear and testify:

9 (1) Before a court-martial, military commission, or court of inquiry;

10 (2) At a deposition under article 49; or

11 (3) As otherwise authorized under this chapter.

12 (d) In general. A subpoena or other process may be issued to compel the
 13 production of evidence:

14 (1) For a court-martial, military commission, or court of inquiry;

15 (2) For a deposition under article 49;

16 (3) For an investigation of an offense under this chapter; or

17 (4) As otherwise authorized under this chapter.

18 (e) Investigative subpoena. An investigative subpoena under subsec-
 19 tion (c) (3) of this article may be issued before referral of charges to a
 20 court-martial only if a general court-martial convening authority has au-
 21 thorized counsel for the government to issue such a subpoena or a military
 22 judge issues such a subpoena pursuant to article 30.

23 (f) Warrant or order for wire or electronic communications. With re-
 24 spect to an investigation of an offense under this chapter, a military judge
 25 detailed in accordance with article 26 or 30 may issue warrants or court or-
 26 ders for the contents of, and records concerning, wire or electronic commu-
 27 nications in the same manner as such warrants and orders may be issued by a
 28 district court of the state of Idaho under title 19, Idaho Code, subject to
 29 such limitations as the governor or his designated representative may pre-
 30 scribe.

31 (g) Request for relief from subpoena or other process. If a person re-
 32 quests relief from a subpoena or other process under this article on grounds
 33 that compliance is unreasonable or oppressive or is prohibited by law, a mil-
 34 itary judge detailed in accordance with article 26 or 30 shall review the re-
 35 quest and shall:

36 (1) Order that the subpoena or other process be modified or withdrawn,
 37 as appropriate; or

38 (2) Order the person to comply with the subpoena or other process.

39 ARTICLE 47. REFUSAL OF PERSON NOT SUBJECT TO CHAP-
 40 TER TO APPEAR, OR TESTIFY, OR PRODUCE EVIDENCE

41 (a) Any person not subject to this code who: In general.

42 ~~(1) Has been duly subpoenaed to appear as a witness or to produce books~~
 43 ~~and records before a court-martial or court of inquiry, or before any~~
 44 ~~military or civil officer designated to take a deposition to be read in~~
 45 ~~evidence before such a court;~~

46 ~~(2) Has been duly paid or tendered the fees and mileage of a witness at~~
 47 ~~the rates allowed to witnesses attending a criminal court of the state;~~
 48 ~~and~~

1 ~~(3) Willfully neglects or refuses to appear, or refuses to qualify as~~
 2 ~~a witness or to testify or to produce any evidence which that person may~~
 3 ~~have been legally subpoenaed to produce;~~
 4 ~~may be punished by the military court in the same manner as a criminal court~~
 5 ~~of the state.~~

6 (1) Any person described in paragraph (2) of this subsection who does
 7 either of the following is guilty of an offense against the United
 8 States:

9 (A) Willfully neglects or refuses to appear; or

10 (B) Willfully refuses to qualify as a witness or to testify or to
 11 produce any evidence which that person is required to produce.

12 (2) The persons referred to in paragraph (1) of this subsection are the
 13 following:

14 (A) Any person not subject to this chapter who is issued a subpoena
 15 or other process described in subsection (c) of article 46 and is
 16 provided a means for reimbursement from the government for fees
 17 and mileage at the rates allowed to witnesses attending the courts
 18 of the United States or, in the case of extraordinary hardship, is
 19 advanced such fees and mileage; and

20 (B) Any person not subject to this chapter who is issued a subpoena
 21 or other process described in subsection (d) of article 46.

22 (b) The fees and mileage of witnesses shall be advanced or paid out of
 23 the appropriations for the compensation of witnesses.

24 ARTICLE 48. CONTEMPTS

25 ~~A military judge or summary court-martial officer may punish for contempt~~
 26 ~~any person who uses any menacing word, sign, or gesture in its presence or who~~
 27 ~~disturbs its proceedings by any riot or disorder.~~

28 (a) ~~A person subject to this code may be punished for contempt by con-~~
 29 ~~finement not to exceed thirty (30) days or a fine of one hundred dollars~~
 30 ~~(\$100), or both Authority to punish.~~

31 (1) With respect to any proceeding under this chapter, a judicial of-
 32 ficer specified in paragraph (2) of this subsection may punish for con-
 33 tempt any person who:

34 (A) Uses any menacing word, sign, or gesture in the presence of the
 35 judicial officer during the proceeding;

36 (B) Disturbs the proceeding by any riot or disorder; or

37 (C) Willfully disobeys a lawful writ, process, order, rule, de-
 38 cree, or command issued with respect to the proceeding.

39 (2) A judicial officer referred to in paragraph (1) of this subsection
 40 is any of the following:

41 (A) Any military judge detailed to a court-martial, a provost
 42 court, a military commission, or any other proceeding under this
 43 chapter;

44 (B) Any military magistrate designated to preside under this
 45 code; or

46 (C) The governor or his designated representative of a court of
 47 inquiry.

1 (A) Whenever practicable, by an impartial judge advocate certi-
 2 fied under article 27 (b); or

3 (B) In exceptional circumstances, by an impartial military or
 4 civil officer authorized to administer oaths by the laws of the
 5 United States or the laws of the place where the deposition is
 6 taken.

7 (b) Representation by counsel. Representation of the parties with re-
 8 spect to a deposition shall be by counsel detailed in the same manner as trial
 9 counsel and defense counsel are detailed under article 27. In addition, the
 10 accused shall have the right to be represented by civilian or military coun-
 11 sel in the same manner as provided for in article 38 (b).

12 (c) Admissibility and use as evidence. A deposition order under sub-
 13 section (a) of this article does not control the admissibility of the depo-
 14 sition in a court-martial or other proceeding under this chapter. Except as
 15 otherwise provided by this code, a party may use all or part of a deposition
 16 as provided by the rules of evidence.

17 ARTICLE 50. ADMISSIBILITY OF SWORN TES-
 18 TIMONY FROM RECORDS OF COURTS OF INQUIRY

19 (a) Use as evidence by any party. In any case not extending to the dis-
 20 missal of a commissioned officer, the sworn testimony, contained in the duly
 21 authenticated record of proceedings of a court of inquiry, of a person whose
 22 oral testimony cannot be obtained, may, if otherwise admissible under the
 23 rules of evidence, be read in evidence by any party before a court-martial if
 24 the accused was a party before the court of inquiry and if the same issue was
 25 involved or if the accused consents to the introduction of such evidence.

26 (b) Use of evidence by defense. Such testimony may be read in evidence
 27 only by the defense in cases extending to the dismissal of a commissioned of-
 28 ficer.

29 (c) Use in courts of inquiry and military boards. Such testimony may
 30 also be read in evidence before a court of inquiry.

31 (d) Audiotape or videotape. Sworn testimony that is recorded by au-
 32 diotape, videotape, or similar method, and is contained in the duly authen-
 33 ticated record of proceedings of a court of inquiry, is admissible before a
 34 court-martial, military commission, court of inquiry, or military board, to
 35 the same extent as sworn testimony may be read in evidence before any such
 36 body under subsection (a), (b), or (c) of this article.

37 ARTICLE 50a. DEFENSE OF LACK OF MENTAL RESPONSIBILITY

38 (a) It is an affirmative defense in a trial by court-martial that, at
 39 the time of the commission of the acts constituting the offense, the accused,
 40 as a result of a severe mental disease or defect, was unable to appreciate the
 41 nature and quality or the wrongfulness of the acts. Mental disease or defect
 42 does not otherwise constitute a defense.

43 (b) The accused has the burden of proving the defense of lack of mental
 44 responsibility by clear and convincing evidence.

45 (c) Whenever lack of mental responsibility of the accused with respect
 46 to an offense is properly at issue, the military judge shall instruct the

1 members of the court as to the defense of lack of mental responsibility un-
 2 der this article and charge them to find the accused:

3 (1) Guilty;

4 (2) Not guilty; or

5 (3) Not guilty only by reason of lack of mental responsibility.

6 (d) Subsection (c) of this article does not apply to a court-martial
 7 composed of a military judge only. In the case of a court-martial composed
 8 of a military judge only or a summary court-martial officer, whenever lack of
 9 mental responsibility of the accused with respect to an offense is properly
 10 at issue, the military judge or summary court-martial officer shall find the
 11 accused:

12 (1) Guilty;

13 (2) Not guilty; or

14 (3) Not guilty only by reason of lack of mental responsibility.

15 (e) Notwithstanding the provisions of article 52 of this code, the ac-
 16 cused shall be found not guilty only by reason of lack of mental responsibil-
 17 ity if:

18 (1) A majority of the members of the court-martial present at the time
 19 the vote is taken determines that the defense of lack of mental respon-
 20 sibility has been established; or

21 (2) In the case of a court-martial composed of a military judge only or
 22 a summary court-martial officer, the military judge or summary court-
 23 martial officer determines that the defense of lack of mental responsi-
 24 bility has been established.

25 ARTICLE 51. VOTING AND RULINGS

26 (a) Voting by members of a general or special court-martial on the find-
 27 ings and on the sentence shall be by secret written ballot. The junior member
 28 of the court shall count the votes. The count shall be checked by the presi-
 29 dent, who shall forthwith announce the result of the ballot to the members of
 30 the court.

31 (b) The military judge shall rule upon all questions of law and all in-
 32 terlocutory questions arising during the proceedings. Any such ruling made
 33 by the military judge upon any question of law or any interlocutory question
 34 other than the factual issue of mental responsibility of the accused is fi-
 35 nal and constitutes the ruling of the court. However, the military judge may
 36 change the ruling at any time during the trial. Unless the ruling is final,
 37 if any member objects thereto, the court shall be cleared and closed and the
 38 question decided by a voice vote as provided in article 52 of this code, be-
 39 ginning with the junior in rank.

40 (c) Before a vote is taken on the findings, the military judge shall, in
 41 the presence of the accused and counsel, instruct the members of the court as
 42 to the elements of the offense and charge them:

43 (1) That the accused must be presumed to be innocent until his guilt is
 44 established by legal and competent evidence beyond reasonable doubt;

45 (2) That in the case being considered, if there is a reasonable doubt as
 46 to the guilt of the accused, the doubt must be resolved in favor of the
 47 accused and the accused must be acquitted;

1 (3) That, if there is a reasonable doubt as to the degree of guilt, the
 2 finding must be in a lower degree as to which there is no reasonable
 3 doubt; and

4 (4) That the burden of proof to establish the guilt of the accused be-
 5 yond reasonable doubt is upon the state.

6 (d) Subsections (a), (b), and (c) of this article do not apply to a
 7 court-martial composed of a military judge only. The military judge of such
 8 a court-martial shall determine all questions of law and fact arising during
 9 the proceedings and, if the accused is convicted, adjudge an appropriate
 10 sentence. The military judge of such a court-martial shall make a general
 11 finding and shall in addition, on request, find the facts specially. If an
 12 opinion or memorandum of decision is filed, it will be sufficient if the
 13 findings of fact appear therein.

14 ARTICLE 52. NUMBER OF VOTES REQUIRED FOR
 15 CONVICTION, SENTENCING, AND OTHER MATTERS

16 (a) In general. No person may be convicted of an offense except as pro-
 17 vided in article 45 (b) of this code or by the concurrence of two-thirds (2/3)
 18 of the members present at the time the vote is taken in a general or special
 19 court-martial, other than:

20 (1) After a plea of guilty under article 45 (b);

21 (2) By a military judge in a court-martial with a military judge alone,
 22 under article 16; or

23 (3) In a court-martial with members under article 16, by the concur-
 24 rence of at least three-fourths (3/4) of the members present when the
 25 vote is taken.

26 (b) All other questions to be decided by the members of a general or spe-
 27 cial court-martial shall be determined by a majority vote, but a determi-
 28 nation to reconsider a finding of guilty or to reconsider a sentence, with
 29 a view toward decreasing it, may be made by any lesser vote which indicates
 30 that the reconsideration is not opposed by the number of votes required for
 31 that finding or sentence. A tie vote on a challenge disqualifies the mem-
 32 ber challenged. A tie vote on a motion relating to the question of the ac-
 33 cused's sanity is a determination against the accused. A tie vote on any
 34 other question is a determination in favor of the accused. Level of concur-
 35 rence required.

36 (1) In general. Except as provided in subsection (a) of this article
 37 and in paragraph (2) of this subsection, all matters to be decided by
 38 members of a general or special court-martial shall be determined by a
 39 majority vote, but a reconsideration of a finding of guilty or recon-
 40 sideration of a sentence, with a view toward decreasing the sentence,
 41 may be made by any lesser vote which indicates that the reconsideration
 42 is not opposed by the number of votes required for that finding or sen-
 43 tence.

44 (2) Sentencing. All sentences imposed by members shall be deter-
 45 mined by the concurrence of at least three-fourths (3/4) of the members
 46 present when the vote is taken.

1 ARTICLE 53. COURT TO ANNOUNCE ACTION FINDINGS AND SENTENCING

2 (a) Announcement. A court-martial shall announce its findings and sen-
3 tence to the parties as soon as determined.

4 (b) Sentencing generally.

5 (1) General and special courts-martial.

6 (A) Sentencing by military judge. Except as provided in subpara-
7 graph (B) of this paragraph, and in this code for capital offenses,
8 if the accused is convicted of an offense in a trial by general or
9 special court-martial, the military judge shall sentence the ac-
10 cused.

