

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 53

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO THE CODE OF MILITARY JUSTICE; REPEALING CHAPTER 11, TITLE 46, IDAHO CODE, RELATING TO THE CODE OF MILITARY JUSTICE; AMENDING TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 11, TITLE 46, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO ENACT AND SPECIFY PARTICULAR PROVISIONS OF THE MODEL STATE CODE OF MILITARY JUSTICE, TO PROVIDE FOR ARREST, TO PROVIDE FOR REGULATORY AUTHORITY, TO PROVIDE FOR IMMUNITY AND TO PROVIDE FOR SEVERABILITY.

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

SECTION 1. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 11, Title 46, Idaho Code, and to read as follows:

CHAPTER 11

IDAHO CODE OF MILITARY JUSTICE

46-1101. SHORT TITLE. This act may be cited and referred to as the "Idaho Code of Military Justice."

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 substantially 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 a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the state military forces;

- 1 (3) The term "classified information" means:  
2 (A) Any information or material that has been determined by an of-  
3 ficial of the United States or any state pursuant to law, an exec-  
4 utive order, or regulation to require protection against unautho-  
5 rized disclosure for reasons of national or state security; and  
6 (B) Any restricted data, as defined in section 11(y) of the atomic  
7 energy act of 1954, 42 U.S.C. section 2014(y);
- 8 (4) The term "code" means this act;
- 9 (5) The term "commanding officer" includes only commissioned officers  
10 of the state military forces and shall include officers in charge only  
11 when administering nonjudicial punishment under article 15 of this  
12 code. The term "commander" has the same meaning as "commanding officer"  
13 unless the context otherwise requires;
- 14 (6) The term "convening authority" includes, in addition to the person  
15 who convened the court, a commissioned officer commanding for the time  
16 being or a successor in command to the convening authority;
- 17 (7) The term "day" means calendar day and is not synonymous with the  
18 term "unit training assembly." Any punishment authorized by this arti-  
19 cle which is measured in terms of days shall, when served in a status  
20 other than annual field training, be construed to mean succeeding duty  
21 days;
- 22 (8) The term "duty status other than state active duty" means any other  
23 type of duty not in federal service and not full-time duty in the active  
24 service of the state, under an order issued by authority of law and in-  
25 cludes travel to and from such duty;
- 26 (9) The term "enlisted member" means a person in an enlisted grade;
- 27 (10) The term "judge advocate" means a commissioned officer of the orga-  
28 nized state military forces who is a member in good standing of the bar  
29 of the highest court of a state and is:
- 30 (A) Certified or designated as a judge advocate in the judge ad-  
31 vocate general's corps of the army, air force, navy, or the marine  
32 corps or designated as a law specialist as an officer of the coast  
33 guard, or a reserve component of one (1) of these; or
- 34 (B) Certified as a nonfederally recognized judge advocate, under  
35 regulations promulgated pursuant to this provision, by the senior  
36 judge advocate of the commander of the force in the state military  
37 forces of which the accused is a member, as competent to perform  
38 such military justice duties required by this code. If there is no  
39 such judge advocate available, then such certification may be made  
40 by such senior judge advocate of the commander of another force in  
41 the state military forces, as the convening authority directs;
- 42 (11) The term "may" is used in a permissive sense. The phrase "no person  
43 may ..." means that no person is required, authorized or permitted to do  
44 the act prescribed;
- 45 (12) The term "military court" means a court-martial or a court of in-  
46 quiry;
- 47 (13) The term "military judge" means an official of a general or special  
48 court-martial detailed in accordance with article 26 of this code;
- 49 (14) The term "military offenses" means those offenses prescribed under  
50 articles 77 (Principals), 78 (Accessory after the fact), 80 (Attempts),

