

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 23

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 supreme court:

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 supreme court for a writ of mandamus to
23 require the preliminary hearing officer or the court-martial to comply
24 with the provisions of this article.

25 (2) A petition for a writ of mandamus described in this subsection shall
26 be forwarded directly to the Idaho supreme court by such means as may
27 be prescribed by the governor or his designee. To the extent practi-
28 cable, a petition for a writ of mandamus described in this subsection
29 shall have priority over all other proceedings before the Idaho supreme
30 court.

31 (3) Paragraph (1) of this subsection applies with respect to the pro-
32 tections afforded by the following:

33 (A) The provisions of this article;

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

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

38 (D) Military rule of evidence 615, relating to the exclusion of
39 witnesses.

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

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

1 PART II. APPREHENSION AND RESTRAINT

2 ARTICLE 7. APPREHENSION

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

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

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

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

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

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

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

29 ARTICLE 9. IMPOSITION OF RESTRAINT

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

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

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

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

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

6 ARTICLE 10. RESTRAINT OF PERSONS CHARGED WITH OFFENSES

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

13 (a) In general.

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

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

20 (b) Notification to accused and related procedures.

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

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

25 (B) To try the person or to dismiss the charges and release the
26 person.

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

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

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

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

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

1 name of the prisoner, the offense charged against the prisoner, and the name
2 of the person who ordered or authorized the commitment.

3 ARTICLE 12. CONFINEMENT WITH ENEMY PRISONERS PROHIBITED

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

8 ARTICLE 13. PUNISHMENT PROHIBITED BEFORE TRIAL

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

14 ARTICLE 14. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES

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

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

25 PART III. NONJUDICIAL PUNISHMENT

26 ARTICLE 15. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

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

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

- 35 (1) An admonition;
36 (2) A reprimand;
37 (3) The withholding of privileges for not more than six (6) months;
38 (4) The forfeiture of pay of not more than seven (7) days' pay;
39 (5) A fine of not more than seven (7) days' pay;
40 (6) A reduction to the next inferior pay grade, if the grade from which
41 demoted is within the promotion authority of the officer imposing the

1 reduction or any officer subordinate to the one who imposes the reduc-
2 tion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 (3) Mitigate extra duties to restriction.

1 The mitigated punishment shall not be for a greater period than the punish-
 2 ment mitigated. When mitigating reduction in grade to forfeiture of pay, the
 3 amount of the forfeiture shall not be greater than the amount that could have
 4 been imposed initially under this article by the officer who imposed the pun-
 5 ishment mitigated.

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

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

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

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

31 PART IV. COURT-MARTIAL JURISDICTION

32 ARTICLE 16. COURTS-MARTIAL CLASSIFIED

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

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

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

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

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

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

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

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

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

1 ARTICLE 17. JURISDICTION OF COURTS-MARTIAL IN GENERAL

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

6 ARTICLE 18. JURISDICTION OF GENERAL COURTS-MARTIAL

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

11 ARTICLE 19. JURISDICTION OF SPECIAL COURTS-MARTIAL

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

19 ARTICLE 20. JURISDICTION OF SUMMARY COURTS-MARTIAL

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

24 (b) No person in the rank of E-7 or above may be brought to trial before
25 a summary court-martial if that person objects thereto. If objection to
26 trial by summary court-martial is made by an accused in the rank of E-7 or
27 above, trial by special or general court-martial may be ordered, as may be
28 appropriate. Members in the rank of E-6 and below do not have the right to
29 reject trial before a summary court-martial. Summary courts-martial may,
30 under such limitations as the governor may prescribe, adjudge any punishment
31 not forbidden by this code except dismissal, dishonorable or bad-conduct
32 discharge, confinement for more than one (1) month, restriction to specified
33 limits for more than two (2) months, or forfeiture of more than two-thirds
34 (2/3) of one (1) month's pay.

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

37 ARTICLE 21. RESERVED

38 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

39 ARTICLE 22. WHO MAY CONVENE GENERAL COURTS-MARTIAL

- 1 (a) General courts-martial may be convened by:
2 (1) The governor;
3 (2) The adjutant general;
4 (3) The commanding officer of a force of the state military forces;
5 (4) The commanding officer of a division or a separate brigade; or
6 (5) The commanding officer of a separate wing.
7 (b) If any such commanding officer is an accuser, the court shall be
8 convened by superior competent authority and may in any case be convened by
9 such superior authority if considered desirable by such authority.

10 ARTICLE 23. WHO MAY CONVENE SPECIAL COURTS-MARTIAL

- 11 (a) Special courts-martial may be convened by:
12 (1) Any person who may convene a general court-martial;
13 (2) The commanding officer of a garrison, fort, post, camp, station,
14 air national guard base, or naval base or station;
15 (3) The commanding officer of a brigade, regiment, detached battalion,
16 or corresponding unit of the army;
17 (4) The commanding officer of a wing, group, separate squadron, or cor-
18 responding unit of the air force; or
19 (5) The commanding officer or officer in charge of any other command
20 when empowered by the adjutant general.
21 (b) If any such officer is an accuser, the court shall be convened by
22 superior competent authority and may in any case be convened by such superior
23 authority if considered desirable by such authority.

24 ARTICLE 24. WHO MAY CONVENE SUMMARY COURTS-MARTIAL

- 25 (a) Summary courts-martial may be convened by:
26 (1) Any person who may convene a general or special court-martial;
27 (2) The commanding officer of a detached company or other detachment,
28 or corresponding unit of the army;
29 (3) The commanding officer of a detached squadron or other detachment,
30 or corresponding unit of the air force; or
31 (4) The commanding officer or officer in charge of any other command
32 when empowered by the adjutant general.
33 (b) When only one (1) commissioned officer is present with a command
34 or detachment, that officer shall be the summary court-martial of that com-
35 mand or detachment and shall hear and determine all summary court-martial
36 cases. Summary courts-martial may, however, be convened in any case by supe-
37 rior competent authority if considered desirable by such authority.

38 ARTICLE 25. WHO MAY SERVE ON COURTS-MARTIAL

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

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

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

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

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

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

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

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

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

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

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

1 (e) When convening a court-martial, the convening authority shall de-
2 tail as members thereof such members of the state military forces as, in the
3 convening authority's opinion, are best qualified for the duty by reason of
4 age, education, training, experience, length of service, and judicial tem-
5 perament. No member of the state military forces is eligible to serve as a
6 member of a general or special court-martial when that member is the accuser,
7 a witness, or has acted as investigating officer or as counsel in the same
8 case.

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

13 ARTICLE 25a. RESERVED

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

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

18 (b) A military judge shall be:

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

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

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

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

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

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

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

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

46 (g) A military judge may be detailed under subsection (a) of this arti-
47 cle to a court-martial or a proceeding under article 30 that is convened in a

1 different armed force, when so permitted by the senior force judge advocate
 2 of the armed force of which the military judge is a member.

3 ARTICLE 26a. MILITARY MAGISTRATES

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

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

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

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

14 ARTICLE 27. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL

15 (a) General provision:

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

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

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

32 (1) A judge advocate as defined in article 1(a) (103) of this code; and

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

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

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

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

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

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

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

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

8 ARTICLE 28. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS

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

14 ARTICLE 29. ABSENT AND ADDITIONAL ASSEMBLY AND IMPANEL-
 15 ING OF MEMBERS -- DETAIL OF NEW MEMBERS AND MILITARY JUDGES

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

23 (1) As a result of a challenge;

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

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

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

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

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

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

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

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

1 ARTICLE 30. CHARGES AND SPECIFICATIONS

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

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

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

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

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

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

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

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

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

26 ARTICLE 31. COMPULSORY SELF-INCRIMINATION PROHIBITED

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

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

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

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

43 ARTICLE 32. INVESTIGATION

44 (a) ~~No charge or specification may be referred to a general court-mar-~~
 45 ~~tial for trial until a thorough and impartial investigation of all the mat-~~

1 ~~ters set forth therein has been made. This investigation shall include in-~~
2 ~~quiry as to the truth of the matter set forth in the charges, consideration of~~
3 ~~the form of charges, and a recommendation as to the disposition that should~~
4 ~~be made of the case in the interest of justice and discipline In general.~~

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

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

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

18 (A) Whether or not the specification alleges an offense under this
19 chapter;

20 (B) Whether or not there is probable cause to believe that the ac-
21 cusced committed the offense charged;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) ~~Is present at the investigation;~~

32 (2) ~~Is informed of the nature of each uncharged offense investigated;~~
 33 ~~and~~

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

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

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

45 ARTICLE 33. ~~FORWARDING OF CHARGES~~ DISPOSITION GUIDANCE

46 ~~When a person is held for trial by general court-martial, the commanding of-~~
 47 ~~ficer shall within eight (8) days after the accused is ordered into arrest or~~
 48 ~~confinement, if practicable, forward the charges, together with the inves-~~

1 ~~igation and allied papers, to the person exercising general court-martial~~
 2 ~~jurisdiction. If that is not practicable, the commanding officer shall~~
 3 ~~report in writing to that person the reasons for delay~~ The governor or his
 4 designated representative shall issue nonbinding guidance regarding fac-
 5 tors that commanders, convening authorities, staff judge advocates, and
 6 judge advocates should take into account when exercising their duties with
 7 respect to disposition of charges and specifications in the interest of jus-
 8 tice and discipline under articles 30 and 34. Such guidance shall take into
 9 account, with appropriate consideration of military requirements, the prin-
 10 ciples contained in official guidance of the Idaho attorney general or U.S.
 11 attorney general with respect to disposition of state or federal criminal
 12 cases in accordance with the principle of fair and evenhanded administration
 13 of Idaho and federal criminal law.