11 (B) Sentencing by members. If the accused is convicted of an of-
12 fense by general or special court-martial consisting of a military
13 judge and members, and the accused elects sentencing by members
14 under article 25, the members shall sentence the accused.

15 (C) Sentence of the accused. The sentence determined pursuant to
16 this paragraph constitutes the sentence of the accused.

17 (2) Summary courts-martial. If the accused is convicted of an offense
18 in a trial by summary court-martial, the court-martial shall sentence
19 the accused.

20 ARTICLE 53a. PLEA AGREEMENTS

21 (a) In general.

22 (1) At any time before the announcement of findings under article 53,
23 the convening authority and the accused may enter into a plea agree-
24 ment with respect to such matters as the manner in which the convening
25 authority will dispose of one (1) or more charges and specifications
26 and limitations on the sentence that may be adjudged for one (1) or more
27 charges and specifications.

28 (2) The military judge of a general or special court-martial may not
29 participate in discussions between the parties concerning prospective
30 terms and conditions of a plea agreement.

31 (b) Limitation on acceptance of plea agreements. The military judge of
32 a general or special court-martial shall reject a plea agreement that:

33 (1) Contains a provision that has not been accepted by both parties;

34 (2) Contains a provision that is not understood by the accused;

35 (3) Except as provided in subsection (c) of this article, contains a
36 provision for a sentence that is less than the mandatory minimum sen-
37 tence applicable to an offense;

38 (4) Is prohibited by law; or

39 (5) Is contrary to, or is inconsistent with, a regulation prescribed
40 by the governor or his designated representative with respect to terms,
41 conditions, or other aspects of plea agreements.

42 (c) Limited conditions for acceptance of plea agreement for sentence
43 below mandatory minimum for certain offenses. With respect to an offense:

44 (1) The military judge may accept a plea agreement that provides for a
45 sentence of bad-conduct discharge; and

46 (2) Upon recommendation of the trial counsel, in exchange for substan-
47 tial assistance by the accused in the investigation or prosecution of

1 another person who has committed an offense, the military judge may ac-
 2 cept a plea agreement that provides for a sentence that is less than the
 3 mandatory minimum sentence for the offense charged.

4 (d) Binding effect of plea agreement. Upon acceptance by the military
 5 judge of a general or special court-martial, a plea agreement shall bind the
 6 parties and the court-martial.

7 ARTICLE 54. RECORD OF TRIAL

8 (a) Each general and special court-martial shall keep a separate record
 9 of the proceedings in each case brought before it, and the record shall be
 10 authenticated by the signature of the military judge. If the record cannot
 11 be authenticated by the military judge by reason of his death, disability,
 12 or absence, it shall be authenticated by the signature of the trial counsel
 13 or by that of a member, if the trial counsel is unable to authenticate it by
 14 reason of his death, disability, or absence. In a court-martial consist-
 15 ing of only a military judge, the record shall be authenticated by the court
 16 reporter under the same conditions which would impose such a duty on a mem-
 17 ber under this subsection General and special courts-martial. Each general
 18 or special court-martial shall keep a separate record of the proceedings in
 19 each case brought before it. The record shall be certified by a court re-
 20 porter, except that in the case of death, disability, or absence of a court
 21 reporter, the record shall be certified by an official selected as the gover-
 22 nor or his designated representative may prescribe by regulation.

23 (b) (1) A complete verbatim record of the proceedings and testimony
 24 shall be prepared in each general and special court-martial case re-
 25 sulting in a conviction; and

26 (2) In all other court-martial cases, the record shall contain such
 27 matters as may be prescribed by regulations.

28 (c) Summary courts-martial. Each summary court-martial shall keep
 29 a separate record of the proceedings in each case, and the record shall be
 30 authenticated certified in the manner as may be prescribed by regulations.

31 (d) Copy to accused. A copy of the record of the proceedings of each
 32 general and special court-martial shall be given to the accused as soon as it
 33 is authenticated certified.

34 (e) Contents of record.

35 (1) Except as provided in paragraph (2) of this subsection, the record
 36 shall contain such matters as the governor or his designated represen-
 37 tative may prescribe by regulation.

38 (2) In accordance with regulations prescribed by the governor or his
 39 designated representative, a complete record of proceedings and testi-
 40 mony shall be prepared in any case of a sentence of death, dismissal,
 41 discharge, confinement for more than six (6) months, or forfeiture of
 42 pay for more than six (6) months.

43 (f) A copy of the record of the proceedings of each general and special
 44 court-martial shall be given to the accused as soon as it is certified.

45 (g) In the case of a general or special court-martial, upon request, a
 46 copy of all prepared records of the proceedings of the court-martial shall
 47 be given to the victim of the offense if the victim testified during the pro-
 48 ceedings. The records of the proceedings shall be provided without charge

1 and as soon as the records are certified. The victim shall be notified of the
 2 opportunity to receive the records of the proceedings.

3 PART VIII. SENTENCES

4 ARTICLE 55. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED

5 Punishment by flogging, or by branding, marking, or tattooing on the body, or
 6 any other cruel or unusual punishment may not be adjudged by a court-martial
 7 or inflicted upon any person subject to this code. The use of irons, single
 8 or double, except for the purpose of safe custody, is prohibited.

9 ARTICLE 56. ~~MAXIMUM LIMITS~~ SENTENCING

10 (a) The punishment which a court-martial may direct for an offense may
 11 not exceed such limits as prescribed by this code, but in no instance may a
 12 sentence exceed more than ten (10) years for a military offense, nor shall a
 13 sentence of death be adjudged. A conviction by general court-martial of any
 14 military offense for which an accused may receive a sentence of confinement
 15 for more than one (1) year is a felony offense. Except for convictions by a
 16 summary court-martial, all other military offenses are misdemeanors. Any
 17 conviction by a summary court-martial is not a criminal conviction.

18 (b) The limits of punishment for violations of the punitive articles
 19 prescribed herein shall be the lesser of the sentences prescribed by the man-
 20 ual for courts-martial of the United States currently in effect on January 1,
 21 2004, and the state manual for courts-martial, but in no instance shall any
 22 punishment exceed that authorized by this code.

23 (c) Imposition of sentence.

24 (1) In general. In sentencing an accused, a court-martial shall impose
 25 punishment that is sufficient, but not greater than necessary, to pro-
 26 motivate justice and to maintain good order and discipline in the state mil-
 27 itary forces, taking into consideration:

28 (A) The nature and circumstances of the offense and the history
 29 and characteristics of the accused;

30 (B) The impact of the offense on:

31 (i) The financial, social, psychological, or medical well-
 32 being of any victim of the offense; and

33 (ii) The mission, discipline, or efficiency of the command
 34 of the accused and any victim of the offense;

35 (C) The need for the sentence:

36 (i) To reflect the seriousness of the offense;

37 (ii) To promote respect for the law;

38 (iii) To provide just punishment for the offense;

39 (iv) To promote adequate deterrence of misconduct;

40 (v) To protect others from further crimes by the accused;

41 (vi) To rehabilitate the accused; and

42 (vii) To provide, in appropriate cases, the opportunity for
 43 retraining and return to duty to meet the needs of the ser-
 44 vice; and

45 (D) The sentences available under this chapter.

1 is suspended or deferred shall be excluded in computing the service of
2 the term of confinement.

3 (3) Approval of dismissal. If, in the case of a commissioned officer,
4 cadet, or midshipman, the sentence of a court-martial extends to dis-
5 missal, that part of the sentence providing for dismissal may not be ex-
6 ecuted until approved by the secretary concerned or such undersecretary
7 or assistant secretary as may be designated by the secretary concerned.
8 In such a case, the secretary, undersecretary, or assistant secretary,
9 as the case may be, may commute, remit, or suspend the sentence, or any
10 part of the sentence, as the secretary sees fit. In time of war or na-
11 tional emergency, he may commute a sentence of dismissal to reduction to
12 any enlisted grade. A person so reduced may be required to serve for the
13 duration of the war or emergency and six (6) months thereafter.

14 (4) Completion of appellate review. If a sentence extends to dis-
15 missal, or a dishonorable or bad-conduct discharge, that part of the
16 sentence extending to dismissal, or a dishonorable or bad-conduct dis-
17 charge, may be executed in accordance with service regulations after
18 completion of appellate review and, with respect to dismissal, approval
19 under paragraph (3) or (4) of this subsection, as appropriate.

20 (5) Other sentences. Except as otherwise provided in this subsection,
21 a general or special court-martial sentence is effective upon entry of
22 judgment and a summary court-martial sentence is effective when the
23 convening authority acts on the sentence.

24 (b) Deferral of sentences.

25 (1) In general. On application by an accused, the convening authority
26 or, if the accused is no longer under his jurisdiction, the officer ex-
27 ercising general court-martial jurisdiction over the command to which
28 the accused is currently assigned may, in his sole discretion, defer the
29 effective date of a sentence of confinement, reduction, or forfeiture.
30 The deferment shall terminate upon entry of judgment or, in the case of
31 a summary court-martial, when the convening authority acts on the sen-
32 tence. The deferment may be rescinded at any time by the officer who
33 granted it or, if the accused is no longer under his jurisdiction, by the
34 officer exercising general court-martial jurisdiction over the command
35 to which the accused is currently assigned.

36 (2) Deferral of certain persons sentenced to confinement. In any case
37 in which a court-martial sentences a person referred to in paragraph (3)
38 of this subsection to confinement, the convening authority may defer
39 the service of the sentence to confinement, without the consent of that
40 person, until after the person has been permanently released to the
41 state military forces by a state or foreign country referred to in that
42 paragraph.

43 (3) Covered persons. Paragraph (2) of this subsection applies to a per-
44 son subject to this chapter who, while in the custody of a state or for-
45 foreign country, is temporarily returned by that state or foreign country
46 to the state military forces for trial by court-martial and, after the
47 court-martial, is returned to that state or foreign country under the
48 authority of a mutual agreement or treaty, as the case may be.

1 ~~adjutant general may defer further service of the sentence to confinement~~
 2 ~~while that review is pending.~~

3 ARTICLE 58. EXECUTION OF CONFINEMENT

4 (a) A sentence of confinement adjudged by a court-martial, whether or
 5 not the sentence includes discharge or dismissal, and whether or not the dis-
 6 charge or dismissal has been executed, may be carried into execution by con-
 7 finement in any place authorized by this code. Persons so confined are sub-
 8 ject to the same discipline and treatment as persons regularly confined or
 9 committed to that place of confinement.

10 (b) The omission of "hard labor" as a sentence authorized under this
 11 code does not deprive the state confinement facility from employing it, if it
 12 otherwise is within the authority of that facility to do so.

13 (c) No place of confinement may require payment of any fee or charge for
 14 so receiving or confining a person except as otherwise provided by law.

15 ARTICLE 58a. SENTENCES -- REDUCTION IN ENLISTED GRADE ~~UPON APPROVAL~~

16 (a) A court-martial sentence of an enlisted member in a pay grade above
 17 E-1, ~~as approved by the convening authority, that as set forth in the judg-~~
 18 ment of the court-martial entered into the record, includes:

19 (1) A dishonorable or bad-conduct discharge; ~~or~~

20 (2) Confinement; or

21 (3) ~~reduces~~ Reduction of that member to pay grade E-1, ~~effective on the~~
 22 date of that approval if such a reduction is authorized by regulation
 23 prescribed by the governor or his designated representative. The re-
 24 duction in pay grade shall take effect on the date on which the judgment
 25 is so entered.

26 (b) If the sentence of a member who is reduced in pay grade under subsec-
 27 tion (a) of this article is set aside or ~~disapproved, or, as finally approved~~
 28 reduced, or, as finally affirmed, does not include any punishment named in
 29 subsection (a) (1) or (2) of this article, the rights and privileges of which
 30 the person was deprived because of that reduction shall be restored, includ-
 31 ing pay and allowances.

32 ARTICLE 58b. SENTENCES -- FORFEITURE OF
 33 PAY AND ALLOWANCES DURING CONFINEMENT

34 (a) Generally.

35 (1) A court-martial sentence described in paragraph (2) of this sub-
 36 section shall result in the forfeiture of pay, or of pay and allowances,
 37 due that member during any period of confinement or parole. The forfei-
 38 ture pursuant to this article shall take effect on the date determined
 39 under ~~article 57(a) of~~ this code and may be deferred as provided by ~~that~~
 40 article this code. The pay and allowances forfeited, in the case of a
 41 general court-martial, shall be all pay and allowances due that member
 42 during such period and, in the case of a special court-martial, shall be
 43 two-thirds (2/3) of all pay due that member during such period.

44 (2) A sentence covered by this article is any sentence that includes:

1 (A) Confinement for more than six (6) months; or

2 (B) Confinement for six (6) months or less and a dishonorable or
3 bad-conduct discharge or dismissal.

4 (b) In a case involving an accused who has dependents, the convening au-
5 thority or other person acting under article 60 of this code may waive any
6 or all of the forfeitures of pay and allowances required by subsection (a)
7 of this article for a period not to exceed six (6) months. Any amount of pay
8 or allowances that, except for a waiver under this subsection, would be for-
9 feited shall be paid, as the convening authority or other person taking ac-
10 tion directs, to the dependents of the accused.