1 81 (Conspiracy), 82 (Solicitation), 83 (Fraudulent enlistment, ap-  
2 pointment, or separation), 84 (Unlawful enlistment, appointment, or  
3 separation), 85 (Desertion), 86 (Absence without leave), 87 (Missing  
4 movement), 88 (Contempt toward officials), 89 (Disrespect towards su-  
5 perior commissioned officer), 90 (Assaulting or willfully disobeying  
6 superior commissioned officer), 91 (Insubordinate conduct toward war-  
7 rant officer, noncommissioned officer, or petty officer), 92 (Failure  
8 to obey order or regulation), 93 (Cruelty and maltreatment), 94 (Mutiny  
9 or sedition), 95 (Resistance, flight, breach of arrest, and escape),  
10 96 (Releasing prisoner without proper authority), 97 (Unlawful de-  
11 tention), 98 (Noncompliance with procedural rules), 99 (Misbehavior  
12 before the enemy), 100 (Subordinate compelling surrender), 101 (Im-  
13 proper use of countersign), 102 (Forcing a safeguard), 103 (Captured  
14 or abandoned property), 104 (Aiding the enemy), 105 (Misconduct as  
15 prisoner), 107 (False official statements), 108 (Military property --  
16 Loss, damage, destruction, or wrongful disposition), 109 (Property  
17 other than military property -- Waste, spoilage, or destruction), 110  
18 (Improper hazarding of vessel), 112 (Drunk on duty), 112a. (Wrongful  
19 use, possession, etc., of controlled substances), 113 (Misbehavior of  
20 sentinel), 114 (Dueling), 115 (Malingering), 116 (Riot or breach of  
21 peace), 117 (Provoking speeches or gestures), 132 (Frauds against the  
22 government), 133 (Conduct unbecoming an officer and a gentleman), and  
23 134 (General article) of this code;  
24 (15) The term "national security" means the national defense and for-  
25 eign relations of the United States;  
26 (16) The term "officer" means a commissioned or warrant officer;  
27 (17) The term "officer in charge" means a member of the naval militia,  
28 the navy, the marine corps, or the coast guard designated as such by ap-  
29 propriate authority;  
30 (18) The term "record," when used in connection with the proceedings of  
31 a court-martial, means:  
32 (A) An official written transcript, written summary or other  
33 writing relating to the proceedings; or  
34 (B) An official audiotape, videotape, digital image or file, or  
35 similar material from which sound, or sound and visual images, de-  
36 picting the proceedings may be reproduced;  
37 (19) "Shall" is used in an imperative sense;  
38 (20) "State" means one of the several states, the District of Columbia,  
39 the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands;  
40 (21) "State active duty" means full-time duty in the state military  
41 forces under an order of the governor or otherwise issued by authority  
42 of law, and paid by state funds, and includes travel to and from such  
43 duty;  
44 (22) "Senior force judge advocate" means the senior judge advocate of  
45 the commander of the same force of the state military forces as the ac-  
46 cused and who is that commander's chief legal advisor;  
47 (23) "State military forces" means the national guard of the state of  
48 Idaho, as defined in title 32, United States Code, the organized naval  
49 militia of the state, and any other military force organized under the  
50 constitution and laws of the state of Idaho, not to include the unorga-

1 nized militia, when not in a status subjecting them to exclusive juris-  
 2 diction under 10 U.S.C. chapter 47. The unorganized militia, state de-  
 3 fense force, state national guard, home guard or any other name of any  
 4 state force that does not meet this definition shall not be part of the  
 5 "state military forces" under this code;

6 (24) The term "superior commissioned officer" means a commissioned of-  
 7 ficer superior in rank or command;

8 (25) "Senior force commander" means the commander of the same force of  
 9 the state military forces as the accused.

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

## 12 ARTICLE 2. PERSONS SUBJECT TO THIS CODE -- JURISDICTION

13 (a) This code applies to all members of the state military forces when  
 14 serving in a title 32 status or state active duty status as defined in article  
 15 1(a) (23) of this code. This code does not apply to members serving in a title  
 16 10 status or members of the unorganized militia as defined in section 46-102,  
 17 Idaho Code.

18 (b) Subject matter jurisdiction is established if a nexus exists be-  
 19 tween an offense, either military or nonmilitary, and the state military  
 20 force, regardless of duty status. Courts-martial have primary jurisdiction  
 21 of military offenses as defined in article 1(a) (14) of this code. A proper  
 22 civilian court has primary jurisdiction of a nonmilitary offense when an  
 23 act or omission violates both this code and local criminal law, foreign  
 24 or domestic. In such a case, a court-martial may be initiated only after  
 25 the civilian authority has declined to prosecute or dismissed the charge,  
 26 provided jeopardy has not attached. Jurisdiction over attempted crimes,  
 27 conspiracy crimes, solicitation, and accessory crimes must be determined by  
 28 the underlying offense.