14 ARTICLE 34. ADVICE OF JUDGE ADVOCATE AND REFER-
 15 ENCE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL

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

- 28 (1) ~~The specification alleges an offense under this code chapter;~~
 29 (2) ~~The specification is warranted by the evidence indicated in the re-~~
 30 ~~port of investigation under article 32 of this code, if there is such a~~
 31 ~~report~~ There is probable cause to believe that the accused committed the
 32 offense charged; and
 33 (3) ~~A court-martial would have jurisdiction over the accused and the~~
 34 ~~offense.~~

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

- 43 ~~(1) Expressing conclusions with respect to each matter set forth in~~
 44 ~~subsection (a) of this article; and~~
 45 ~~(2) Recommending action that the convening authority take regarding~~
 46 ~~the specification. If the specification is referred for trial, the rec-~~
 47 ~~ommendation of the judge advocate shall accompany the specification.~~

1 (c) ~~If the charges or specifications are not correct formally or do not~~
 2 ~~conform to the substance of the evidence contained in the report of the in-~~
 3 ~~vestigating officer, formal corrections, and such changes in the charges and~~
 4 ~~specifications as are needed to make them conform to the evidence, may be~~
 5 ~~made Staff judge advocate advice and recommendation to accompany referral.~~
 6 When a convening authority makes a referral for trial by general court-mar-
 7 tial, the written advice of the staff judge advocate under subsection (a) of
 8 this article and the written recommendation of the staff judge advocate un-
 9 der subsection (b) of this article with respect to each specification shall
 10 accompany the referral.

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

15 (e) General and special courts-martial; correction of charges and
 16 specifications before referral. Before referral for trial by general
 17 court-martial or special court-martial, changes may be made to charges and
 18 specifications:

19 (1) To correct errors in form; and

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

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

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

26 ~~The trial counsel shall serve or caused to be served upon the accused a copy~~
 27 ~~of the charges. No person may, against the person's objection, be brought~~
 28 ~~to trial before a general court-martial case within a period of five (5) days~~
 29 ~~after the service of charges upon the accused, or in a special court-martial~~
 30 ~~within a period of three (3) days after the service of charges upon the ac-~~
 31 ~~cused~~

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

35 (b) Commencement of trial.

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

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

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

44 (2) An objection under paragraph (1) of this subsection may be raised
 45 only at the first session of the trial or other proceeding and only if
 46 the first session occurs before the end of the applicable period under
 47 paragraph (1) (A) or (1) (B) of this subsection. If the first session oc-
 48 curr before the end of the applicable period, the military judge shall,

1 at that session, inquire as to whether the defense objects under this
2 subsection.

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

4 PART VII. TRIAL PROCEDURE

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

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

13 ARTICLE 37. UNLAWFULLY INFLUENCING ACTION OF COURT

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

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

40 ARTICLE 38. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL

41 (a) The trial counsel of a general or special court-martial shall be a
42 member in good standing of the state bar and shall prosecute in the name of

1 the state and shall, under the direction of the court, prepare the record of
2 the proceedings.

3 (b) Defense counsel:

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

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

9 (3) The accused may be represented:

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

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

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

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

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

25 (A) May detail additional military counsel as assistant defense
26 counsel; and

27 (B) If the accused is represented by military counsel of the ac-
28 cused's own selection under paragraph (3) (B) of this subsection,
29 may approve a request from the accused that military counsel de-
30 tailed under paragraph (3) (A) of this subsection act as associate
31 defense counsel.

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

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

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

41 (2) ~~May assist the accused in the submission of any matter under article~~
42 ~~60 of this code; and~~

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

44 ARTICLE 39. SESSIONS

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

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

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

7 (3) Holding the arraignment and receiving the pleas of the accused; and

8 (4) Conducting a sentencing proceeding and sentencing the accused in
9 noncapital cases unless the accused requests sentencing by members un-
10 der article 25; and

11 (5) Performing any other procedural function which does not require the
12 presence of the members of the court under this code. These proceedings
13 shall be conducted in the presence of the accused, the defense counsel,
14 and the trial counsel and shall be made a part of the record. These pro-
15 ceedings may be conducted notwithstanding the number of court members
16 and without regard to article 29.

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

22 ARTICLE 40. CONTINUANCES

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

26 ARTICLE 41. CHALLENGES

27 (a) Challenges generally.

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

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

41 (b) Preemptory challenges.

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

45 (2) If exercise of a preemptory challenge reduces the court below the
46 minimum number of members required by article 16 of this code, the par-

1 ties shall, notwithstanding article 29 of this code, either exercise
2 or waive any remaining peremptory challenge, not previously waived,
3 against the remaining members of the court before additional members
4 are detailed to the court.

5 (3) Whenever additional members are detailed to the court, and after
6 any challenges for cause against such additional members are presented
7 and decided, each accused and the trial counsel are entitled to one (1)
8 peremptory challenge against members not previously subject to peremp-
9 tory challenge.

10 ARTICLE 42. OATHS OR AFFIRMATIONS

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

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

27 ARTICLE 43. STATUTE OF LIMITATIONS

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

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

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

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

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

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

4 (3) Committed in connection with the negotiation, procurement, award,
 5 performance, payment, interim financing, cancellation, or other termi-
 6 nation or settlement, of any contract, subcontract, or purchase order
 7 which is connected with or related to the prosecution of the war, or with
 8 any disposition of termination inventory by any war contractor or gov-
 9 ernment agency;

10 is suspended until two (2) years after the termination of hostilities as pro-
 11 claimed by the president or by a joint resolution of congress.

12 (e) Exception.

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

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

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

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

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

27 (B) Allege the same acts or omissions that were alleged in the dis-
 28 missed charges or specifications (or allege acts or omissions that
 29 were included in the dismissed charges or specifications).

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

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

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

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

45 ARTICLE 44. FORMER JEOPARDY

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

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

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

9 (c) (1) A court-martial with a military judge alone is a trial in the
 10 sense of this article if, without fault of the accused after introduc-
 11 tion of evidence and before announcement of findings under article 53,
 12 the case is dismissed or terminated by the convening authority or on mo-
 13 tion of the prosecution for failure of available evidence or witnesses.

14 (2) A court-martial with a military judge and members is a trial in the
 15 sense of this article if, without fault of the accused after the mem-
 16 bers, having taken an oath as members under article 42 and after com-
 17 pletion of challenges under article 41, are impaneled, and before an-
 18 ouncement of findings under article 53, the case is dismissed or ter-
 19 minated by the convening authority or on motion of the prosecution for
 20 failure of available evidence or witnesses.

21 ARTICLE 45. PLEAS OF THE ACCUSED

22 (a) Irregular and similar pleas. If an accused after arraignment makes
 23 an irregular pleading, or after a plea of guilty sets up matter inconsis-
 24 tent with the plea, or if it appears that the accused has entered the plea of
 25 guilty improvidently or through lack of understanding of its meaning and ef-
 26 fect, or if the accused fails or refuses to plead, a plea of not guilty shall
 27 be entered in the record, and the court shall proceed as though the accused
 28 had pleaded not guilty.

29 (b) Pleas of guilty. With respect to any charge or specification to
 30 which a plea of guilty has been made by the accused and accepted by the mil-
 31 itary judge or by a court-martial without a military judge, a finding of
 32 guilty of the charge or specification may be entered immediately without
 33 vote. This finding shall constitute the finding of the court unless the plea
 34 of guilty is withdrawn prior to announcement of the sentence, in which event
 35 the proceedings shall continue as though the accused had pleaded not guilty.

36 (c) Harmless error. A variance from the requirements of this article is
 37 harmless error if the variance does not materially prejudice the substantial
 38 rights of the accused.

39 ARTICLE 46. OPPORTUNITY TO OBTAIN WIT-
 40 NESSES AND OTHER EVIDENCE IN TRIALS BY COURT

41 (a) In a case referred for trial by court-martial, the trial counsel,
 42 and the defense counsel, and the court-martial shall have equal opportunity
 43 to obtain witnesses and other evidence as prescribed by regulations and pro-
 44 vided by law. Process issued in court-martial cases to compel witnesses to
 45 appear and testify and to compel the production of other evidence shall ap-
 46 ply the principles of law and the rules of courts-martial generally recog-

1 nized in military criminal cases in the courts of the armed forces of the
 2 United States, but which may not be contrary to or inconsistent with this
 3 code. Process shall run to any part of the United States, or the territo-
 4 ries, commonwealths, and possessions, and may be executed by civil officers
 5 as prescribed by the laws of the place where the witness or evidence is lo-
 6 cated or of the United States.