11 (c) If the sentence of a member who forfeits pay and allowances under
12 subsection (a) of this article is set aside or disapproved or, as finally ap-
13 proved, does not provide for a punishment referred to in subsection (a) (2) of
14 this article, the member shall be paid the pay and allowances which the mem-
15 ber would have been paid, except for the forfeiture, for the period during
16 which the forfeiture was in effect.

17 ~~PART IX. POST-TRIAL~~ POSTTRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

18 ARTICLE 59. ERROR OF LAW -- LESSER INCLUDED OFFENSE

19 (a) A finding or sentence of a court-martial may not be held incorrect
20 on the ground of an error of law unless the error materially prejudices the
21 substantial rights of the accused.

22 (b) Any reviewing authority with the power to approve or affirm a find-
23 ing of guilty may approve or affirm, instead, so much of the finding as in-
24 cludes a lesser included offense.

25 ARTICLE 60. ACTION BY THE CONVENING AUTHORITY POSTTRIAL
26 PROCESSING IN GENERAL AND SPECIAL COURTS-MARTIAL

27 ~~(a) The findings and sentence of a court-martial shall be reported~~
28 ~~promptly to the convening authority after the announcement of the sentence.~~

29 ~~(b) Matters in extenuation.~~

30 ~~(1) The accused may submit to the convening authority matters for con-~~
31 ~~sideration by the convening authority with respect to the findings and~~
32 ~~the sentence. Any such submission shall be in writing. Except in a sum-~~
33 ~~mary court-martial case, such a submission shall be made within ten (10)~~
34 ~~days after the accused has been given an authenticated record of trial~~
35 ~~and, if applicable, the recommendation of a judge advocate under sub-~~
36 ~~section (d) of this article. In a summary court-martial case, such a~~
37 ~~submission shall be made within seven (7) days after the sentence is an-~~
38 ~~nounced.~~

39 ~~(2) If the accused shows that additional time is required for the ac-~~
40 ~~used to submit such matters, the convening authority or other person~~
41 ~~taking action under this article, for good cause, may extend the appli-~~
42 ~~cable period under paragraph (1) of this subsection for not more than an~~
43 ~~additional twenty (20) days.~~

1 ~~(3) In a summary court-martial case, the accused shall be promptly pro-~~
2 ~~vided a copy of the record of trial for use in preparing a submission au-~~
3 ~~thorized by paragraph (1) of this subsection.~~

4 ~~(4) The accused may waive the right to make a submission to the con-~~
5 ~~vening authority under paragraph (1) of this subsection. Such a waiver~~
6 ~~must be made in writing and may not be revoked. For the purposes of sub-~~
7 ~~section (c)(2) of this article, the time within which the accused may~~
8 ~~make a submission under this subsection shall be deemed to have expired~~
9 ~~upon the submission of such a waiver to the convening authority.~~

10 ~~(c) Discretion of convening authority.~~

11 ~~(1) The authority under this article to modify the findings and sen-~~
12 ~~tence of a court-martial is a matter of command prerogative involving~~
13 ~~the sole discretion of the convening authority. If it is impractical~~
14 ~~for the convening authority to act, the convening authority shall for-~~
15 ~~ward the case to a person exercising general court-martial jurisdiction~~
16 ~~who may take action under this article.~~

17 ~~(2) Action on the sentence of a court-martial shall be taken by the~~
18 ~~convening authority or by another person authorized to act under this~~
19 ~~article. Such action may be taken only after consideration of any mat-~~
20 ~~ters submitted by the accused under subsection (b) of this article or~~
21 ~~after the time for submitting such matters expires, whichever is ear-~~
22 ~~lier. The convening authority or other person taking such action, in~~
23 ~~that person's sole discretion, may approve, disapprove, commute, or~~
24 ~~suspend the sentence in whole or in part.~~

25 ~~(3) Action on the findings of a court-martial by the convening author-~~
26 ~~ity or other person acting on the sentence is not required. However,~~
27 ~~such person, in the person's sole discretion, may:~~

28 ~~(A) Dismiss any charge or specification by setting aside a finding~~
29 ~~of guilty thereto; or~~

30 ~~(B) Change a finding of guilty to a charge or specification to a~~
31 ~~finding of guilty to an offense that is a lesser included offense~~
32 ~~of the offense stated in the charge or specification.~~

33 ~~(d) Before acting under this article on any general or special court-~~
34 ~~martial case in which there is a finding of guilt, the convening authority~~
35 ~~or other person taking action under this article shall obtain and consider~~
36 ~~the written recommendation of a judge advocate. The convening authority or~~
37 ~~other person taking action under this article shall refer the record of trial~~
38 ~~to the judge advocate, and the judge advocate shall use such record in the~~
39 ~~preparation of the recommendation. The recommendation of the judge advocate~~
40 ~~shall include such matters as may be prescribed by regulation and shall be~~
41 ~~served on the accused, who may submit any matter in response under subsection~~
42 ~~(b) of this article. Failure to object in the response to the recommendation~~
43 ~~or to any matter attached to the recommendation waives the right to object~~
44 ~~thereto.~~

45 ~~(e) Proceedings in revision.~~

46 ~~(1) The convening authority or other person taking action under this~~
47 ~~article, in the person's sole discretion, may order a proceeding in re-~~
48 ~~vision or a rehearing.~~

49 ~~(2) A proceeding in revision may be ordered if there is an apparent er-~~
50 ~~ror or omission in the record or if the record shows improper or incon-~~

1 ~~sistent action by a court-martial with respect to the findings or sen-~~
 2 ~~tence that can be rectified without material prejudice to the substan-~~
 3 ~~tial rights of the accused. In no case, however, may a proceeding in re-~~
 4 ~~vision:~~

5 ~~(A) Reconsider a finding of not guilty of any specification or a~~
 6 ~~ruling which amounts to a finding of not guilty;~~

7 ~~(B) Reconsider a finding of not guilty of any charge, unless there~~
 8 ~~has been a finding of guilty under a specification laid under that~~
 9 ~~charge, which sufficiently alleges a violation of some article of~~
 10 ~~this code; or~~

11 ~~(C) Increase the severity of the sentence unless the sentence pre-~~
 12 ~~scribed for the offense is mandatory.~~

13 ~~(3) A rehearing may be ordered by the convening authority or other~~
 14 ~~person taking action under this article if that person disapproves the~~
 15 ~~findings and sentence and states the reasons for disapproval of the~~
 16 ~~findings. If such person disapproves the findings and sentence and~~
 17 ~~does not order a rehearing, that person shall dismiss the charges. A~~
 18 ~~rehearing as to the findings may not be ordered where there is a lack of~~
 19 ~~sufficient evidence in the record to support the findings. A rehearing~~
 20 ~~as to the sentence may be ordered if the convening authority or other~~
 21 ~~person taking action under this subsection disapproves the sentence.~~

22 Statement of trial results.

23 (1) The military judge of a general or special court-martial shall en-
 24 ter into the record of trial a document entitled "statement of trial re-
 25 sults," which shall set forth:

26 (A) Each plea and finding;

27 (B) The sentence, if any; and

28 (C) Such other information as the governor or his designated rep-
 29 resentative may prescribe by regulation.

30 (2) Copies of the statement of trial results shall be provided promptly
 31 to the convening authority, the accused, and any victim of the offense.

32 (b) Posttrial motions. In accordance with regulations prescribed by
 33 the governor or his designated representative, the military judge in a gen-
 34 eral or special court-martial shall address all posttrial motions and other
 35 posttrial matters that:

36 (1) May affect a plea, a finding, the sentence, the statement of trial
 37 results, the record of trial, or any posttrial action by the convening
 38 authority; and

39 (2) Are subject to resolution by the military judge before entry of
 40 judgment.

41 ARTICLE 61. WAIVER OF RIGHT TO APPEAL -- WITHDRAWAL OF APPEAL

42 (a) In each case subject to appellate review under this code, the
 43 accused may file with the convening authority a statement expressly with-
 44 drawing the right of the accused to such appeal. Such a withdrawal shall be
 45 signed by both the accused and his defense counsel and must be filed in accor-
 46 dance with appellate procedures as provided by law Waiver of right to appeal.
 47 After entry of judgment in a general or special court-martial, under proce-
 48 dures prescribed by the secretary concerned, the accused may waive the right

1 to appellate review in each case subject to such review under this code. Such
 2 a waiver shall be signed by the accused and by defense counsel and attached to
 3 the record of trial.

4 ~~(b) The accused may withdraw an appeal at any time in accordance with~~
 5 ~~appellate procedures as provided by law~~ Withdrawal of appeal. In a general
 6 or special court-martial, the accused may withdraw an appeal at any time.

7 (c) Waiver or withdrawal as bar. A waiver or withdrawal under this ar-
 8 article bars review under this code.

9 ARTICLE 62. APPEAL BY THE STATE

10 (a) Generally.

11 (1) In a trial by court-martial in which a punitive discharge may be ad-
 12 judged, the state may appeal the following, other than a finding of not
 13 guilty with respect to the charge or specification by the members of the
 14 court-martial, or by a judge in a bench trial so long as it is not made in
 15 reconsideration:

16 (A) An order or ruling of the military judge which terminates the
 17 proceedings with respect to a charge or specification.

18 (B) An order or ruling which excludes evidence that is substantial
 19 proof of a fact material in the proceeding.

20 (C) An order or ruling which directs the disclosure of classified
 21 information.

22 (D) An order or ruling which imposes sanctions for nondisclosure
 23 of classified information.

24 (E) A refusal of the military judge to issue a protective order
 25 sought by the state to prevent the disclosure of classified infor-
 26 mation.

27 (F) A refusal by the military judge to enforce an order described
 28 in subparagraph (E) of this paragraph that has previously been is-
 29 sued by appropriate authority.

30 (G) An order or ruling of the military judge entering a finding of
 31 not guilty with respect to a charge or specification following the
 32 return of a finding of guilty by the members.

33 (2) (A) An appeal of an order or ruling may not be taken unless the
 34 trial counsel provides the military judge with written notice of
 35 appeal from the order or ruling within seventy-two (72) hours of
 36 the order or ruling. Such notice shall include a certification by
 37 the trial counsel that the appeal is not taken for the purpose of
 38 delay and, if the order or ruling appealed is one which excludes
 39 evidence, that the evidence excluded is substantial proof of a
 40 fact material in the proceeding.

41 (B) An appeal of an order or ruling may not be taken when prohib-
 42 ited by article 44.

43 (3) An appeal under this article shall be diligently prosecuted as pro-
 44 vided by law.

45 (b) An appeal under this article shall be forwarded to the court pre-
 46 scribed in article 67a of this code. In ruling on an appeal under this arti-
 47 cle, that court may act only with respect to matters of law.

1 (c) Any period of delay resulting from an appeal under this article
 2 shall be excluded in deciding any issue regarding denial of a speedy trial
 3 unless an appropriate authority determines that the appeal was filed solely
 4 for the purpose of delay with the knowledge that it was totally frivolous and
 5 without merit.

6 (d) The United States may appeal a ruling or order of a military magis-
 7 trate in the same manner as had the ruling or order been made by a military
 8 judge, except that the issue shall first be presented to the military judge
 9 who designated the military magistrate or to a military judge detailed to
 10 hear the issue.

11 (e) The provisions of this article shall be liberally construed to ef-
 12 fect its purposes.

13 ARTICLE 63. REHEARINGS

14 (a) Each rehearing under this code shall take place before a court-mar-
 15 tial composed of members not members of the court-martial which first heard
 16 the case. Upon a rehearing, the accused may not be tried for any offense of
 17 which he was found not guilty by the first court-martial, and no sentence in
 18 excess of or more severe than the original sentence may be approved adjudged,
 19 unless the sentence is based upon a finding of guilty of an offense not con-
 20 sidered upon the merits in the original proceedings, or unless the sentence
 21 prescribed for the offense is mandatory. If the sentence approved after the
 22 first court-martial was in accordance with a pretrial agreement and the ac-
 23 used at the rehearing changes a plea with respect to the charges or spec-
 24 ifications upon which the pretrial agreement was based, or otherwise does
 25 not comply with the pretrial agreement, the approved sentence as to those
 26 charges or specifications may include any punishment not in excess of that
 27 lawfully adjudged at the first court-martial.

28 (b) If the sentence adjudged by the first court-martial was in accor-
 29 dance with a plea agreement under article 53a and the accused at the rehear-
 30 ing does not comply with the agreement, or if a plea of guilty was entered for
 31 an offense at the first court-martial and a plea of not guilty was entered
 32 at the rehearing, the sentence as to those charges or specifications may in-
 33 clude any punishment not in excess of that which could have been adjudged at
 34 the first court-martial, subject to such limitations as the governor or his
 35 designated representative may prescribe by regulation.

36 (c) If, after appeal by the government under article 56(d), the sen-
 37 tence adjudged is set aside and a rehearing on sentence is ordered by the
 38 state court, the court-martial may impose any sentence that is in accordance
 39 with the order or ruling setting aside the adjudged sentence, subject to such
 40 limitations as the governor or his designated representative may prescribe
 41 by regulation.

42 ARTICLE 64. REVIEW BY THE SENIOR FORCE JUDGE ADVOCATE
 43 REVIEW OF FINDING OF GUILTY IN SUMMARY COURT-MARTIAL

44 (a) Each general and special court-martial case in which there has been
 45 a finding of guilty shall be reviewed by the senior force judge advocate, or
 46 a designee. The senior force judge advocate, or designee, may not review a

1 ~~case under this subsection if that person has acted in the same case as an ac-~~
2 ~~cuser, investigating officer, member of the court, military judge, or coun-~~
3 ~~sel or has otherwise acted on behalf of the prosecution or defense. The se-~~
4 ~~nior force judge advocate's review shall be in writing and shall contain the~~
5 ~~following:~~

6 (1) Conclusions as to whether:

7 (A) The court had jurisdiction over the accused and the offense;

8 (B) The charge and specification stated an offense; and

9 (C) The sentence was within the limits prescribed as a matter of
10 law.

11 (2) A response to each allegation of error made in writing by the ac-
12 cused.

13 (3) If the case is sent for action under subsection (b) of this article,
14 a recommendation as to the appropriate action to be taken and an opinion
15 as to whether corrective action is required as a matter of law.

16 (b) Record. The record of trial and related documents in each case re-
17 viewed under subsection (a) of this article shall be sent for action to the
18 adjutant general if:

19 (1) The judge advocate who reviewed the case recommends corrective ac-
20 tion;

21 (2) The sentence approved under ~~article 60(e)~~ of this code extends to
22 dismissal, a bad-conduct or dishonorable discharge, or confinement for
23 more than six (6) months; or

24 (3) Such action is otherwise required by regulations of the adjutant
25 general.

26 (c) The adjutant general's discretion.

27 (1) The adjutant general may:

28 (A) Disapprove or approve the findings or sentence, in whole or in
29 part;

30 (B) Remit, commute, or suspend the sentence in whole or in part;

31 (C) Except where the evidence was insufficient at the trial to
32 support the findings, order a rehearing on the findings, on the
33 sentence, or on both; or

34 (D) Dismiss the charges.

35 (2) If a rehearing is ordered but the convening authority finds a
36 rehearing impracticable, the convening authority shall dismiss the
37 charges.

38 (3) If the opinion of the senior force judge advocate, or designee, in
39 the senior force judge advocate's review under subsection (a) of this
40 article is that corrective action is required as a matter of law and if
41 the adjutant general does not take action that is at least as favorable
42 to the accused as that recommended by the judge advocate, the record of
43 trial and action thereon shall be sent to the governor for review and ac-
44 tion as deemed appropriate.

45 (d) The senior force judge advocate, or a designee, may review any case
46 in which there has been a finding of not guilty of all charges and specifica-
47 tions. The senior force judge advocate, or designee, may not review a case
48 under this subsection if that person has acted in the same case as an ac-
49 cuser, investigating officer, member of the court, military judge, or coun-
50 sel or has otherwise acted on behalf of the prosecution or defense. The se-

1 nior force judge advocate's review shall be limited to questions of subject
2 matter jurisdiction.

3 (e) The record of trial and related documents in each case reviewed un-
4 der subsection (d) of this article shall be sent for action to the adjutant
5 general.

6 (1) The adjutant general may:

7 (A) When subject matter jurisdiction is found to be lacking, void
8 the court-martial ab initio, with or without prejudice to the gov-
9 ernment, as the adjutant general deems appropriate; or

10 (B) Return the record of trial and related documents to the senior
11 force judge advocate for appeal by the government as provided by
12 law.

13 ~~ARTICLE 65. DISPOSITION OF RECORDS AFTER REVIEW BY THE~~
14 ~~CONVENING AUTHORITY TRANSMITTAL AND REVIEW OF RECORDS~~

15 ~~Except as otherwise required by this code, all records of trial and related~~
16 ~~documents shall be transmitted and disposed of as prescribed by regulation~~
17 ~~and provided by law.~~

18 (a) Finding of guilty in general or special court-martial. If the judg-
19 ment of a general or special court-martial entered under this code includes
20 a finding of guilty, the record shall be transmitted to the state staff judge
21 advocate.

22 (b) Other cases. In all other cases, records of trial by court-martial
23 and related documents shall be transmitted and disposed of as the adjutant
24 general may prescribe by regulation.

25 ARTICLE 66. RESERVED

26 ARTICLE 67. RESERVED

27 ARTICLE 67a. REVIEW BY STATE APPELLATE AUTHORITY

28 Decisions of a court-martial are from a court with jurisdiction to issue
29 felony convictions and appeals therefrom will be made to the district court
30 of the judicial district wherein the court-martial was conducted within
31 forty-two (42) days from the ~~date of receipt of the record of trial as set~~
32 ~~out in article 64~~ entry of judgment. For courts-martial held outside of the
33 state of Idaho, venue for appeal purposes shall be in the district court of
34 the fourth judicial district, Ada county, Idaho. The appellate procedures
35 to be followed shall be those provided by law and rule for the appeal of state
36 criminal cases thereto.

37 ARTICLE 68. RESERVED

38 ARTICLE 69. RESERVED

39 ARTICLE 70. APPELLATE COUNSEL

1 (a) The senior force judge advocate shall detail a judge advocate as ap-
2 pellate government counsel to represent the state in the review or appeal of
3 cases specified in article 67a of this code and before any federal court when
4 requested to do so by the state attorney general. Appellate government coun-
5 sel must be a member in good standing of the bar of the highest court of the
6 state to which the appeal is taken.

7 (b) Upon an appeal by the state, an accused has the right to be repre-
8 sented by detailed military counsel before any reviewing authority and be-
9 fore any appellate court.

10 (c) Upon the appeal by an accused, the accused has the right to be repre-
11 sented by military counsel before any reviewing authority.

12 (d) Upon the request of an accused entitled to be so represented, the
13 senior force judge advocate shall appoint a judge advocate to represent the
14 accused in the review or appeal of cases specified in subsections (b) and (c)
15 of this article.

16 (e) An accused may be represented by civilian appellate counsel at no
17 expense to the state.

18 ARTICLE 71. EXECUTION OF SENTENCE -- SUSPENSION OF SENTENCE

19 (a) If the sentence of the court-martial extends to dismissal or a dis-
20 honorable or bad-conduct discharge and if the right of the accused to appel-
21 late review is not waived, and an appeal is not withdrawn under article 61 of
22 this code, that part of the sentence extending to dismissal or a dishonorable
23 or bad-conduct discharge may not be executed until there is a final judgment
24 as to the legality of the proceedings. A judgment as to the legality of the
25 proceedings is final in such cases when review is completed by an appellate
26 court prescribed in article 67a- of this code and is deemed final by the law
27 of state where the judgment was had.

28 (b) If the sentence of the court-martial extends to dismissal or a dis-
29 honorable or bad conduct discharge and if the right of the accused to appel-
30 late review is waived, or an appeal is withdrawn under article 61 of this
31 code, that part of the sentence extending to dismissal or a dishonorable or
32 bad-conduct discharge may not be executed until review of the case by the se-
33 nior force judge advocate and any action on that review under article 64 of
34 this code is completed. Any other part of a court-martial sentence may be or-
35 dered executed by the convening authority or other person acting on the case
36 under article 60 of this code when so approved under that article.

37 ARTICLE 72. VACATION OF SUSPENSION

38 (a) Before the vacation of the suspension of a special court-martial
39 sentence, which as approved includes a bad-conduct discharge, or of any gen-
40 eral court-martial sentence, the officer having special court-martial ju-
41 risdiction over the probationer shall hold a hearing on an alleged violation
42 of probation. The probationer shall be represented at the hearing by mili-
43 tary counsel if the probationer so desires special court-martial convening
44 authority may detail a judge advocate who is certified under article 27(b)
45 of this code to conduct the hearing. The probationer shall be represented at
46 the hearing by military counsel if the probationer so desires.

1 (b) The record of the hearing and the recommendation of the officer hav-
2 ing special court-martial jurisdiction shall be sent for action to the offi-
3 cer exercising general court-martial jurisdiction over the probationer. If
4 the officer exercising general court-martial jurisdiction vacates the sus-
5 pension, any unexecuted part of the sentence, except a dismissal, shall be
6 executed, subject to applicable restrictions under article 57 in this code.

7 (c) The suspension of any other sentence may be vacated by any authority
8 competent to convene, for the command in which the accused is serving or as-
9 signed, a court of the kind that imposed the sentence.

10 ARTICLE 73. PETITION FOR A NEW TRIAL

11 At any time within ~~two~~ three (23) years after approval by the convening au-
12 thority of a court-martial sentence, the accused may petition the adjutant
13 general for a new trial on the grounds of newly discovered evidence or fraud
14 on the court-martial.

15 ARTICLE 74. REMISSION AND SUSPENSION

16 (a) Any authority competent to convene, for the command in which the ac-
17 cused is serving or assigned, a court of the kind that imposed the sentence
18 may remit or suspend any part or amount of the unexecuted part of any sen-
19 tence, including all uncollected forfeitures other than a sentence approved
20 by the governor.

21 (b) The governor may, for good cause, substitute an administrative form
22 of discharge for a discharge or dismissal executed in accordance with the
23 sentence of a court-martial.

24 ARTICLE 75. RESTORATION

25 (a) Under such regulations as may be prescribed, all rights, privi-
26 leges, and property affected by an executed part of a court-martial sentence
27 which has been set aside or disapproved, except an executed dismissal or
28 discharge, shall be restored unless a new trial or rehearing is ordered and
29 such executed part is included in a sentence imposed upon the new trial or
30 rehearing.

31 (b) If a previously executed sentence of dishonorable or bad-conduct
32 discharge is not imposed on a new trial, the governor or his designated rep-
33 resentative may substitute therefore a form of discharge authorized for ad-
34 ministrative issuance unless the accused is to serve out the remainder of the
35 accused's enlistment.

36 (c) If a previously executed sentence of dismissal is not imposed on
37 a new trial, the governor or his designated representative may substitute
38 therefore a form of discharge authorized for administrative issue, and the
39 commissioned officer dismissed by that sentence may be reappointed by the
40 governor alone to such commissioned grade and with such rank as in the opin-
41 ion of the governor that former officer would have attained had he not been
42 dismissed. The reappointment of such a former officer shall be without re-
43 gard to the existence of a vacancy and shall affect the promotion status of
44 other officers only insofar as the governor may direct. All time between the

1 dismissal and the reappointment shall be considered as actual service for
2 all purposes, including the right to pay and allowances.

3 (d) The adjutant general may prescribe regulations, with such limita-
4 tions as the adjutant general considers appropriate, governing eligibility
5 for pay and allowances for the period after the date on which an executed part
6 of a court-martial sentence is set aside.

7 ARTICLE 76. FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES

8 The appellate review of records of trial provided by this code, the proceed-
9 ings, findings, and sentences of courts-martial as approved, reviewed, or
10 affirmed as required by this code, and all dismissals and discharges car-
11 ried into execution under sentences by courts-martial following approval,
12 review, or affirmation as required by this code are final and conclusive.
13 Orders publishing the proceedings of courts-martial and all action taken
14 pursuant to those proceedings are binding upon all departments, courts,
15 agencies, and officers of the United States and the several states, subject
16 only to action upon a petition for a new trial as provided in article 73 of
17 this code and to action under article 74 of this code.

18 ARTICLE 76a. LEAVE REQUIRED TO BE TAKEN PEND-
19 ING REVIEW OF CERTAIN COURT-MARTIAL CONVICTIONS

20 Under regulations prescribed, an accused who has been sentenced by a court-
21 martial may be required to take leave pending completion of action under this
22 article if the sentence, as approved under article 60 of this code, includes
23 an unsuspended dismissal or an unsuspended dishonorable or bad-conduct dis-
24 charge. The accused may be required to begin such leave on the date on which
25 the sentence is approved under article 60 of this code or at any time after
26 such date, and such leave may be continued until the date on which action un-
27 der this article is completed or may be terminated at any earlier time.

28 ARTICLE 76b. RESERVED

29 PART X. PUNITIVE ARTICLES

30 ARTICLE 77. PRINCIPALS

31 Any person subject to this code who:

32 (1) Commits an offense punishable by this code, or aids, abets, coun-
33 sels, commands, or procures its commission; or

34 (2) Causes an act to be done which if directly performed by him would be
35 punishable by this code;

36 is a principal.

37 ARTICLE 78. ACCESSORY AFTER THE FACT

38 Any person subject to this code who, knowing that an offense punishable by
39 this code has been committed, receives, comforts, or assists the offender in

1 order to hinder or prevent his apprehension, trial, or punishment shall be
2 punished as a court-martial may direct.

3 ARTICLE 79. CONVICTION OF OFFENSE CHARGED,
4 LESSER INCLUDED OFFENSES, AND ATTEMPTS

5 ~~An accused may be found guilty of an offense necessarily included in the of-~~
6 ~~fense charged or of an attempt to commit either the offense charged or an of-~~
7 ~~fense necessarily included therein.~~

8 (a) In general. An accused may be found guilty of any of the following:

9 (1) The offense charged;

10 (2) A lesser included offense;

11 (3) An attempt to commit the offense charged; or

12 (4) An attempt to commit a lesser included offense, if the attempt is an
13 offense in its own right.

14 (b) Definition. In this article, the term "lesser included offense"
15 means:

16 (1) An offense that is necessarily included in the offense charged; and

17 (2) Any lesser included offense so designated by regulation prescribed
18 by the adjutant general.

19 (c) Regulatory authority. Any designation of a lesser included offense
20 in a regulation referred to in subsection (b) of this article shall be rea-
21 sonably included in the greater offense.