7 (b) Subpoena and other process generally. Any subpoena or other
 8 process issued under this article:

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

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

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

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

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

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

19 (3) As otherwise authorized under this chapter.

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

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

23 (2) For a deposition under article 49;

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

25 (4) As otherwise authorized under this chapter.

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

31 (f) Warrant or order for wire or electronic communications. With re-
 32 spect to an investigation of an offense under this chapter, a military judge
 33 detailed in accordance with article 26 or 30 may issue warrants or court or-
 34 ders for the contents of, and records concerning, wire or electronic commu-
 35 nications in the same manner as such warrants and orders may be issued by a
 36 district court of the United States under title 19, Idaho Code, subject to
 37 such limitations as the governor or his designated representative may pre-
 38 scribe.

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

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

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

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

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

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

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

9 ~~(3) Willfully neglects or refuses to appear, or refuses to qualify as~~
10 ~~a witness or to testify or to produce any evidence which that person may~~
11 ~~have been legally subpoenaed to produce;~~

12 ~~may be punished by the military court in the same manner as a criminal court~~
13 ~~of the state.~~

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

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

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

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

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

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

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

32 ARTICLE 48. CONTEMPTS

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

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

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

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

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

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

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

~~in person at the place of trial or hearing; or~~ A deposition may be ordered under paragraph (1) of this subsection only if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be preserved for use at a court-martial, military commission, court of inquiry, or other military court or board.

~~(3) That the present whereabouts of the witness is unknown~~ A party who requests a deposition under this article shall give to every other party reasonable written notice of the time and place for the deposition.

~~(4) A deposition under this article shall be taken before, and authenticated by, an impartial officer, as follows:~~

~~(A) Whenever practicable, by an impartial judge advocate certified under article 27 (b); or~~

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

~~(b) Representation by counsel. Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under article 27. In addition, the accused shall have the right to be represented by civilian or military counsel in the same manner as provided for in article 38 (b) .~~

~~(c) Admissibility and use as evidence. A deposition order under subsection (a) of this article does not control the admissibility of the deposition in a court-martial or other proceeding under this chapter. Except as otherwise provided by this code, a party may use all or part of a deposition as provided by the rules of evidence.~~

ARTICLE 50. ADMISSIBILITY OF SWORN TESTIMONY FROM RECORDS OF COURTS OF INQUIRY

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

~~(b) Use of evidence by defense. Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.~~

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

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

1 ARTICLE 50a. DEFENSE OF LACK OF MENTAL RESPONSIBILITY

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

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

9 (c) Whenever lack of mental responsibility of the accused with respect
10 to an offense is properly at issue, the military judge shall instruct the
11 members of the court as to the defense of lack of mental responsibility un-
12 der this article and charge them to find the accused:

13 (1) Guilty;

14 (2) Not guilty; or

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

16 (d) Subsection (c) of this article does not apply to a court-martial
17 composed of a military judge only. In the case of a court-martial composed
18 of a military judge only or a summary court-martial officer, whenever lack of
19 mental responsibility of the accused with respect to an offense is properly
20 at issue, the military judge or summary court-martial officer shall find the
21 accused:

22 (1) Guilty;

23 (2) Not guilty; or

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

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

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

31 (2) In the case of a court-martial composed of a military judge only or
32 a summary court-martial officer, the military judge or summary court-
33 martial officer determines that the defense of lack of mental responsi-
34 bility has been established.

35 ARTICLE 51. VOTING AND RULINGS

36 (a) Voting by members of a general or special court-martial on the find-
37 ings and on the sentence shall be by secret written ballot. The junior member
38 of the court shall count the votes. The count shall be checked by the presi-
39 dent, who shall forthwith announce the result of the ballot to the members of
40 the court.

41 (b) The military judge shall rule upon all questions of law and all in-
42 terlocutory questions arising during the proceedings. Any such ruling made
43 by the military judge upon any question of law or any interlocutory question
44 other than the factual issue of mental responsibility of the accused is fi-
45 nal and constitutes the ruling of the court. However, the military judge may
46 change the ruling at any time during the trial. Unless the ruling is final,
47 if any member objects thereto, the court shall be cleared and closed and the

1 question decided by a voice vote as provided in article 52 of this code, be-
2 ginning with the junior in rank.

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

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

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

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

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

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

24 ARTICLE 52. NUMBER OF VOTES REQUIRED FOR
25 CONVICTION, SENTENCING, AND OTHER MATTERS

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

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

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

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

36 (b) ~~All other questions to be decided by the members of a general or spe-~~
37 ~~cial court-martial shall be determined by a majority vote, but a determi-~~
38 ~~nation to reconsider a finding of guilty or to reconsider a sentence, with~~
39 ~~a view toward decreasing it, may be made by any lesser vote which indicates~~
40 ~~that the reconsideration is not opposed by the number of votes required for~~
41 ~~that finding or sentence. A tie vote on a challenge disqualifies the mem-~~
42 ~~ber challenged. A tie vote on a motion relating to the question of the ac-~~
43 ~~cusd's sanity is a determination against the accused. A tie vote on any~~
44 ~~other question is a determination in favor of the accused Level of concur-~~
45 ~~rence required.~~

46 (1) In general. Except as provided in subsection (a) of this article
47 and in paragraph (2) of this subsection, all matters to be decided by
48 members of a general or special court-martial shall be determined by a

1 majority vote, but a reconsideration of a finding of guilty or recon-
 2 sideration of a sentence, with a view toward decreasing the sentence,
 3 may be made by any lesser vote which indicates that the reconsideration
 4 is not opposed by the number of votes required for that finding or sen-
 5 tence.

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

9 ARTICLE 53. COURT TO ANNOUNCE ACTION FINDINGS AND SENTENCING

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

12 (b) Sentencing generally.

13 (1) General and special courts-martial.

14 (A) Sentencing by military judge. Except as provided in subpara-
 15 graph (B) of this paragraph, and in this code for capital offenses,
 16 if the accused is convicted of an offense in a trial by general or
 17 special court-martial, the military judge shall sentence the ac-
 18 cusced.

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

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

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

28 ARTICLE 53a. PLEA AGREEMENTS

29 (a) In general.

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

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

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

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

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

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

46 (4) Is prohibited by law; or

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

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

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

8 (2) Upon recommendation of the trial counsel, in exchange for substan-
 9 tial assistance by the accused in the investigation or prosecution of
 10 another person who has committed an offense, the military judge may ac-
 11 cept a plea agreement that provides for a sentence that is less than the
 12 mandatory minimum sentence for the offense charged.

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

16 ARTICLE 54. RECORD OF TRIAL

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

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

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

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

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

43 (e) Contents of record.

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

47 (2) In accordance with regulations prescribed by the governor or his
 48 designated representative, a complete record of proceedings and testi-

1 mony shall be prepared in any case of a sentence of death, dismissal,
 2 discharge, confinement for more than six (6) months, or forfeiture of
 3 pay for more than six (6) months.

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

6 (g) In the case of a general or special court-martial, upon request, a
 7 copy of all prepared records of the proceedings of the court-martial shall
 8 be given to the victim of the offense if the victim testified during the pro-
 9 ceedings. The records of the proceedings shall be provided without charge
 10 and as soon as the records are certified. The victim shall be notified of the
 11 opportunity to receive the records of the proceedings.

12 PART VIII. SENTENCES

13 ARTICLE 55. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED

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

18 ARTICLE 56. ~~MAXIMUM LIMITS~~ SENTENCING

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

27 (b) The limits of punishment for violations of the punitive articles
 28 prescribed herein shall be the lesser of the sentences prescribed by the man-
 29 ual for courts-martial of the United States currently in effect ~~on January 1,~~
 30 ~~2004,~~ and the state manual for courts-martial, but in no instance shall any
 31 punishment exceed that authorized by this code.

32 (c) Imposition of sentence.

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

37 (A) The nature and circumstances of the offense and the history
 38 and characteristics of the accused;

39 (B) The impact of the offense on:

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

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

44 (C) The need for the sentence:

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

1 which the sentence takes effect. Any forfeiture of pay or allowances
2 or reduction in grade that is included in a sentence of a court-martial
3 takes effect on the earlier of:

4 (A) The date that is fourteen (14) days after the date on which the
5 sentence is adjudged; or

6 (B) In the case of a summary court-martial, the date on which the
7 sentence is approved by the convening authority.

8 (2) Confinement. Any period of confinement included in a sentence of
9 a court-martial begins to run from the date the sentence is adjudged by
10 the court-martial, but periods during which the sentence to confinement
11 is suspended or deferred shall be excluded in computing the service of
12 the term of confinement.