22 ARTICLE 80. ATTEMPTS

23 (a) An act done with specific intent to commit an offense under this
24 code amounting to more than mere preparation and tending, even though fail-
25 ing, to effect its commission, is an attempt to commit that offense.

26 (b) Any person subject to this code who attempts to commit any offense
27 punishable by this code shall be punished as a court-martial may direct, un-
28 less otherwise specifically prescribed.

29 (c) Any person subject to this code may be convicted of an attempt to
30 commit an offense although it appears on the trial that the offense was con-
31 summated.

32 ARTICLE 81. CONSPIRACY

33 Any person subject to this code who conspires with any other person to commit
34 an offense under this code shall, if one (1) or more of the conspirators ~~does~~
35 commits an act to effect the object of the conspiracy, be punished as a court-
36 martial may direct.

37 ARTICLE 82. SOLICITATION

38 (a) ~~Any person subject to this code who solicits or advises another or~~
39 ~~others to desert in violation of article 85 of this code or mutiny in viola-~~
40 ~~tion of article 94 of this code shall, if the offense solicited or advised~~
41 ~~is attempted or committed, be punished with the punishment provided for the~~
42 ~~commission of the offense; but, if the offense solicited or advised is not~~

1 ~~committed or attempted, the person shall be punished as a court-martial may~~
 2 ~~direct~~ Soliciting commission of offenses generally. Any person subject to
 3 this code who solicits or advises another to commit an offense under this
 4 code, other than an offense specified in subsection (b) of this article,
 5 shall be punished as a court-martial may direct.

6 ~~(b) Any person subject to this code who solicits or advises another or~~
 7 ~~others to commit an act of misbehavior before the enemy in violation of ar-~~
 8 ~~ticle 99 of this code or sedition in violation of article 94 of this code~~
 9 ~~shall, if the offense solicited or advised is committed, be punished with~~
 10 ~~the punishment provided for the commission of the offense; but, if the of-~~
 11 ~~fense solicited or advised is not committed, the person shall be punished as~~
 12 ~~a court-martial may direct~~ Soliciting desertion, mutiny, sedition, or mis-
 13 behavior before the enemy. Any person subject to this code who solicits or
 14 advises another to violate article 85, article 94, or article 99:

15 (1) If the offense solicited or advised is attempted or is committed,
 16 shall be punished with the punishment provided for the commission of the
 17 offense; and

18 (2) If the offense solicited or advised is not attempted or committed,
 19 shall be punished as a court-martial may direct.

20 ~~ARTICLE 83. FRAUDULENT ENLISTMENT -- APPOINTMENT -- SEPARATION~~ MALINGERING

21 ~~Any person who:~~ subject to this code who, for the purpose of avoiding work,
 22 duty, or service, feigns illness, physical disablement, mental lapse, or de-
 23 rangement, or who intentionally inflicts self-injury, shall be punished as a
 24 court-martial may direct.

25 ~~(1) Procures his own enlistment or appointment in the state military~~
 26 ~~forces by knowingly false representation or deliberate concealment as to his~~
 27 ~~qualifications for that enlistment or appointment and receives pay or al-~~
 28 ~~lowances thereunder; or~~

29 ~~(2) Procures his own separation from the state military forces by know-~~
 30 ~~ingly false representation or deliberate concealment as to his eligibility~~
 31 ~~for that separation;~~
 32 ~~shall be punished as a court-martial may direct.~~

33 ~~ARTICLE 84. UNLAWFUL ENLISTMENT -- APPOINT-~~
 34 ~~MENT -- SEPARATION~~ BREACH OF MEDICAL QUARANTINE

35 ~~Any person subject to this code who effects an enlistment or appointment in~~
 36 ~~or a separation from the state military forces of any person who is known to~~
 37 ~~him to be ineligible for that enlistment, appointment, or separation because~~
 38 ~~it is prohibited by law, regulation, or order~~ is ordered into medical quaran-
 39 tine by a person authorized to issue such order and who, with knowledge of the
 40 quarantine and the limits of the quarantine, goes beyond those limits before
 41 being released from the quarantine by proper authority shall be punished as a
 42 court-martial may direct.

43 ~~ARTICLE 85. DESERTION~~

44 (a) Any member of the state military forces who:

1 (1) Without authority goes or remains absent from his unit, organi-
2 zation, or place of duty with intent to remain away there from perma-
3 nently;

4 (2) Quits his unit, organization, or place of duty with intent to avoid
5 hazardous duty or to shirk important service; or

6 (3) Without being regularly separated from one of the state military
7 forces enlists or accepts an appointment in the same or another one of
8 the state military forces, or in one of the armed forces of the United
9 States, without fully disclosing the fact that he has not been regularly
10 separated, or enters any foreign armed service except when authorized
11 by the United States;

12 is guilty of desertion.

13 (b) Any commissioned officer of the state military forces who, after
14 tender of his resignation and before notice of its acceptance, quits his post
15 or proper duties without leave and with intent to remain away there from per-
16 manently is guilty of desertion.

17 (c) Any person found guilty of desertion or attempt to desert shall be
18 punished, if the offense is committed in time of war, by confinement of not
19 more than ten (10) years or such other punishment as a court-martial may di-
20 rect, but if the desertion or attempt to desert occurs at any other time, by
21 such punishment as a court-martial may direct.

22 ARTICLE 86. ABSENCE WITHOUT LEAVE

23 Any person subject to this code who, without authority:

24 (1) Fails to go to his appointed place of duty at the time prescribed;

25 (2) Goes from that place; or

26 (3) Absents himself or remains absent from his unit, organization, or
27 place of duty at which he is required to be at the time prescribed;

28 shall be punished as a court-martial may direct.

29 ARTICLE 87. MISSING MOVEMENT

30 Any person subject to this code who through neglect or design misses the
31 movement of a ship, aircraft, or unit with which he is required in the course
32 of duty to move shall be punished as a court-martial may direct.

33 ARTICLE 87a. RESISTANCE, FLIGHT, BREACH OF ARREST, AND ESCAPE

34 Any person subject to this code who resists apprehension, flees from appre-
35 hension, breaks arrest, or escapes from custody or confinement shall be pun-
36 ished as a court-martial may direct.

37 ARTICLE 87b. OFFENSES AGAINST CORRECTIONAL CUSTODY AND RESTRICTION

38 (a) Escape from correctional custody. Any person subject to this code:

39 (1) Who is placed in correctional custody by a person authorized to do
40 so;

41 (2) Who, while in correctional custody, is under physical restraint;
42 and

1 (3) Who escapes from the physical restraint before being released from
 2 the physical restraint by proper authority;
 3 shall be punished as a court-martial may direct.

4 (b) Breach of correctional custody. Any person subject to this code:

5 (1) Who is placed in correctional custody by a person authorized to do
 6 so;

7 (2) Who, while in correctional custody, is under restraint other than
 8 physical restraint; and

9 (3) Who goes beyond the limits of the restraint before being released
 10 from the correctional custody or relieved of the restraint by proper au-
 11 thority;

12 shall be punished as a court-martial may direct.

13 (c) Breach of restriction. Any person subject to this code:

14 (1) Who is ordered to be restricted to certain limits by a person autho-
 15 riized to do so; and

16 (2) Who, with knowledge of the limits of the restriction, goes beyond
 17 those limits before being released by proper authority;

18 shall be punished as a court-martial may direct.

19 ARTICLE 88. CONTEMPT TOWARD OFFICIALS

20 Any commissioned officer who uses contemptuous words against the president,
 21 the vice president, congress, the secretary of defense, the secretary of a
 22 military department, the secretary of homeland security, or the governor or
 23 legislature of the state shall be punished as a court-martial may direct.

24 ARTICLE 89. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER

25 (a) Disrespect. Any person subject to this code who behaves with dis-
 26 respect toward his that person's superior commissioned officer shall be pun-
 27 ished as a court-martial may direct.

28 (b) Assault. Any person subject to this code who strikes that person's
 29 superior commissioned officer or draws or lifts up any weapon or offers any
 30 violence against that officer while the officer is in the execution of the
 31 officer's office shall be punished: if the offense is committed in time of
 32 war, by confinement of not more than ten (10) years or such other punishment
 33 as a court-martial may direct; and, if the offense is committed at any other
 34 time, by such punishment as a court-martial may direct.

35 ARTICLE 90. ASSAULTING OR WILLFULLY DIS-
 36 OBEYING SUPERIOR COMMISSIONED OFFICER

37 Any person subject to this code who:

38 (1) Strikes his superior commissioned officer or draws or lifts up any
 39 weapon or offers any violence against him while he is in the execution of his
 40 office; or

41 (2) Willfully disobeys a lawful command of his superior commissioned
 42 officer;

43 shall be punished, if the offense is committed in time of war, by confinement
 44 of not more than ten (10) years or such other punishment as a court-martial

1 may direct, and if the offense is committed at any other time, by such punish-
2 ment as a court-martial may direct.

3 ARTICLE 91. INSUBORDINATE CONDUCT TOWARD WARRANT OF-
4 FICER, NONCOMMISSIONED OFFICER OR PETTY OFFICER

5 Any warrant officer or enlisted member who:

6 (1) Strikes or assaults a warrant officer, noncommissioned officer, or
7 petty officer, while that officer is in the execution of his office;

8 (2) Willfully disobeys the lawful order of a warrant officer, noncom-
9 missioned officer, or petty officer; or

10 (3) Treats with contempt or is disrespectful in language or deportment
11 toward a warrant officer, noncommissioned officer, or petty officer, while
12 that officer is in the execution of his office;
13 shall be punished as a court-martial may direct.

14 ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

15 Any person subject to this code who:

16 (1) Violates or fails to obey any lawful general order or regulation;

17 (2) Having knowledge of any other lawful order issued by a member of the
18 state military forces, which it is his duty to obey, fails to obey the order;
19 or

20 (3) Is derelict in the performance of his duties;
21 shall be punished as a court-martial may direct.

22 ARTICLE 93. CRUELTY AND MALTREATMENT

23 Any person subject to this code who is guilty of cruelty toward, or oppres-
24 sion or maltreatment of, any person subject to his orders shall be punished
25 as a court-martial may direct.

26 ARTICLE 93a. PROHIBITED ACTIVITY WITH MILITARY RE-
27 CRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST

28 (a) Abuse of training leadership position. Any person subject to this
29 code:

30 (1) Who is an officer or a noncommissioned officer;

31 (2) Who is in a training leadership position with respect to a specially
32 protected junior member of the state military forces; and

33 (3) Who engages in prohibited sexual activity with such specially pro-
34 protected junior member of the state military forces;

35 shall be punished as a court-martial may direct.

36 (b) Abuse of position as military recruiter. Any person subject to this
37 code:

38 (1) Who is a military recruiter and engages in prohibited sexual activ-
39 ity with an applicant for state military service; or

40 (2) Who is a military recruiter and engages in prohibited sexual ac-
41 tivity with a specially protected junior member of the state military
42 forces who is enlisted under a delayed entry program;

1 shall be punished as a court-martial may direct.

2 (c) Consent. Consent is not a defense for any conduct at issue in a
 3 prosecution under this article.

4 (d) Definitions. In this article:

5 (1) "Specially protected junior member of the state military forces"
 6 means:

7 (A) A member of the state military forces who is assigned to, or is
 8 awaiting assignment to, basic training or other initial training,
 9 including a member who is enlisted under a delayed entry program;

10 (B) A member of the state military forces who is a cadet, an of-
 11 ficer candidate, or a student in any other officer qualification
 12 program; and

13 (C) A member of the state military forces in any program that, by
 14 regulation prescribed by the secretary concerned, is identified
 15 as a training program for initial career qualification.

16 (2) "Training leadership position" means, with respect to a specially
 17 protected junior member of the state military forces, any instructor
 18 position or other leadership position in a basic training program,
 19 an officer candidate school, a reserve officers' training corps unit
 20 (ROTC), a training program for entry into the state military forces, or
 21 any program that, by regulation prescribed by the secretary concerned,
 22 is identified as a training program for initial career qualification.

23 (3) "Applicant for state military service" means a person who, under
 24 the regulations prescribed by the secretary concerned, is an applicant
 25 for original enlistment or appointment in the state military forces.

26 (4) "Military recruiter" means a person who, under regulation pre-
 27 scribed by the secretary concerned, has the primary duty to recruit
 28 persons for the state military forces.

29 (5) "Prohibited sexual activity" means, as specified in the regula-
 30 tions prescribed by the governor or his designated representative,
 31 inappropriate physical intimacy under circumstances described in such
 32 regulations.

33 ARTICLE 94. MUTINY OR SEDITION

34 (a) Any person subject to this code who:

35 (1) With intent to usurp or override lawful military authority, re-
 36 fuses, in concert with any other person, to obey orders or otherwise do
 37 his duty or creates any violence or disturbance is guilty of mutiny;

38 (2) With intent to cause the overthrow or destruction of lawful civil
 39 authority, creates, in concert with any other person, revolt, violence,
 40 or other disturbance against that authority is guilty of sedition;

41 (3) Fails to do his utmost to prevent and suppress a mutiny or sedi-
 42 tion being committed in his presence, or fails to take all reasonable
 43 means to inform his superior commissioned officer or commanding officer
 44 of a mutiny or sedition which he knows or has reason to believe is taking
 45 place, is guilty of a failure to suppress or report a mutiny or sedition.

46 (b) A person who is found guilty of attempted mutiny, mutiny, sedition,
 47 or failure to suppress or report a mutiny or sedition shall be punished as a
 48 court-martial may direct.