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

24 (4) Completion of appellate review. If a sentence extends to dis-
25 missal, or a dishonorable or bad-conduct discharge, that part of the
26 sentence extending to dismissal, or a dishonorable or bad-conduct dis-
27 charge, may be executed in accordance with service regulations after
28 completion of appellate review and, with respect to death or dismissal,
29 approval under paragraph (3) or (4) of this subsection, as appropriate.

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

34 (b) Deferral of sentences.

35 (1) In general. On application by an accused, the convening authority
36 or, if the accused is no longer under his jurisdiction, the officer ex-
37 ercising general court-martial jurisdiction over the command to which
38 the accused is currently assigned may, in his sole discretion, defer the
39 effective date of a sentence of confinement, reduction, or forfeiture.
40 The deferment shall terminate upon entry of judgment or, in the case of
41 a summary court-martial, when the convening authority acts on the sen-
42 tence. The deferment may be rescinded at any time by the officer who
43 granted it or, if the accused is no longer under his jurisdiction, by the
44 officer exercising general court-martial jurisdiction over the command
45 to which the accused is currently assigned.

46 (2) Deferral of certain persons sentenced to confinement. In any case
47 in which a court-martial sentences a person referred to in paragraph (3)
48 of this subsection to confinement, the convening authority may defer
49 the service of the sentence to confinement, without the consent of that
50 person, until after the person has been permanently released to the

1 state military forces by a state or foreign country referred to in that
 2 paragraph.

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

9 (4) State defined. In this subsection, the term "state" includes the
 10 District of Columbia and any commonwealth, territory, or possession of
 11 the United States.

12 (5) Deferral while review pending. In any case in which a court-martial
 13 sentences a person to confinement, but in which review of the case is
 14 pending, the secretary concerned may defer further service of the sen-
 15 tence to confinement while that review is pending.

16 (c) Appellate review.

17 (1) Completion of appellate review. Appellate review is complete under
 18 this article when a review under this code is completed or a review is
 19 completed by the state supreme court.

20 (2) Completion as final judgment of legality of proceedings. The com-
 21 pletion of appellate review shall constitute a final judgment as to the
 22 legality of the proceedings.

23 ~~ARTICLE 57a. DEFERMENT OF SENTENCES~~

24 ~~(a) On application by an accused who is under sentence to confinement~~
 25 ~~that has not been ordered executed, the convening authority or, if the ac-~~
 26 ~~cused is no longer under that person's jurisdiction, the person exercising~~
 27 ~~general court-martial jurisdiction over the command to which the accused is~~
 28 ~~currently assigned, may in that person's sole discretion defer service of~~
 29 ~~the sentence to confinement. The deferment shall terminate when the sen-~~
 30 ~~tence is ordered executed. The deferment may be rescinded at any time by~~
 31 ~~the person who granted it or, if the accused is no longer under that person's~~
 32 ~~jurisdiction, by the person exercising general court-martial jurisdiction~~
 33 ~~over the command to which the accused is currently assigned.~~

34 ~~(b) (1) In any case in which a court-martial sentences an accused re-~~
 35 ~~ferred to in paragraph (2) of this subsection to confinement, the~~
 36 ~~convening authority may defer the service of the sentence to confine-~~
 37 ~~ment, without the consent of the accused, until after the accused has~~
 38 ~~been permanently released to the state military forces by a state, the~~
 39 ~~United States, or a foreign country referred to in that paragraph.~~

40 ~~(2) Paragraph (1) of this subsection applies to a person subject to this~~
 41 ~~code who:~~

42 ~~(A) While in the custody of a state, the United States, or a for-~~
 43 ~~ign country is temporarily returned by that state, the United~~
 44 ~~States, or a foreign country to the state military forces for trial~~
 45 ~~by court-martial; and~~

46 ~~(B) After the court-martial, is returned to that state, the United~~
 47 ~~States, or a foreign country under the authority of a mutual agree-~~
 48 ~~ment or treaty, as the case may be.~~

1 ~~(3) In this subsection, the term "state" includes the District of Co-~~
 2 ~~lumbia and any commonwealth, territory, or possession of the United~~
 3 ~~States.~~

4 ~~(c) In any case in which a court-martial sentences an accused to con-~~
 5 ~~finement and the sentence to confinement has been ordered executed, but in~~
 6 ~~which review of the case under article 67(a) of this code is pending, the~~
 7 ~~adjutant general may defer further service of the sentence to confinement~~
 8 ~~while that review is pending.~~

9 ARTICLE 58. EXECUTION OF CONFINEMENT

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

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

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

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

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

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

26 (2) ~~Confinement; or~~

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

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

38 ARTICLE 58b. SENTENCES -- FORFEITURE OF
 39 PAY AND ALLOWANCES DURING CONFINEMENT

40 (a) Generally.

41 (1) A court-martial sentence described in paragraph (2) of this sub-
 42 section shall result in the forfeiture of pay, or of pay and allowances,
 43 due that member during any period of confinement or parole. The forfei-
 44 ture pursuant to this article shall take effect on the date determined

1 under ~~article 57(a)~~ of this code and may be deferred as provided by ~~that~~
 2 ~~article~~ this code. The pay and allowances forfeited, in the case of a
 3 general court-martial, shall be all pay and allowances due that member
 4 during such period and, in the case of a special court-martial, shall be
 5 two-thirds (2/3) of all pay due that member during such period.

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

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

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

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

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

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

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

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

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

31 ARTICLE 60. ~~ACTION BY THE CONVENING AUTHORITY~~ POSTTRIAL
 32 PROCESSING IN GENERAL AND SPECIAL COURTS-MARTIAL

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

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

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

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

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

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

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

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

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

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

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

35 ~~(B) Change a finding of guilty to a charge or specification to a~~
36 ~~finding of guilty to an offense that is a lesser included offense~~
37 ~~of the offense stated in the charge or specification.~~

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

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

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

4 ~~(2) A proceeding in revision may be ordered if there is an apparent er-~~
 5 ~~ror or omission in the record or if the record shows improper or incon-~~
 6 ~~sistent action by a court-martial with respect to the findings or sen-~~
 7 ~~tence that can be rectified without material prejudice to the substan-~~
 8 ~~tial rights of the accused. In no case, however, may a proceeding in re-~~
 9 ~~vision:~~

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

12 ~~(B) Reconsider a finding of not guilty of any charge, unless there~~
 13 ~~has been a finding of guilty under a specification laid under that~~
 14 ~~charge, which sufficiently alleges a violation of some article of~~
 15 ~~this code; or~~

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

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

27 Statement of trial results.

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

31 (A) Each plea and finding;

32 (B) The sentence, if any; and

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

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

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

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

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

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

47 (a) In each case subject to appellate review under this code, the
 48 accused may file with the convening authority a statement expressly with-

~~drawing the right of the accused to such appeal. Such a withdrawal shall be signed by both the accused and his defense counsel and must be filed in accordance with appellate procedures as provided by law Waiver of right to appeal. After entry of judgment in a general or special court-martial, under procedures prescribed by the secretary concerned, the accused may waive the right to appellate review in each case subject to such review under this code. Such a waiver shall be signed by the accused and by defense counsel and attached to the record of trial.~~

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

~~(c) Death penalty case exception. Notwithstanding subsections (a) and (b) of this article, an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.~~

~~(d) Waiver or withdrawal as bar. A waiver or withdrawal under this article bars review under this code.~~

ARTICLE 62. APPEAL BY THE STATE

(a) Generally.

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

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

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

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

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

(E) A refusal of the military judge to issue a protective order sought by the state to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) of this paragraph that has previously been issued by appropriate authority.

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

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

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

(a) ~~Each general and special court-martial case in which there has been a finding of guilty shall be reviewed by the senior force judge advocate, or a designee. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be in writing and shall contain the following:~~

(1) Conclusions as to whether:

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

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

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

(2) A response to each allegation of error made in writing by the accused.

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

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

(1) The judge advocate who reviewed the case recommends corrective action;

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

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

(c) The adjutant general's discretion.

(1) The adjutant general may:

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

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

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

(D) Dismiss the charges.

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

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

1 (d) The senior force judge advocate, or a designee, may review any case
 2 in which there has been a finding of not guilty of all charges and specifica-
 3 tions. The senior force judge advocate, or designee, may not review a case
 4 under this subsection if that person has acted in the same case as an ac-
 5 cuser, investigating officer, member of the court, military judge, or coun-
 6 sel or has otherwise acted on behalf of the prosecution or defense. The se-
 7 nior force judge advocate's review shall be limited to questions of subject
 8 matter jurisdiction.

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

12 (1) The adjutant general may:

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

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

19 ~~ARTICLE 65. DISPOSITION OF RECORDS AFTER REVIEW BY THE~~
 20 ~~CONVENING AUTHORITY TRANSMITTAL AND REVIEW OF RECORDS~~

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

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

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

31 ARTICLE 66. RESERVED

32 ARTICLE 67. RESERVED

33 ARTICLE 67a. REVIEW BY STATE APPELLATE AUTHORITY

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

42 ARTICLE 68. RESERVED

1 ARTICLE 69. RESERVED

2 ARTICLE 70. APPELLATE COUNSEL

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

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

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

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

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

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

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

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

39 ARTICLE 72. VACATION OF SUSPENSION

40 (a) Before the vacation of the suspension of a special court-martial
41 sentence, which as approved includes a bad-conduct discharge, or of any gen-
42 eral court-martial sentence, the officer having special court-martial ju-
43 risdiction over the probationer shall hold a hearing on an alleged violation
44 of probation. The probationer shall be represented at the hearing by mili-

1 ~~tary counsel if the probationer so desires~~ special court-martial convening
2 authority may detail a judge advocate who is certified under article 27(b)
3 of this code to conduct the hearing. The probationer shall be represented at
4 the hearing by military counsel if the probationer so desires.

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

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

14 ARTICLE 73. PETITION FOR A NEW TRIAL

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

19 ARTICLE 74. REMISSION AND SUSPENSION

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

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

28 ARTICLE 75. RESTORATION

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

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

40 (c) If a previously executed sentence of dismissal is not imposed on
41 a new trial, the governor or his designated representative may substitute
42 therefore a form of discharge authorized for administrative issue, and the
43 commissioned officer dismissed by that sentence may be reappointed by the
44 governor alone to such commissioned grade and with such rank as in the opin-

1 ion of the governor that former officer would have attained had he not been
 2 dismissed. The reappointment of such a former officer shall be without re-
 3 gard to the existence of a vacancy and shall affect the promotion status of
 4 other officers only insofar as the governor may direct. All time between the
 5 dismissal and the reappointment shall be considered as actual service for
 6 all purposes, including the right to pay and allowances.

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

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

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

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

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

32 ARTICLE 76b. RESERVED

33 PART X. PUNITIVE ARTICLES

34 ARTICLE 77. PRINCIPALS

35 Any person subject to this code who:

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

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

40 is a principal.

1 ARTICLE 78. ACCESSORY AFTER THE FACT

2 Any person subject to this code who, knowing that an offense punishable by
 3 this code has been committed, receives, comforts, or assists the offender in
 4 order to hinder or prevent his apprehension, trial, or punishment shall be
 5 punished as a court-martial may direct.

6 ARTICLE 79. CONVICTION OF OFFENSE CHARGED,
 7 LESSER INCLUDED OFFENSES, AND ATTEMPTS

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

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

12 (1) The offense charged;

13 (2) A lesser included offense;

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

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

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

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

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

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

25 ARTICLE 80. ATTEMPTS

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

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

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

35 ARTICLE 81. CONSPIRACY

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

40 ARTICLE 82. SOLICITATION

1 ~~(a) Any person subject to this code who solicits or advises another or~~
 2 ~~others to desert in violation of article 85 of this code or mutiny in viola-~~
 3 ~~tion of article 94 of this code shall, if the offense solicited or advised~~
 4 ~~is attempted or committed, be punished with the punishment provided for the~~
 5 ~~commission of the offense; but, if the offense solicited or advised is not~~
 6 ~~committed or attempted, the person shall be punished as a court-martial may~~
 7 ~~direct~~ Soliciting commission of offenses generally. Any person subject to
 8 this code who solicits or advises another to commit an offense under this
 9 code, other than an offense specified in subsection (b) of this article,
 10 shall be punished as a court-martial may direct.

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

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

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

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

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

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

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

38 ARTICLE 84. ~~UNLAWFUL ENLISTMENT -- APPOINT-~~
 39 ~~MENT -- SEPARATION~~ BREACH OF MEDICAL QUARANTINE

40 Any person subject to this code who ~~effects an enlistment or appointment in~~
 41 ~~or a separation from the state military forces of any person who is known to~~
 42 ~~him to be ineligible for that enlistment, appointment, or separation because~~
 43 ~~it is prohibited by law, regulation, or order~~ is ordered into medical quaran-
 44 tine by a person authorized to issue such order and who, with knowledge of the
 45 quarantine and the limits of the quarantine, goes beyond those limits before

1 being released from the quarantine by proper authority shall be punished as a
2 court-martial may direct.

3 ARTICLE 85. DESERTION

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

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

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

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

16 is guilty of desertion.

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

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

26 ARTICLE 86. ABSENCE WITHOUT LEAVE

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

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

29 (2) Goes from that place; or

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

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

33 ARTICLE 87. MISSING MOVEMENT

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

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

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

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

4 (2) Willfully disobeys a lawful command of his superior commissioned
5 officer;
6 shall be punished, if the offense is committed in time of war, by confinement
7 of not more than ten (10) years or such other punishment as a court-martial
8 may direct, and if the offense is committed at any other time, by such punish-
9 ment as a court-martial may direct.

10 ARTICLE 91. INSUBORDINATE CONDUCT TOWARD WARRANT OF-
11 FICER, NONCOMMISSIONED OFFICER OR PETTY OFFICER

12 Any warrant officer or enlisted member who:

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

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

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

21 ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

22 Any person subject to this code who:

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

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

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

29 ARTICLE 93. CRUELTY AND MALTREATMENT

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

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

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

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

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

40 (3) Who engages in prohibited sexual activity with such specially pro-
41 ected junior member of the state military forces;

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

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

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

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

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

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

11 (d) Definitions. In this article:

12 (1) "Specially protected junior member of the state military forces"
 13 means:

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

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

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

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

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

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

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

40 ARTICLE 94. MUTINY OR SEDITION

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

42 (1) With intent to usurp or override lawful military authority, re-

43 fuses, in concert with any other person, to obey orders or otherwise do

44 his duty or creates any violence or disturbance is guilty of mutiny;

45 (2) With intent to cause the overthrow or destruction of lawful civil

46 authority, creates, in concert with any other person, revolt, violence,

47 or other disturbance against that authority is guilty of sedition;

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

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

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

11 ~~Any person subject to this code who:~~

- 12 ~~(1) Resists apprehension;~~
 13 ~~(2) Flees from apprehension;~~
 14 ~~(3) Breaks arrest; or~~
 15 ~~(4) Escapes from custody or confinement;~~

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

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

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

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

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

28 ARTICLE 95a. DISRESPECT TOWARD SENTINEL OR LOOKOUT

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

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

39 ARTICLE 96. RELEASING PRISONER WITHOUT
 40 PROPER AUTHORITY -- DRINKING WITH PRISONER

41 (a) Any person subject to this code who, without proper authority, re-
 42 leases any prisoner committed to his charge, or who through neglect or design
 43 suffers any such prisoner to escape, shall be punished as a court-martial may

1 direct, whether or not the prisoner was committed in strict compliance with
2 law.

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

6 ARTICLE 97. UNLAWFUL DETENTION

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

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

11 Any person subject to this code who:

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

17 (2) ~~Knowingly and intentionally fails to enforce or comply with any~~
18 ~~provision of this code regulating the proceedings before, during, or after~~
19 ~~trial of an accused~~ While in a position of authority over such persons mal-
20 treats them without justifiable cause;
21 shall be punished as a court-martial may direct.

22 ARTICLE 99. MISBEHAVIOR BEFORE THE ENEMY

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

24 (1) Runs away;

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

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

29 (4) Casts away his arms or ammunition;

30 (5) Is guilty of cowardly conduct;

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

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

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

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

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

42 ARTICLE 100. SUBORDINATE COMPELLING SURRENDER

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

7 ARTICLE 101. IMPROPER USE OF COUNTERSIGN

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

13 ARTICLE 102. FORCING A SAFEGUARD

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

16 ARTICLE 103. CAPTURED OR ABANDONED PROPERTY

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

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

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

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

28 (3) Engages in looting or pillaging;

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

30 ARTICLE 103a. SPIES -- RESERVED

31 ARTICLE 103b. ESPIONAGE -- RESERVED

32 ARTICLE 1043c. AIDING THE ENEMY

33 Any person subject to this code who:

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

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

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

2 ARTICLE 104. PUBLIC RECORD OFFENSES

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

4 (1) Alters, conceals, removes, mutilates, obliterates, or destroys a
5 public record; or

6 (2) Takes a public record with the intent to alter, conceal, remove, mu-
7 tilate, obliterate, or destroy the public record;

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

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

10 Any person who:

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

15 (2) Procures his own separation from the state military forces by know-
16 ingly false representation or deliberate concealment as to his eligibility
17 for that separation;

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

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

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

25 ARTICLE 105. MISCONDUCT AS PRISONER RESERVED

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

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

32 (2) While in a position of authority over such persons maltreats them
33 without justifiable cause;

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

35 ARTICLE 105a. FALSE OR UNAUTHORIZED PASS OFFENSES

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

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

6 (3) Wrongful use or possession. Any person subject to this code who
 7 wrongfully uses or possesses a false or unauthorized military or official
 8 pass, permit, discharge certificate, or identification card, knowing that
 9 the pass, permit, discharge certificate, or identification card is false or
 10 unauthorized, shall be punished as a court-martial may direct.