1 ARTICLE 95. ~~RESISTANCE -- FLIGHT -- BREACH OF AR-~~
2 ~~REST -- ESCAPE~~ OFFENSES BY SENTINEL OR LOOKOUT

3 Any person subject to this code who:

- 4 ~~(1) Resists apprehension;~~
5 ~~(2) Flees from apprehension;~~
6 ~~(3) Breaks arrest; or~~
7 ~~(4) Escapes from custody or confinement;~~

8 ~~shall be punished as a court-martial may direct.~~

9 (a) Drunk or sleeping on post, or leaving post before being relieved.
10 Any sentinel or lookout who is drunk on post, who sleeps on post, or who
11 leaves post before being regularly relieved shall be punished:

12 (1) If the offense is committed in time of war, by confinement of not
13 more than ten (10) years or other punishment as a court-martial may di-
14 rect; and

15 (2) If the offense is committed at any other time, by such punishment as
16 a court-martial may direct.

17 (b) Loitering or wrongfully sitting on post. Any sentinel or lookout
18 who loiters or wrongfully sits down on post shall be punished as a court-mar-
19 ital may direct.

20 ARTICLE 95a. DISRESPECT TOWARD SENTINEL OR LOOKOUT

21 (a) Disrespectful language toward sentinel or lookout. Any person sub-
22 ject to this code who, knowing that another person is a sentinel or lookout,
23 uses wrongful and disrespectful language that is directed toward and within
24 the hearing of the sentinel or lookout who is in the execution of duties as a
25 sentinel or lookout shall be punished as a court-martial may direct.

26 (b) Disrespectful behavior toward sentinel or lookout. Any person sub-
27 ject to this code who, knowing that another person is a sentinel or lookout,
28 behaves in a wrongful and disrespectful manner that is directed toward and
29 within the sight of the sentinel or lookout who is in the execution of duties
30 as a sentinel or lookout shall be punished as a court-martial may direct.

31 ARTICLE 96. RELEASING PRISONER WITHOUT
32 PROPER AUTHORITY -- DRINKING WITH PRISONER

33 (a) Any person subject to this code who, without proper authority, re-
34 leases any prisoner committed to his charge, or who through neglect or design
35 suffers any such prisoner to escape, shall be punished as a court-martial may
36 direct, whether or not the prisoner was committed in strict compliance with
37 law.

38 (b) Drinking with prisoner. Any person subject to this code who unlaw-
39 fully drinks any alcoholic beverage with a prisoner shall be punished as a
40 court-martial may direct.

41 ARTICLE 97. UNLAWFUL DETENTION

1 Any person subject to this code who, except as provided by law or regulation,
 2 apprehends, arrests, or confines any person shall be punished as a court-
 3 martial may direct.

4 ARTICLE 98. ~~NONCOMPLIANCE WITH PROCEDURAL RULES~~ MISCONDUCT AS PRISONER

5 Any person subject to this code who:

6 (1) ~~Is responsible for unnecessary delay in the disposition of any case~~
 7 ~~of a person accused of an offense under this code~~ For the purpose of secur-
 8 ing favorable treatment by his captors, acts without proper authority in a
 9 manner contrary to law, custom, or regulation, to the detriment of others of
 10 whatever nationality held by the enemy as civilian or military prisoners; or

11 (2) ~~Knowingly and intentionally fails to enforce or comply with any~~
 12 ~~provision of this code regulating the proceedings before, during, or after~~
 13 ~~trial of an accused~~ While in a position of authority over such persons mal-
 14 treats them without justifiable cause;

15 shall be punished as a court-martial may direct.

16 ARTICLE 99. MISBEHAVIOR BEFORE THE ENEMY

17 Any person subject to this code who before or in the presence of the enemy:

18 (1) Runs away;

19 (2) Shamefully abandons, surrenders, or delivers up any command, unit,
 20 place, or military property which it is his duty to defend;

21 (3) Through disobedience, neglect, or intentional misconduct endan-
 22 gers the safety of any such command, unit, place, or military property;

23 (4) Casts away his arms or ammunition;

24 (5) Is guilty of cowardly conduct;

25 (6) Quits his place of duty to plunder or pillage;

26 (7) Causes false alarms in any command, unit, or place under control of
 27 the armed forces of the United States or the state military forces;

28 (8) Willfully fails to do his utmost to encounter, engage, capture, or
 29 destroy any enemy troops, combatants, vessels, aircraft, or any other thing,
 30 which it is his duty so to encounter, engage, capture, or destroy; or

31 (9) Does not afford all practicable relief and assistance to any
 32 troops, combatants, vessels, or aircraft of the armed forces belonging to
 33 the United States or its allies, to the state, or to any other state, when
 34 engaged in battle;

35 shall be punished as a court-martial may direct.

36 ARTICLE 100. SUBORDINATE COMPELLING SURRENDER

37 Any person subject to this code who compels or attempts to compel the comman-
 38 der of any of the state military forces of the state, or of any other state,
 39 place, vessel, aircraft, or other military property, or of any body of mem-
 40 bers of the armed forces, to give it up to an enemy or to abandon it, or who
 41 strikes the colors or flag to an enemy without proper authority, shall be
 42 punished as a court-martial may direct.

1 ARTICLE 101. IMPROPER USE OF COUNTERSIGN

2 Any person subject to this code who in time of war discloses the parole or
3 countersign to any person not entitled to receive it or who gives to another,
4 who is entitled to receive and use the parole or countersign, a different pa-
5 role or countersign from that which, to his knowledge, he was authorized and
6 required to give, shall be punished as a court-martial may direct.

7 ARTICLE 102. FORCING A SAFEGUARD

8 Any person subject to this code who forces a safeguard shall be punished as a
9 court-martial may direct.

10 ARTICLE 103. CAPTURED OR ABANDONED PROPERTY

11 (a) All persons subject to this code shall secure all public property
12 taken for the service of the United States or the state and shall give notice
13 and turn over to the proper authority without delay all captured or abandoned
14 property in their possession, custody, or control.

15 (b) Any person subject to this code who:

16 (1) Fails to carry out the duties prescribed in subsection (a) of this
17 article;

18 (2) Buys, sells, trades, or in any way deals in or disposes of taken,
19 captured, or abandoned property, whereby he receives or expects any
20 profit, benefit, or advantage to himself or another directly or indi-
21 rectly connected with himself; or

22 (3) Engages in looting or pillaging;

23 shall be punished as a court-martial may direct.

24 ARTICLE 103a. SPIES -- RESERVED

25 ARTICLE 103b. ESPIONAGE -- RESERVED

26 ARTICLE 1043c. AIDING THE ENEMY

27 Any person subject to this code who:

28 (1) Aids, or attempts to aid, the enemy with arms, ammunition, sup-
29 plies, money, or other things; or

30 (2) Without proper authority, knowingly harbors or protects or gives
31 intelligence to, or communicates or corresponds with or holds any in-
32 tercourse with the enemy, either directly or indirectly;

33 shall be punished as a court-martial may direct.

34 ARTICLE 104. PUBLIC RECORD OFFENSES

35 Any person subject to this code who, willfully and unlawfully:

36 (1) Alters, conceals, removes, mutilates, obliterates, or destroys a
37 public record; or

1 (2) Takes a public record with the intent to alter, conceal, remove, mu-
 2 tilate, obliterate, or destroy the public record;
 3 shall be punished as a court-martial may direct.

4 ARTICLE 104a. FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION

5 Any person who:

6 (1) Procures his own enlistment or appointment in the state military
 7 forces by knowingly false representation or deliberate concealment as to his
 8 qualifications for that enlistment or appointment and receives pay or al-
 9 lowances thereunder; or

10 (2) Procures his own separation from the state military forces by know-
 11 ingly false representation or deliberate concealment as to his eligibility
 12 for that separation;
 13 shall be punished as a court-martial may direct.

14 ARTICLE 104b. UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION

15 Any person subject to this code who effects an enlistment or appointment in
 16 or a separation from the state military forces of any person who is known to
 17 him to be ineligible for that enlistment, appointment, or separation because
 18 it is prohibited by law, regulation, or order shall be punished as a court-
 19 martial may direct.

20 ARTICLE 105. MISCONDUCT AS PRISONER RESERVED

21 Any person subject to this code who, while in the hands of the enemy in time of
 22 war:

23 (1) For the purpose of securing favorable treatment by his captors acts
 24 without proper authority in a manner contrary to law, custom, or regula-
 25 tion, to the detriment of others of whatever nationality held by the enemy as
 26 civilian or military prisoners; or

27 (2) While in a position of authority over such persons maltreats them
 28 without justifiable cause;
 29 shall be punished as a court-martial may direct.

30 ARTICLE 105a. FALSE OR UNAUTHORIZED PASS OFFENSES

31 (1) Wrongful making, altering, counterfeiting, tampering. Any person
 32 subject to this code who, wrongfully and falsely, makes, alters, counter-
 33 feits, or tampers with a military or official pass, permit, discharge cer-
 34 tificate, or identification card shall be punished as a court-martial may
 35 direct.

36 (2) Wrongful sale, etc. Any person subject to this code who wrongfully
 37 sells, gives, lends, or disposes of a false or unauthorized military or of-
 38 ficial pass, permit, discharge certificate, or identification card, know-
 39 ing that the pass, permit, discharge certificate, or identification card is
 40 false or unauthorized, shall be punished as a court-martial may direct.

41 (3) Wrongful use or possession. Any person subject to this code who
 42 wrongfully uses or possesses a false or unauthorized military or official

1 pass, permit, discharge certificate, or identification card, knowing that
 2 the pass, permit, discharge certificate, or identification card is false or
 3 unauthorized, shall be punished as a court-martial may direct.

4 ARTICLE 106. RESERVED IMPERSONATION OF AN OFFICER, NON-
 5 COMMISSIONED OR PETTY OFFICER, OR AGENT OR OFFICIAL

6 (1) In general. Any person subject to this code who, wrongfully and
 7 willfully, impersonates:

- 8 (a) An officer, a noncommissioned officer, or a petty officer;
 9 (b) An agent of superior authority of one of the armed forces; or
 10 (c) An officer of a government;

11 shall be punished as a court-martial may direct.

12 (2) Impersonation with intent to defraud. Any person subject to this
 13 code who, wrongfully and willfully and with intent to defraud, impersonates
 14 any person referred to in subsection (1) of this article shall be punished as
 15 a court-martial may direct.

16 (3) Impersonation of government official without intent to defraud.
 17 Any person subject to this code who, wrongfully and willfully and without
 18 intent to defraud, impersonates an official of a government by committing
 19 an act that exercises or asserts the authority of the office that the person
 20 claims to have shall be punished as a court-martial may direct.

21 ARTICLE 106a. RESERVED WEARING UNAUTHORIZED INSIGNIA,
 22 DECORATION, BADGE, RIBBON, DEVICE, OR LAPEL BUTTON

23 Any person subject to this code:

24 (1) Who is not authorized to wear an insignia, decoration, badge, rib-
 25 bon, device, or lapel button; and

26 (2) Who wrongfully wears such insignia, decoration, badge, ribbon, de-
 27 vice, or lapel button upon the person's uniform or civilian clothing;
 28 shall be punished as a court-martial may direct.

29 ARTICLE 107. FALSE OFFICIAL STATEMENTS

30 Any person subject to this code who, with intent to deceive, signs any false
 31 record, return, regulation, order, or other official document made in the
 32 line of duty, knowing it to be false, or makes any other false official state-
 33 ment made in the line of duty, knowing it to be false, shall be punished as a
 34 court-martial may direct.

35 (1) False official statements. Any person subject to this code who,
 36 with intent to deceive:

37 (a) Signs any false record, return, regulation, order, or other offi-
 38 cial document in the line of duty, knowing it to be false; or

39 (b) Makes any other false official statement in the line of duty, know-
 40 ing it to be false;

41 shall be punished as a court-martial may direct.

42 (2) False swearing. Any person subject to this code:

43 (a) Who is on military orders;

44 (b) Who takes an oath that:

- 1 (i) Is administered in a manner in which such oath is required or
 2 authorized by law; and
 3 (ii) Is administered by a person with authority to do so; and
 4 (c) Who, upon such oath, makes or subscribes to a statement, if the
 5 statement is false and at the time of taking the oath the person does not
 6 believe the statement to be true, shall be punished as a court-martial
 7 may direct.

8 ARTICLE 107a. PAROLE VIOLATION

9 Any person subject to this code:

- 10 (1) Who, having been a prisoner as the result of a court-martial convic-
 11 tion or other criminal proceeding, is on parole with conditions; and
 12 (2) Who violates the conditions of parole;
 13 shall be punished as a court-martial may direct.

14 ARTICLE 108. MILITARY PROPERTY -- LOSS, DAM-
 15 AGE, DESTRUCTION OR WRONGFUL DISPOSITION

16 Any person subject to this code who, without proper authority:

- 17 (1) Sells or otherwise disposes of;
 18 (2) Willfully or through neglect damages, destroys, or loses; or
 19 (3) Willfully or through neglect suffers to be lost, damaged, de-
 20 stroyed, sold, or wrongfully disposed of;
 21 any military property of the United States or of any state shall be punished
 22 as a court-martial may direct.