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

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

15 (a) An officer, a noncommissioned officer, or a petty officer;

16 (b) An agent of superior authority of one of the armed forces; or

17 (c) An officer of a government;

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

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

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

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

30 Any person subject to this code:

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

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

36 ARTICLE 107. FALSE OFFICIAL STATEMENTS

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

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

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

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

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

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

7 (a) Who is on military orders;

8 (b) Who takes an oath that:

9 (i) Is administered in a manner in which such oath is required or
 10 authorized by law; and

11 (ii) Is administered by a person with authority to do so; and

12 (c) Who, upon such oath, makes or subscribes to a statement, if the
 13 statement is false and at the time of taking the oath the person does not
 14 believe the statement to be true, shall be punished as a court-martial
 15 may direct.

16 ARTICLE 107a. PAROLE VIOLATION

17 Any person subject to this code:

18 (1) Who, having been a prisoner as the result of a court-martial convic-
 19 tion or other criminal proceeding, is on parole with conditions; and

20 (2) Who violates the conditions of parole;

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

22 ARTICLE 108. MILITARY PROPERTY -- LOSS, DAM-
 23 AGE, DESTRUCTION OR WRONGFUL DISPOSITION

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

25 (1) Sells or otherwise disposes of;

26 (2) Willfully or through neglect damages, destroys, or loses; or

27 (3) Willfully or through neglect suffers to be lost, damaged, de-
 28 stroyed, sold, or wrongfully disposed of;

29 any military property of the United States or of any state shall be punished
 30 as a court-martial may direct.

31 ARTICLE 108a. CAPTURED OR ABANDONED PROPERTY

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

36 (2) Any person subject to this code who:

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

39 (b) Buys, sells, trades, or in any way deals in or disposes of taken,
 40 captured, or abandoned property, whereby he receives or expects any
 41 profit, benefit, or advantage to himself or another directly or indi-
 42 rectly connected with himself; or

43 (c) Engages in looting or pillaging;

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

1 ARTICLE 109. PROPERTY OTHER THAN MILITARY
2 PROPERTY -- WASTE, SPOILAGE OR DESTRUCTION

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

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

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

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

17 ARTICLE 110. IMPROPER HAZARDING OF VESSEL OR AIRCRAFT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) Without providing personal identification to others in-
 2 involved in the accident or to appropriate authorities;
 3 shall be punished as a court-martial may direct.

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

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

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

9 (2) Incapacitation for duty from drunkenness or drug use. Any person
 10 subject to this code who, as a result of indulgence in any alcoholic bever-
 11 age or any drug, is incapacitated for the proper performance of duty shall be
 12 punished as a court-martial may direct.

13 (3) Drunk prisoner. Any person subject to this code who is a prisoner
 14 and, while in such status, is drunk shall be punished as a court-martial may
 15 direct.

16 (4) Definitions. "Drunk" means any intoxication sufficient to impair
 17 the rational and full exercise of the mental or physical faculties, or an
 18 alcohol concentration of 0.08 or more as shown by an analysis of the per-
 19 son's blood, breath, or urine subject to the testing standards within sec-
 20 tion 18-8004, Idaho Code. "Incapacitated" means unfit or unable to perform
 21 duties properly as a result of prior alcohol consumption.

22 (5) Testing. Commanders may order the person to provide a breath,
 23 blood, or urine sample if the commander has probable cause to believe that
 24 the person is drunk or incapacitated while on duty. Testing under this ar-
 25 ticle will be performed by a peace officer, hospital, or health care profes-
 26 sional in the jurisdiction in which a violation of this article has occurred.
 27 No military member, peace officer, hospital, or health care professional, as
 28 defined in section 18-8002, Idaho Code, shall incur any civil or criminal
 29 liability for any act arising out of administering an evidentiary test for
 30 alcohol concentration or for the presence of drugs or other intoxicating
 31 substances at the request of a commander. In the event a person ordered to
 32 provide a breath, blood, or urine sample refuses to do so, that person may be
 33 punished for violating a lawful order as a court-martial may direct.

34 ARTICLE 112a. WRONGFUL USE, POSSESSION, ETC., OF CONTROLLED SUBSTANCES

35 (a) Any person subject to this code who wrongfully uses, possesses,
 36 manufactures, distributes, imports into the customs territory of the United
 37 States, exports from the United States, or introduces into an installation,
 38 vessel, vehicle, or aircraft used by or under the control of the armed forces
 39 of the United States or of any state military forces a substance described
 40 in subsection (b) of this article shall be punished as a court-martial may
 41 direct.

42 (b) The substances referred to in subsection (a) of this article are the
 43 following:

44 (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
 45 methamphetamine, phencyclidine, barbituric acid, and marijuana and any
 46 compound or derivative of any such substance.

1 (2) Any substance not specified in paragraph (1) of this subsection
 2 that is listed on a schedule of controlled substances prescribed by the
 3 president for the purposes of the uniform code of military justice of
 4 the armed forces of the United States, 10 U.S.C. ~~section~~ 801 et seq.

5 (3) Any other substance not specified in paragraph (1) of this subsec-
 6 tion or contained on a list prescribed by the president under paragraph
 7 (2) of this subsection that is listed in schedules I through V of article
 8 202 of the controlled substances act, 21 U.S.C. ~~section~~ 812.

9 ARTICLE 113. ~~MISBEHAVIOR OF SENTINEL~~ RESERVED

10 ~~Any sentinel or lookout who is found drunk or sleeping upon his post or leaves~~
 11 ~~it before being regularly relieved shall be punished, if the offense is com-~~
 12 ~~mitted in time of war, by confinement of not more than ten (10) years or other~~
 13 ~~punishment as a court-martial may direct, but if the offense is committed at~~
 14 ~~any other time, by such punishment as a court-martial may direct.~~

15 ARTICLE 114. DUELING ENDANGERMENT OFFENSES

16 ~~Any person subject to this code who fights or promotes, or is concerned in or~~
 17 ~~connives at fighting a duel, or who, having knowledge of a challenge sent or~~
 18 ~~about to be sent, fails to report the fact promptly to the proper authority,~~
 19 ~~shall be punished as a court-martial may direct.~~

20 (a) Reckless endangerment. Any person subject to this code who engages
 21 in conduct that:

22 (1) Is wrongful and reckless or is wanton; and

23 (2) Is likely to produce death or grievous bodily harm to another per-
 24 son;

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

26 (b) Dueling. Any person subject to this code:

27 (1) Who fights or promotes, or is concerned in or connives at fighting,
 28 a duel; or

29 (2) Who, having knowledge of a challenge sent or about to be sent, fails
 30 to report the fact promptly to the proper authority;

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

32 (c) Firearm discharge, endangering human life. Any person subject to
 33 this code who negligently discharges a firearm under circumstances such as
 34 to endanger human life shall be punished as a court-martial may direct.

35 (d) Carrying concealed weapon. Any person subject to this chapter
 36 who, while on military orders, unlawfully or in violation of the adjutant
 37 general's policy or regulation, carries a dangerous weapon concealed on or
 38 about his person shall be punished as a court-martial may direct.

39 ARTICLE 115. MALINGERING COMMUNICATING THREATS

40 ~~Any person subject to this code who for the purpose of avoiding work, duty, or~~
 41 ~~service:~~

42 ~~(1) Feigns illness, physical disablement, mental lapse, or derange-~~
 43 ~~ment; or~~

44 ~~(2) Intentionally inflicts self-injury;~~

1 ~~shall be punished as a court-martial may direct~~ Communicating threats gener-
 2 ally. Any person subject to this code who wrongfully communicates a threat
 3 to injure the person, property, or reputation of another shall be punished as
 4 a court-martial may direct.

5 (2) Communicating threat to use explosive, etc. Any person subject to
 6 this code who wrongfully communicates a threat to injure the person or prop-
 7 erty of another by use of:

8 (a) An explosive;

9 (b) A weapon of mass destruction;

10 (c) A biological or chemical agent, substance, or weapon; or

11 (d) A hazardous material;

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

13 (3) Communicating false threat concerning use of explosive, etc. Any
 14 person subject to this code who maliciously communicates a false threat con-
 15 cerning injury to the person or property of another by use of:

16 (a) An explosive;

17 (b) A weapon of mass destruction;

18 (c) A biological or chemical agent, substance, or weapon; or

19 (d) A hazardous material;

20 shall be punished as a court-martial may direct. The term "false threat" as
 21 used in this subsection means a threat that, at the time the threat is commu-
 22 nicated, is known to be false by the person communicating the threat.

23 ARTICLE 116. RIOT OR BREACH OF PEACE

24 Any person subject to this code who causes or participates in any riot or
 25 breach of the peace shall be punished as a court-martial may direct.

26 ARTICLE 117. PROVOKING SPEECHES OR GESTURES

27 Any person subject to this code who uses provoking or reproachful words or
 28 gestures towards any other person subject to this code shall be punished as a
 29 court-martial may direct.