23 ARTICLE 108a. CAPTURED OR ABANDONED PROPERTY

- 24 (1) All persons subject to this code shall secure all public property
 25 taken for the service of the United States, or the state, and shall give
 26 notice and turn over to the proper authority without delay all captured or
 27 abandoned property in their possession, custody, or control.
 28 (2) Any person subject to this code who:
 29 (a) Fails to carry out the duties prescribed in subsection (1) of this
 30 article;
 31 (b) Buys, sells, trades, or in any way deals in or disposes of taken,
 32 captured, or abandoned property, whereby he receives or expects any
 33 profit, benefit, or advantage to himself or another directly or indi-
 34 rectly connected with himself; or
 35 (c) Engages in looting or pillaging;
 36 shall be punished as a court-martial may direct.

37 ARTICLE 109. PROPERTY OTHER THAN MILITARY
 38 PROPERTY -- WASTE, SPOILAGE OR DESTRUCTION

39 Any person subject to this code who willfully or recklessly wastes, spoils,
 40 or otherwise willfully and wrongfully destroys or damages any property other
 41 than military property of the United States or of any state shall be punished
 42 as a court-martial may direct.

1 ARTICLE 109a. MAIL MATTER -- WRONGFUL TAKING, OPENING

2 (1) Taking. Any person subject to this code who, with the intent to ob-
 3 struct the correspondence of, or to pry into the business or secrets of, any
 4 person or organization, while on military duty, wrongfully takes mail matter
 5 before the mail matter is delivered to or received by the addressee shall be
 6 punished as a court-martial may direct.

7 (2) Opening, secreting, destroying, stealing. Any person subject to
 8 this code who, while on military duty, wrongfully opens, secretes, destroys,
 9 or steals mail matter before the mail matter is delivered to or received by
 10 the addressee shall be punished as a court-martial may direct.

11 ARTICLE 110. IMPROPER HAZARDING OF VESSEL OR AIRCRAFT

12 (a) Willful and wrongful hazarding. Any person subject to this code who
 13 willfully and wrongfully hazards or suffers to be hazarded any vessel or air-
 14 craft of the armed forces of the United States or any state military forces
 15 shall suffer such punishment as a court-martial may direct.

16 (b) Negligent hazarding. Any person subject to this code who negli-
 17 gently hazards or suffers to be hazarded any vessel or aircraft of the armed
 18 forces of the United States or any state military forces shall be punished as
 19 a court-martial may direct.

20 ARTICLE 111. ~~RESERVED~~ LEAVING SCENE OF A VEHICLE ACCIDENT

21 (a) Driver. Any person on state military orders:

22 (1) Who is the driver of a vehicle that is involved in an accident that
 23 results in personal injury or property damage; and

24 (2) Who wrongfully leaves the scene of the accident;

25 (3) Who, without providing assistance to an injured person; or

26 (4) Who, without providing personal identification to others involved
 27 in the accident or to appropriate authorities;

28 shall be punished as a court-martial may direct.

29 (b) Senior passenger. Any person subject to this code:

30 (1) Who is passenger in a vehicle that is involved in an accident that
 31 results in personal injury or property damage;

32 (2) Who is the superior commissioned or noncommissioned officer of the
 33 driver of the vehicle or is the commander of the vehicle; and

34 (3) Who wrongfully and unlawfully orders, causes, or permits the driver
 35 to leave the scene of the accident;

36 (i) Without providing assistance to an injured person; or

37 (ii) Without providing personal identification to others in-
 38 olved in the accident or to appropriate authorities;

39 shall be punished as a court-martial may direct.

40 ARTICLE 112. ~~DRUNK ON DUTY~~ DRUNKENNESS AND OTHER INCAPACITATION OFFENSES

41 Any person subject to this code other than a sentinel or lookout who is found
 42 drunk on duty shall be punished as a court-martial may direct.

1 (1) Drunk on duty. Any person subject to this code who is drunk on duty
 2 shall be punished as a court-martial may direct.

3 (2) Incapacitation for duty from drunkenness or drug use. Any person
 4 subject to this code who, as a result of indulgence in any alcoholic bever-
 5 age or any drug, is incapacitated for the proper performance of duty shall be
 6 punished as a court-martial may direct.

7 (3) Drunk prisoner. Any person subject to this code who is a prisoner
 8 and, while in such status, is drunk shall be punished as a court-martial may
 9 direct.

10 (4) Definitions. "Drunk" means any intoxication sufficient to impair
 11 the rational and full exercise of the mental or physical faculties, or an al-
 12 cohol concentration of 0.08 or more as shown by an analysis of the person's
 13 blood, breath, or urine subject to the testing standards within title 18,
 14 Idaho Code. "Incapacitated" means unfit or unable to perform duties prop-
 15 erly as a result of prior alcohol consumption.

16 (5) Testing. Commanders may order the person to provide a breath,
 17 blood, or urine sample if the commander has probable cause to believe that
 18 the person is drunk or incapacitated while on duty. Testing under this ar-
 19 ticle will be performed by a peace officer, hospital, or health care profes-
 20 sional in the jurisdiction in which a violation of this article has occurred.
 21 No military member, peace officer, hospital, or health care professional, as
 22 defined in title 18, Idaho Code, shall incur any civil or criminal liability
 23 for any act arising out of administering an evidentiary test for alcohol
 24 concentration or for the presence of drugs or other intoxicating substances
 25 at the request of a commander. In the event a person ordered to provide a
 26 breath, blood, or urine sample refuses to do so, that person may be punished
 27 for violating a lawful order as a court-martial may direct.

28 ARTICLE 112a. WRONGFUL USE, POSSESSION, ETC., OF CONTROLLED SUBSTANCES

29 (a) Any person subject to this code who wrongfully uses, possesses,
 30 manufactures, distributes, imports into the customs territory of the United
 31 States, exports from the United States, or introduces into an installation,
 32 vessel, vehicle, or aircraft used by or under the control of the armed forces
 33 of the United States or of any state military forces a substance described
 34 in subsection (b) of this article shall be punished as a court-martial may
 35 direct.

36 (b) The substances referred to in subsection (a) of this article are the
 37 following:

38 (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
 39 methamphetamine, phencyclidine, barbituric acid, and marijuana and any
 40 compound or derivative of any such substance.

41 (2) Any substance not specified in paragraph (1) of this subsection
 42 that is listed on a schedule of controlled substances prescribed by the
 43 president for the purposes of the uniform code of military justice of
 44 the armed forces of the United States, 10 U.S.C. ~~section~~ 801 et seq.

45 (3) Any other substance not specified in paragraph (1) of this subsec-
 46 tion or contained on a list prescribed by the president under paragraph
 47 (2) of this subsection that is listed in schedules I through V of article
 48 202 of the controlled substances act, 21 U.S.C. ~~section~~ 812.

1 ARTICLE 113. MISBEHAVIOR OF SENTINEL RESERVED

2 ~~Any sentinel or lookout who is found drunk or sleeping upon his post or leaves~~
 3 ~~it before being regularly relieved shall be punished, if the offense is com-~~
 4 ~~mitted in time of war, by confinement of not more than ten (10) years or other~~
 5 ~~punishment as a court-martial may direct, but if the offense is committed at~~
 6 ~~any other time, by such punishment as a court-martial may direct.~~

7 ARTICLE 114. DUELING ENDANGERMENT OFFENSES

8 ~~Any person subject to this code who fights or promotes, or is concerned in or~~
 9 ~~connives at fighting a duel, or who, having knowledge of a challenge sent or~~
 10 ~~about to be sent, fails to report the fact promptly to the proper authority,~~
 11 ~~shall be punished as a court-martial may direct.~~

12 (a) Reckless endangerment. Any person subject to this code who engages
 13 in conduct that:

14 (1) Is wrongful and reckless or is wanton; and

15 (2) Is likely to produce death or grievous bodily harm to another per-
 16 son;

17 ~~shall be punished as a court-martial may direct.~~

18 (b) Dueling. Any person subject to this code:

19 (1) Who fights or promotes, or is concerned in or connives at fighting,
 20 a duel; or

21 (2) Who, having knowledge of a challenge sent or about to be sent, fails
 22 to report the fact promptly to the proper authority;

23 ~~shall be punished as a court-martial may direct.~~

24 (c) Firearm discharge, endangering human life. Any person subject to
 25 this code who negligently discharges a firearm under circumstances such as
 26 to endanger human life shall be punished as a court-martial may direct.

27 (d) Carrying concealed weapon. Any person subject to this chapter
 28 who, while on military orders, unlawfully or in violation of the adjutant
 29 general's policy or regulation, carries a dangerous weapon concealed on or
 30 about his person shall be punished as a court-martial may direct.

31 ARTICLE 115. MALINGERING COMMUNICATING THREATS

32 ~~Any person subject to this code who for the purpose of avoiding work, duty, or~~
 33 ~~service:~~

34 (1) Feigns illness, physical disablement, mental lapse, or derange-
 35 ment; or

36 (2) Intentionally inflicts self-injury;

37 ~~shall be punished as a court-martial may direct.~~ Communicating threats gener-
 38 ally. Any person subject to this code who wrongfully communicates a threat
 39 to injure the person, property, or reputation of another shall be punished as
 40 a court-martial may direct.

41 (2) Communicating threat to use explosive, etc. Any person subject to
 42 this code who wrongfully communicates a threat to injure the person or prop-
 43 erty of another by use of:

44 (a) An explosive;

45 (b) A weapon of mass destruction;

1 (3) Knowingly causes the transmission of a program, information, code,
 2 or command and, as a result of such conduct, intentionally causes damage
 3 without authorization to a government computer;
 4 shall be punished as a court-martial may direct.

5 (b) Definition. In this article, the term "government computer" means
 6 a computer owned or operated by or on behalf of the United States government
 7 or state.

8 ARTICLE 123a. RESERVED

9 ARTICLE 124. RESERVED

10 ARTICLE 124a. BRIBERY

11 (a) Asking for, accepting, or receiving a thing of value. Any person
 12 subject to this code:

13 (1) Who occupies an official position or who has official duties with
 14 the state military forces; and

15 (2) Who wrongfully asks, accepts, or receives a thing of value with
 16 the intent to have the person's decisions or actions influenced with
 17 respect to an official matter in which the United States or the state is
 18 interested;

19 shall be punished as a court-martial may direct.

20 (b) Promising, offering, or giving a thing of value. Any person subject
 21 to this code who wrongfully promises, offers, or gives a thing of value to
 22 another person who occupies an official position or who has official duties
 23 with the state military forces, with the intent to influence the decision
 24 or action of another person with respect to an official matter in which the
 25 United States or the state is interested, shall be punished as a court-mar-
 26 tial may direct.

27 ARTICLE 124b. GRAFT

28 (a) Asking for, accepting, or receiving a thing of value. Any person
 29 subject to this code:

30 (1) Who occupies an official position or who has official duties with
 31 the state military forces; and

32 (2) Who wrongfully asks, accepts, or receives a thing of value as com-
 33 penensation for or in recognition of services rendered or to be rendered
 34 by the person with respect to an official matter in which the United
 35 States or the state is interested;

36 shall be punished as a court-martial may direct.

37 (b) Promising, offering, or giving a thing of value. Any person sub-
 38 ject to this code who wrongfully promises, offers, or gives a thing of value
 39 to another person who occupies an official position or who has official du-
 40 ties with the state military forces, as compensation for or in recognition of
 41 services rendered or to be rendered by the other person with respect to an of-
 42 ficial matter in which the United States or the state is interested, shall be
 43 punished as a court-martial may direct.

1 ARTICLE 125. RESERVED
 2 ARTICLE 126. RESERVED
 3 ARTICLE 127. RESERVED
 4 ARTICLE 128. RESERVED
 5 ARTICLE 129. RESERVED
 6 ARTICLE 130. RESERVED
 7 ARTICLE 131. RESERVED

8 ARTICLE 131b. OBSTRUCTING JUSTICE

9 Any person subject to this code who engages in conduct in the case of a cer-
 10 tain person against whom the accused had reason to believe there were or
 11 would be criminal or disciplinary proceedings pending pursuant to this code,
 12 with intent to influence, impede, or otherwise obstruct the due administra-
 13 tion of justice, shall be punished as a court-martial may direct.

14 ARTICLE 131c. MISPRISION OF A SERIOUS OFFENSE

15 In general. Any person subject to this code:

16 (1) Who knows that another person has committed a serious offense; and
 17 (2) Who wrongfully conceals the commission of the offense and fails to
 18 make the commission of the offense known to civilian or military authorities
 19 as soon as possible;
 20 shall be punished as a court-martial may direct.

21 ARTICLE 131d. WRONGFUL REFUSAL TO TESTIFY

22 Any person subject to this code who, in the presence of a court-martial, a
 23 board of officers, a military commission, a court of inquiry, a prelimi-
 24 nary hearing, or an officer taking a deposition of or for the state military
 25 forces or for the United States, wrongfully refuses to qualify as a witness
 26 or to answer a question after having been directed to do so by the person
 27 presiding shall be punished as a court-martial may direct.

28 ARTICLE 131e. PREVENTION OF AUTHORIZED SEIZURE OF PROPERTY

29 Any person subject to this code who, knowing that one (1) or more persons au-
 30 thorized to make searches and seizures are seizing, are about to seize, or
 31 are endeavoring to seize property, destroys, removes, or otherwise disposes
 32 of the property with intent to prevent the seizure thereof shall be punished
 33 as a court-martial may direct.