30 ARTICLE 118. RESERVED

31 ARTICLE 119. RESERVED

32 ARTICLE 120. RESERVED

33 ARTICLE 121. RESERVED

34 ARTICLE 122. RESERVED

35 ARTICLE 123. ~~RESERVED~~ OFFENSES CONCERNING GOVERNMENT COMPUTERS

36 (a) In general. Any person subject to this chapter who:

37 (1) Knowingly accesses a government computer, with an unauthorized
 38 purpose, and by doing so obtains classified information, with reason

1 to believe such information could be used to the injury of the United
 2 States or the state, or to the advantage of any foreign nation, and
 3 intentionally communicates, delivers, transmits, or causes to be com-
 4 municated, delivered, or transmitted such information to any person not
 5 entitled to receive it;

6 (2) Intentionally accesses a government computer, with an unauthorized
 7 purpose, and thereby obtains classified or other protected information
 8 from any such government computer; or

9 (3) Knowingly causes the transmission of a program, information, code,
 10 or command and, as a result of such conduct, intentionally causes damage
 11 without authorization to a government computer;

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

13 (b) Definition. In this article, the term "government computer" means
 14 a computer owned or operated by or on behalf of the United States government
 15 or state.

16 ARTICLE 123a. RESERVED

17 ARTICLE 124. RESERVED

18 ARTICLE 124a. BRIBERY

19 (a) Asking for, accepting, or receiving a thing of value. Any person
 20 subject to this code:

21 (1) Who occupies an official position or who has official duties with
 22 the state military forces; and

23 (2) Who wrongfully asks, accepts, or receives a thing of value with
 24 the intent to have the person's decisions or actions influenced with
 25 respect to an official matter in which the United States or the state is
 26 interested;

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

28 (b) Promising, offering, or giving a thing of value. Any person subject
 29 to this code who wrongfully promises, offers, or gives a thing of value to
 30 another person who occupies an official position or who has official duties
 31 with the state military forces, with the intent to influence the decision
 32 or action of another person with respect to an official matter in which the
 33 United States or the state is interested, shall be punished as a court-mar-
 34 tial may direct.

35 ARTICLE 124b. GRAFT

36 (a) Asking for, accepting, or receiving a thing of value. Any person
 37 subject to this code:

38 (1) Who occupies an official position or who has official duties with
 39 the state military forces; and

40 (2) Who wrongfully asks, accepts, or receives a thing of value as com-
 41 penensation for or in recognition of services rendered or to be rendered
 42 by the person with respect to an official matter in which the United
 43 States or the state is interested;

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

2 (b) Promising, offering, or giving a thing of value. Any person sub-
 3 ject to this code who wrongfully promises, offers, or gives a thing of value
 4 to another person who occupies an official position or who has official du-
 5 ties with the state military forces, as compensation for or in recognition of
 6 services rendered or to be rendered by the other person with respect to an of-
 7 ficial matter in which the United States or the state is interested, shall be
 8 punished as a court-martial may direct.

9 ARTICLE 125. RESERVED

10 ARTICLE 126. RESERVED

11 ARTICLE 127. RESERVED

12 ARTICLE 128. RESERVED

13 ARTICLE 129. RESERVED

14 ARTICLE 130. RESERVED

15 ARTICLE 131. RESERVED

16 ARTICLE 131b. OBSTRUCTING JUSTICE

17 Any person subject to this code who engages in conduct in the case of a cer-
 18 tain person against whom the accused had reason to believe there were or
 19 would be criminal or disciplinary proceedings pending pursuant to this code,
 20 with intent to influence, impede, or otherwise obstruct the due administra-
 21 tion of justice, shall be punished as a court-martial may direct.

22 ARTICLE 131c. MISPRISION OF A SERIOUS OFFENSE

23 In general. Any person subject to this code:

24 (1) Who knows that another person has committed a serious offense; and
 25 (2) Who wrongfully conceals the commission of the offense and fails to
 26 make the commission of the offense known to civilian or military authorities
 27 as soon as possible;
 28 shall be punished as a court-martial may direct.

29 ARTICLE 131d. WRONGFUL REFUSAL TO TESTIFY

30 Any person subject to this code who, in the presence of a court-martial, a
 31 board of officers, a military commission, a court of inquiry, a prelimi-
 32 nary hearing, or an officer taking a deposition of or for the state military
 33 forces or for the United States, wrongfully refuses to qualify as a witness
 34 or to answer a question after having been directed to do so by the person
 35 presiding shall be punished as a court-martial may direct.

1 ARTICLE 131e. PREVENTION OF AUTHORIZED SEIZURE OF PROPERTY

2 Any person subject to this code who, knowing that one (1) or more persons au-
 3 thorized to make searches and seizures are seizing, are about to seize, or
 4 are endeavoring to seize property, destroys, removes, or otherwise disposes
 5 of the property with intent to prevent the seizure thereof shall be punished
 6 as a court-martial may direct.

7 ARTICLE 131f. NONCOMPLIANCE WITH PROCEDURAL RULES

8 Any person subject to this code who:

9 (1) Is responsible for unnecessary delay in the disposition of any case
 10 of a person accused of an offense under this chapter; or

11 (2) Knowingly and intentionally fails to enforce or comply with any
 12 provision of this chapter regulating the proceedings before, during, or
 13 after trial of an accused;

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

15 ARTICLE 131g. WRONGFUL INTERFERENCE WITH ADVERSE ADMINISTRATIVE PROCEEDING

16 Any person subject to this code who, having reason to believe that an adverse
 17 administrative proceeding is pending against any person subject to this
 18 code, wrongfully acts with the intent:

19 (1) To influence, impede, or obstruct the conduct of the proceeding; or

20 (2) Otherwise to obstruct the due administration of justice;

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

22 ARTICLE 132. FRAUDS AGAINST THE GOVERNMENT RETALIATION

23 Any person subject to this code who:

24 ~~(1) Knowing it to be false or fraudulent:~~

25 ~~(A) Makes any claim against the United States, the state, or any officer~~
 26 ~~thereof; or~~

27 ~~(B) Presents to any person in the civil or military service thereof, for~~
 28 ~~approval or payment, any claim against the United States, the state, or~~
 29 ~~any officer thereof;~~

30 ~~(2) For the purpose of obtaining the approval, allowance, or payment of~~
 31 ~~any claim against the United States, the state, or any officer thereof:~~

32 ~~(A) Makes or uses any writing or other paper knowing it to contain any~~
 33 ~~false or fraudulent statements;~~

34 ~~(B) Makes any oath, affirmation or certification to any fact or to any~~
 35 ~~writing or other paper knowing the oath, affirmation or certification~~
 36 ~~to be false; or~~

37 ~~(C) Forges or counterfeits any signature upon any writing or other~~
 38 ~~paper, or uses any such signature knowing it to be forged or counter-~~
 39 ~~feited;~~

40 ~~(3) Having charge, possession, custody, or control of any money or~~
 41 ~~other property of the United States or the state, furnished or intended for~~
 42 ~~the armed forces of the United States or the state military forces, knowingly~~

1 ~~delivers to any person having authority to receive it, any amount thereof~~
 2 ~~less than that for which he receives a certificate or receipt; or~~

3 ~~(4) Being authorized to make or deliver any paper certifying the~~
 4 ~~receipt of any property of the United States or the state, furnished or~~
 5 ~~intended for the armed forces of the United States or the state military~~
 6 ~~forces, makes or delivers to any person such writing without having full~~
 7 ~~knowledge of the truth of the statements therein contained and with intent to~~
 8 ~~defraud the United States or the state;~~
 9 ~~shall, upon conviction, be punished as a court-martial may direct.~~

10 (a) Any person subject to this code who, with the intent to retaliate
 11 against any person for reporting or planning to report a criminal offense,
 12 or making or planning to make a protected communication, or with the intent
 13 to discourage any person from reporting a criminal offense or making or plan-
 14 ning to make a protected communication:

15 (1) Wrongfully takes or threatens to take an adverse personnel action
 16 against any person; or

17 (2) Wrongfully withholds or threatens to withhold a favorable person-
 18 nel action with respect to any person;

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

20 (b) Definitions. In this article:

21 (1) "Protected communication" means the following:

22 (i) A lawful communication to a member of congress or an inspector
 23 general; or

24 (ii) A communication to a covered individual or organization
 25 in which a member of the armed forces complains of, or discloses
 26 information that the member reasonably believes constitutes evi-
 27 dence of, any of the following:

28 (A) A violation of law or regulation, including a law or reg-
 29 ulation prohibiting sexual harassment or unlawful discrimi-
 30 nation; or

31 (B) Gross mismanagement, a gross waste of funds, an abuse
 32 of authority, or a substantial and specific danger to public
 33 health or safety.

34 (2) "Inspector general" has the meaning given that term in 10 U.S.C.
 35 1034.

36 (3) "Covered individual or organization" means any recipient of a
 37 communication specified in clauses (i) through (vi) of 10 U.S.C.
 38 1034(b) (1) (B).

39 ARTICLE 133. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

40 Any commissioned officer, cadet, candidate, or midshipman who is convicted
 41 of conduct unbecoming an officer and a gentleman shall be punished as a
 42 court-martial may direct.