1 ARTICLE 131f. NONCOMPLIANCE WITH PROCEDURAL RULES

2 Any person subject to this code who:

3 (1) Is responsible for unnecessary delay in the disposition of any case
 4 of a person accused of an offense under this chapter; or

5 (2) Knowingly and intentionally fails to enforce or comply with any
 6 provision of this chapter regulating the proceedings before, during, or
 7 after trial of an accused;

8 shall be punished as a court-martial may direct.

9 ARTICLE 131g. WRONGFUL INTERFERENCE WITH ADVERSE ADMINISTRATIVE PROCEEDING

10 Any person subject to this code who, having reason to believe that an adverse
 11 administrative proceeding is pending against any person subject to this
 12 code, wrongfully acts with the intent:

13 (1) To influence, impede, or obstruct the conduct of the proceeding; or

14 (2) Otherwise to obstruct the due administration of justice;

15 shall be punished as a court-martial may direct.

16 ARTICLE 132. FRAUDS AGAINST THE GOVERNMENT RETALIATION

17 Any person subject to this code who:

18 ~~(1) Knowing it to be false or fraudulent:~~

19 ~~(A) Makes any claim against the United States, the state, or any officer~~
 20 ~~thereof; or~~

21 ~~(B) Presents to any person in the civil or military service thereof, for~~
 22 ~~approval or payment, any claim against the United States, the state, or~~
 23 ~~any officer thereof;~~

24 ~~(2) For the purpose of obtaining the approval, allowance, or payment of~~
 25 ~~any claim against the United States, the state, or any officer thereof:~~

26 ~~(A) Makes or uses any writing or other paper knowing it to contain any~~
 27 ~~false or fraudulent statements;~~

28 ~~(B) Makes any oath, affirmation or certification to any fact or to any~~
 29 ~~writing or other paper knowing the oath, affirmation or certification~~
 30 ~~to be false; or~~

31 ~~(C) Forges or counterfeits any signature upon any writing or other~~
 32 ~~paper, or uses any such signature knowing it to be forged or counter-~~
 33 ~~feited;~~

34 ~~(3) Having charge, possession, custody, or control of any money or~~
 35 ~~other property of the United States or the state, furnished or intended for~~
 36 ~~the armed forces of the United States or the state military forces, knowingly~~
 37 ~~delivers to any person having authority to receive it, any amount thereof~~
 38 ~~less than that for which he receives a certificate or receipt; or~~

39 ~~(4) Being authorized to make or deliver any paper certifying the~~
 40 ~~receipt of any property of the United States or the state, furnished or~~
 41 ~~intended for the armed forces of the United States or the state military~~
 42 ~~forces, makes or delivers to any person such writing without having full~~
 43 ~~knowledge of the truth of the statements therein contained and with intent to~~
 44 ~~defraud the United States or the state;~~

45 ~~shall, upon conviction, be punished as a court-martial may direct.~~

1 (a) Any person subject to this code who, with the intent to retaliate
 2 against any person for reporting or planning to report a criminal offense,
 3 or making or planning to make a protected communication, or with the intent
 4 to discourage any person from reporting a criminal offense or making or plan-
 5 ning to make a protected communication:

6 (1) Wrongfully takes or threatens to take an adverse personnel action
 7 against any person; or

8 (2) Wrongfully withholds or threatens to withhold a favorable person-
 9 nel action with respect to any person;

10 shall be punished as a court-martial may direct.

11 (b) Definitions. In this article:

12 (1) "Protected communication" means the following:

13 (i) A lawful communication to a member of congress or an inspector
 14 general; or

15 (ii) A communication to a covered individual or organization
 16 in which a member of the armed forces complains of, or discloses
 17 information that the member reasonably believes constitutes evi-
 18 dence of, any of the following:

19 (A) A violation of law or regulation, including a law or reg-
 20 ulation prohibiting sexual harassment or unlawful discrimi-
 21 nation; or

22 (B) Gross mismanagement, a gross waste of funds, an abuse
 23 of authority, or a substantial and specific danger to public
 24 health or safety.

25 (2) "Inspector general" has the meaning given that term in 10 U.S.C.
 26 1034.

27 (3) "Covered individual or organization" means any recipient of a
 28 communication specified in clauses (i) through (vi) of 10 U.S.C.
 29 1034(b) (1) (B) .

30 ARTICLE 133. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

31 Any commissioned officer, cadet, candidate, or midshipman who is convicted
 32 of conduct unbecoming an officer and a gentleman shall be punished as a
 33 court-martial may direct.

34 ARTICLE 134. GENERAL ARTICLE

35 Though not specifically mentioned in this code, all disorders and neglects
 36 to the prejudice of good order and discipline in the state military forces
 37 and all conduct of a nature to bring discredit upon the state military forces
 38 shall be taken cognizance of by a court-martial and punished at the discre-
 39 tion of a military court. Offenses which may be punished under this ~~section~~
 40 article include, but are not limited to, those offenses set out in the man-
 41 ual for courts-martial as punishable under this article of the uniform code
 42 of military justice, those offenses that violate the criminal laws of the
 43 state where the offense occurred, and those offenses that violate the crimi-
 44 nal laws of the United States. However, where a crime constitutes an offense
 45 that violates both this code and the criminal laws of the state where the of-

1 fense occurs or criminal laws of the United States, jurisdiction of the mili-
2 tary court must be determined in accordance with article 2 (b) of this code.

3 PART XI. MISCELLANEOUS PROVISIONS

4 ARTICLE 135. COURTS OF INQUIRY

5 (a) Courts of inquiry to investigate any matter of concern to the state
6 military forces may be convened by any person authorized to convene a gen-
7 eral court-martial, whether or not the persons involved have requested such
8 an inquiry.

9 (b) A court of inquiry consists of three (3) or more commissioned offi-
10 cers. For each court of inquiry, the convening authority shall also appoint
11 counsel for the court.

12 (c) Any person subject to this code whose conduct is subject to inquiry
13 shall be designated as a party. Any person subject to this code who has a di-
14 rect interest in the subject of inquiry has the right to be designated as a
15 party upon request to the court. Any person designated as a party shall be
16 given due notice and has the right to be present, to be represented by coun-
17 sel, to cross-examine witnesses, and to introduce evidence.

18 (d) Members of a court of inquiry may be challenged by a party, but only
19 for cause stated to the court.

20 (e) The members, counsel, the reporter, and interpreters of courts of
21 inquiry shall take an oath to faithfully perform their duties.

22 (f) Witnesses may be summoned to appear and testify and be examined be-
23 fore courts of inquiry, as provided for courts-martial.

24 (g) Courts of inquiry shall make findings of fact but may not express
25 opinions or make recommendations unless required to do so by the convening
26 authority.

27 (h) Each court of inquiry shall keep a record of its proceedings, which
28 shall be authenticated by the signatures of the president and counsel for
29 the court and forwarded to the convening authority. If the record cannot
30 be authenticated by the president, it shall be signed by a member in lieu of
31 the president. If the record cannot be authenticated by the counsel for the
32 court, it shall be signed by a member in lieu of the counsel.

33 ARTICLE 136. AUTHORITY TO ADMINISTER OATHS AND TO ACT AS NOTARY

34 (a) The following persons may administer oaths for the purposes of mil-
35 itary administration, including military justice:

36 (1) All judge advocates.

37 (2) All summary courts-martial.

38 (3) All adjutants, assistant adjutants, acting adjutants, and person-
39 nel adjutants.

40 (4) All commanding officers of the naval militia.

41 (5) All other persons designated by regulations of the armed forces of
42 the United States or by statute.

43 (b) The following persons may administer oaths necessary in the perfor-
44 mance of their duties:

1 (1) The president, military judge, and trial counsel for all general
2 and special courts-martial.

3 (2) The president and the counsel for the court of any court of inquiry.

4 (3) All officers designated to take a deposition.

5 (4) All persons detailed to conduct an investigation.

6 (5) All recruiting officers.

7 (6) All other persons designated by regulations of the armed forces of
8 the United States or by statute.

9 (c) The signature without seal of any such person, together with the ti-
10 tle of his office, is prima facie evidence of the person's authority.

11 ARTICLE 137. ARTICLES TO BE EXPLAINED

12 (a) The articles of this code specified in subsection (c) of this arti-
13 cle shall be carefully explained to each enlisted member at the time of, or
14 within thirty (30) days after, the member's initial entrance into a duty sta-
15 tus with the state military forces.

16 (b) Such articles shall be explained again:

17 (1) After the member has completed basic or recruit training; and

18 (2) At the time when the member reenlists.

19 (c) This subsection applies with respect to articles 2, 3, 7 through 15,
20 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code.

21 (d) The text of the code and of the regulations prescribed under such
22 code shall be made available to a member of the state military forces, upon
23 request by the member, for the member's personal examination.

24 ARTICLE 138. COMPLAINTS OF WRONGS

25 Any member of the state military forces who believes himself wronged by a
26 commanding officer, and who, upon due application to that commanding offi-
27 cer, is refused redress may complain to any superior commissioned officer,
28 who shall forward the complaint to the officer exercising general court-mar-
29 tial jurisdiction over the officer against whom it is made. The officer
30 exercising general court-martial jurisdiction shall examine into the com-
31 plaint and take proper measures for redressing the wrong complained of, and
32 shall, as soon as possible, send to the adjutant general a true statement of
33 that complaint, with the proceedings had thereon.

34 ARTICLE 139. REDRESS OF INJURIES TO PROPERTY

35 (a) Whenever complaint is made to any commanding officer that willful
36 damage has been done to the property of any person or that the person's prop-
37 erty has been wrongfully taken by members of the state military forces, that
38 officer may, under such regulations prescribed, convene a board to investi-
39 gate the complaint. The board shall consist of from one (1) to three (3) com-
40 missioned officers and, for the purpose of that investigation, it has power
41 to summon witnesses and examine them upon oath, to receive depositions or
42 other documentary evidence, and to assess the damages sustained against the
43 responsible parties. The assessment of damages made by the board is subject
44 to the approval of the commanding officer, and in the amount approved by that

1 officer shall be charged against the pay of the offenders. The order of the
2 commanding officer directing charges herein authorized is conclusive on any
3 disbursing officer for payment to the injured parties of the damages so as-
4 sessed and approved.

5 (b) If the offenders cannot be ascertained, but the organization or
6 detachment to which they belong is known, charges totaling the amount of
7 damages assessed and approved may be made in such proportion as may be con-
8 sidered just upon the individual members thereof who are shown to have been
9 present at the scene at the time the damages complained of were inflicted, as
10 determined by the approved findings of the board.

11 ARTICLE 140. DELEGATION BY THE GOVERNOR

12 The governor may delegate any authority vested in the governor under this
13 code and provide for the sub-delegation of any such authority, except the
14 power given the governor by article 22 of this code.

15 ARTICLE 141. PAYMENT OF FEES, COSTS AND EXPENSES

16 The fees and authorized travel expenses of all witnesses, experts, victims,
17 court reporters, and interpreters, fees for the service of process, the
18 costs of collection, apprehension, detention and confinement, and all other
19 necessary expenses of prosecution and the administration of military jus-
20 tice, to include courts-martial and nonjudicial punishment, not otherwise
21 payable by any other source, shall be paid out of the military division sup-
22 port fund as established in section 46-806, Idaho Code.

23 ARTICLE 142. PAYMENT OF FINES AND DISPOSITION THEREOF

24 (a) Fines imposed by a military court or through imposition of nonjudi-
25 cial punishment may be paid to the state and delivered to the court or impos-
26 ing officer or to a person executing their process. Fines may be collected in
27 the following manner:

28 (1) By cash or money order;

29 (2) By retention of any pay or allowances due or to become due the person
30 fined from any state or the United States;

31 (3) By garnishment or levy, together with costs, on the wages, goods,
32 and chattels of a person delinquent in paying a fine, as provided by law.

33 (b) Any sum so received or retained shall be deposited in the military
34 division support fund as established in section 46-806, Idaho Code, or to
35 whomever the court so directs.

36 ARTICLE 143. UNIFORMITY OF INTERPRETATION

37 This code shall be so construed as to effectuate its general purpose to make
38 it uniform, so far as practical, with the uniform code of military justice,
39 10 U.S.C. chapter 47.

40 ARTICLE 144. IMMUNITY FOR ACTION OF MILITARY COURTS

1 All persons acting under the provisions of this code, whether as a member of
2 the military or as a civilian, shall be immune from any personal liability
3 for any of the acts or omissions which they did or failed to do as part of
4 their duties under this code.

5 ARTICLE 145. SEVERABILITY

6 The provisions of this code are hereby declared to be severable and if any
7 provision of this code or the application of such provision to any person or
8 circumstance is declared invalid for any reason, such declaration shall not
9 affect the validity of the remaining portions of this code.

10 ARTICLE 146. SHORT TITLE

11 This act may be cited as the "~~Uniform State~~ Idaho Code of Military Justice"
12 (USICMJ).

13 ARTICLE 147. TIME OF TAKING EFFECT

14 This act takes effect July 1, 20159.

15 ~~ARTICLE 148. TIME OF TAKING EFFECT~~

16 ~~Upon enactment and the effective date, this law supersedes all existing~~
17 ~~statutes, ordinances, directives, rules, regulations, orders and other~~
18 ~~laws in the state covered by the subject matter of this law, and all such~~
19 ~~statutes, ordinances, directives, rules, regulations, orders and other laws~~
20 ~~are hereby repealed.~~