43 ARTICLE 134. GENERAL ARTICLE

44 Though not specifically mentioned in this code, all disorders and neglects
 45 to the prejudice of good order and discipline in the state military forces
 46 and all conduct of a nature to bring discredit upon the state military forces

1 shall be taken cognizance of by a court-martial and punished at the discre-
 2 tion of a military court. Offenses which may be punished under this ~~section~~
 3 article include, but are not limited to, those offenses set out in the man-
 4 ual for courts-martial as punishable under this article of the uniform code
 5 of military justice, those offenses that violate the criminal laws of the
 6 state where the offense occurred, and those offenses that violate the crimi-
 7 nal laws of the United States. However, where a crime constitutes an offense
 8 that violates both this code and the criminal laws of the state where the of-
 9 fense occurs or criminal laws of the United States, jurisdiction of the mili-
 10 tary court must be determined in accordance with article 2 (b) of this code.

11 PART XI. MISCELLANEOUS PROVISIONS

12 ARTICLE 135. COURTS OF INQUIRY

13 (a) Courts of inquiry to investigate any matter of concern to the state
 14 military forces may be convened by any person authorized to convene a gen-
 15 eral court-martial, whether or not the persons involved have requested such
 16 an inquiry.

17 (b) A court of inquiry consists of three (3) or more commissioned offi-
 18 cers. For each court of inquiry, the convening authority shall also appoint
 19 counsel for the court.

20 (c) Any person subject to this code whose conduct is subject to inquiry
 21 shall be designated as a party. Any person subject to this code who has a di-
 22 rect interest in the subject of inquiry has the right to be designated as a
 23 party upon request to the court. Any person designated as a party shall be
 24 given due notice and has the right to be present, to be represented by coun-
 25 sel, to cross-examine witnesses, and to introduce evidence.

26 (d) Members of a court of inquiry may be challenged by a party, but only
 27 for cause stated to the court.

28 (e) The members, counsel, the reporter, and interpreters of courts of
 29 inquiry shall take an oath to faithfully perform their duties.

30 (f) Witnesses may be summoned to appear and testify and be examined be-
 31 fore courts of inquiry, as provided for courts-martial.

32 (g) Courts of inquiry shall make findings of fact but may not express
 33 opinions or make recommendations unless required to do so by the convening
 34 authority.

35 (h) Each court of inquiry shall keep a record of its proceedings, which
 36 shall be authenticated by the signatures of the president and counsel for
 37 the court and forwarded to the convening authority. If the record cannot
 38 be authenticated by the president, it shall be signed by a member in lieu of
 39 the president. If the record cannot be authenticated by the counsel for the
 40 court, it shall be signed by a member in lieu of the counsel.

41 ARTICLE 136. AUTHORITY TO ADMINISTER OATHS AND TO ACT AS NOTARY

42 (a) The following persons may administer oaths for the purposes of mil-
 43 itary administration, including military justice:

- 44 (1) All judge advocates.
 45 (2) All summary courts-martial.

1 (3) All adjutants, assistant adjutants, acting adjutants, and person-
2 nel adjutants.

3 (4) All commanding officers of the naval militia.

4 (5) All other persons designated by regulations of the armed forces of
5 the United States or by statute.

6 (b) The following persons may administer oaths necessary in the perfor-
7 mance of their duties:

8 (1) The president, military judge, and trial counsel for all general
9 and special courts-martial.

10 (2) The president and the counsel for the court of any court of inquiry.

11 (3) All officers designated to take a deposition.

12 (4) All persons detailed to conduct an investigation.

13 (5) All recruiting officers.

14 (6) All other persons designated by regulations of the armed forces of
15 the United States or by statute.

16 (c) The signature without seal of any such person, together with the ti-
17 tle of his office, is prima facie evidence of the person's authority.

18 ARTICLE 137. ARTICLES TO BE EXPLAINED

19 (a) The articles of this code specified in subsection (c) of this arti-
20 cle shall be carefully explained to each enlisted member at the time of, or
21 within thirty (30) days after, the member's initial entrance into a duty sta-
22 tus with the state military forces.

23 (b) Such articles shall be explained again:

24 (1) After the member has completed basic or recruit training; and

25 (2) At the time when the member reenlists.

26 (c) This subsection applies with respect to articles 2, 3, 7 through 15,
27 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code.

28 (d) The text of the code and of the regulations prescribed under such
29 code shall be made available to a member of the state military forces, upon
30 request by the member, for the member's personal examination.

31 ARTICLE 138. COMPLAINTS OF WRONGS

32 Any member of the state military forces who believes himself wronged by a
33 commanding officer, and who, upon due application to that commanding offi-
34 cer, is refused redress may complain to any superior commissioned officer,
35 who shall forward the complaint to the officer exercising general court-mar-
36 tial jurisdiction over the officer against whom it is made. The officer
37 exercising general court-martial jurisdiction shall examine into the com-
38 plaint and take proper measures for redressing the wrong complained of, and
39 shall, as soon as possible, send to the adjutant general a true statement of
40 that complaint, with the proceedings had thereon.

41 ARTICLE 139. REDRESS OF INJURIES TO PROPERTY

42 (a) Whenever complaint is made to any commanding officer that willful
43 damage has been done to the property of any person or that the person's prop-
44 erty has been wrongfully taken by members of the state military forces, that

1 officer may, under such regulations prescribed, convene a board to investi-
2 gate the complaint. The board shall consist of from one (1) to three (3) com-
3 missioned officers and, for the purpose of that investigation, it has power
4 to summon witnesses and examine them upon oath, to receive depositions or
5 other documentary evidence, and to assess the damages sustained against the
6 responsible parties. The assessment of damages made by the board is subject
7 to the approval of the commanding officer, and in the amount approved by that
8 officer shall be charged against the pay of the offenders. The order of the
9 commanding officer directing charges herein authorized is conclusive on any
10 disbursing officer for payment to the injured parties of the damages so as-
11 sessed and approved.

12 (b) If the offenders cannot be ascertained, but the organization or
13 detachment to which they belong is known, charges totaling the amount of
14 damages assessed and approved may be made in such proportion as may be con-
15 sidered just upon the individual members thereof who are shown to have been
16 present at the scene at the time the damages complained of were inflicted, as
17 determined by the approved findings of the board.

18 ARTICLE 140. DELEGATION BY THE GOVERNOR

19 The governor may delegate any authority vested in the governor under this
20 code and provide for the sub-delegation of any such authority, except the
21 power given the governor by article 22 of this code.

22 ARTICLE 141. PAYMENT OF FEES, COSTS AND EXPENSES

23 The fees and authorized travel expenses of all witnesses, experts, victims,
24 court reporters, and interpreters, fees for the service of process, the
25 costs of collection, apprehension, detention and confinement, and all other
26 necessary expenses of prosecution and the administration of military jus-
27 tice, to include courts-martial and nonjudicial punishment, not otherwise
28 payable by any other source, shall be paid out of the military division sup-
29 port fund as established in section 46-806, Idaho Code.

30 ARTICLE 142. PAYMENT OF FINES AND DISPOSITION THEREOF

31 (a) Fines imposed by a military court or through imposition of nonjudi-
32 cial punishment may be paid to the state and delivered to the court or impos-
33 ing officer or to a person executing their process. Fines may be collected in
34 the following manner:

35 (1) By cash or money order;

36 (2) By retention of any pay or allowances due or to become due the person
37 fined from any state or the United States;

38 (3) By garnishment or levy, together with costs, on the wages, goods,
39 and chattels of a person delinquent in paying a fine, as provided by law.

40 (b) Any sum so received or retained shall be deposited in the military
41 division support fund as established in section 46-806, Idaho Code, or to
42 whomever the court so directs.

1 ARTICLE 143. UNIFORMITY OF INTERPRETATION

2 This code shall be so construed as to effectuate its general purpose to make
3 it uniform, so far as practical, with the uniform code of military justice,
4 10 U.S.C. chapter 47.

5 ARTICLE 144. IMMUNITY FOR ACTION OF MILITARY COURTS

6 All persons acting under the provisions of this code, whether as a member of
7 the military or as a civilian, shall be immune from any personal liability
8 for any of the acts or omissions which they did or failed to do as part of
9 their duties under this code.

10 ARTICLE 145. SEVERABILITY

11 The provisions of this code are hereby declared to be severable and if any
12 provision of this code or the application of such provision to any person or
13 circumstance is declared invalid for any reason, such declaration shall not
14 affect the validity of the remaining portions of this code.

15 ARTICLE 146. SHORT TITLE

16 This act may be cited as the "~~Uniform State~~ Idaho Code of Military Justice"
17 (USICMJ).

18 ARTICLE 147. TIME OF TAKING EFFECT

19 This act takes effect July 1, 20159.

20 ARTICLE 148. TIME OF TAKING EFFECT

21 Upon enactment and the effective date, this law supersedes all existing
22 statutes, ordinances, directives, rules, regulations, orders and other
23 laws in the state covered by the subject matter of this law, and all such
24 statutes, ordinances, directives, rules, regulations, orders and other laws
25 are hereby repealed.