## 29 ARTICLE 3. JURISDICTION TO TRY CERTAIN PERSONNEL

30 (a) Each person discharged from the state military forces who is later  
 31 charged with having fraudulently obtained a discharge is, subject to article  
 32 43 of this code, subject to trial by court-martial on that charge and is, af-  
 33 ter apprehension, subject to this code while in custody under the direction  
 34 of the state military forces for that trial. Upon conviction of that charge  
 35 that person is subject to trial by court-martial for all offenses under this  
 36 code committed before the fraudulent discharge.

37 (b) No person who has deserted from the state military forces may be re-  
 38 lieved from amenability to the jurisdiction of this code by virtue of a sepa-  
 39 ration from any later period of service.

## 40 ARTICLE 4. RESERVED

## 41 ARTICLE 5. TERRITORIAL APPLICABILITY OF THE CODE

42 (a) This code has applicability at all times and in all places subject  
 43 to the personal jurisdiction as provided in article 2 of this code, or, if

1 not in a duty status, that there is a nexus between the act or omission con-  
2 stituting the offense and the efficient functioning of the state military  
3 forces; however, this grant of military jurisdiction shall neither preclude  
4 nor limit civilian jurisdiction over an offense, which is limited only by the  
5 prohibition of double jeopardy.

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

## 12 ARTICLE 6. JUDGE ADVOCATES

13 (a) The senior force judge advocates in each of the state's military  
14 forces or that judge advocate's delegates shall make frequent inspections in  
15 the field in supervision of the administration of military justice in that  
16 force.

17 (b) Convening authorities shall at all times communicate directly with  
18 their judge advocates in matters relating to the administration of military  
19 justice. The judge advocate of any command is entitled to communicate di-  
20 rectly with the judge advocate of a superior or subordinate command, or with  
21 the state judge advocate.

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

## 26 ARTICLE 6a. RESERVED

## 27 PART II. APPREHENSION AND RESTRAINT

## 28 ARTICLE 7. APPREHENSION

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

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

38 (c) Commissioned officers, warrant officers, petty officers, and non-  
39 commissioned officers have authority to quell quarrels, frays, and disor-  
40 ders among persons subject to this code and to apprehend persons subject to  
41 this code who take part therein.

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

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

6 ARTICLE 8. RESERVED

7 ARTICLE 9. IMPOSITION OF RESTRAINT

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

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

17 (c) A commissioned officer, a warrant officer, or a civilian subject to  
18 this code or to trial thereunder may be ordered into arrest or confinement  
19 only by a commanding officer to whose authority the person is subject, by an  
20 order, oral or written, delivered in person or by another commissioned offi-  
21 cer. The authority to order such persons into arrest or confinement may not  
22 be delegated.

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

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

28 ARTICLE 10. RESTRAINT OF PERSONS CHARGED WITH OFFENSES

29 Any person subject to this code charged with an offense under this code may  
30 be ordered into arrest or confinement, as circumstances may require. When  
31 any person subject to this code is placed in arrest or confinement prior to  
32 trial, immediate steps shall be taken to inform the person of the specific  
33 wrong of which the person is accused and diligent steps shall be taken to try  
34 the person or to dismiss the charges and release the person.

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

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

39 (b) No person authorized to receive prisoners pursuant to subsection  
40 (a) of this article may refuse to receive or keep any prisoner committed to  
41 the person's charge by a commissioned officer of the state military forces,  
42 when the committing officer furnishes a statement, signed by such officer,

1 of the offense charged against the prisoner, unless otherwise authorized by  
2 law.

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

9 ARTICLE 12. CONFINEMENT WITH ENEMY PRISONERS PROHIBITED

10 No member of the state military forces may be placed in confinement in imme-  
11 diate association with enemy prisoners or other foreign nationals not mem-  
12 bers of the armed forces.

13 ARTICLE 13. PUNISHMENT PROHIBITED BEFORE TRIAL

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

19 ARTICLE 14. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES

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

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

30 PART III. NONJUDICIAL PUNISHMENT

31 ARTICLE 15. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

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

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

40 (1) An admonition;

41 (2) A reprimand;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (g) The officer who imposes the punishment, or the successor in com-  
50 mand, may, at any time, suspend, set aside, mitigate, or remit any part or



1 amount of the punishment and restore all rights, privileges, and property  
2 affected. The officer also may:

- 3 (1) Mitigate reduction in grade to forfeiture of pay;
- 4 (2) Mitigate arrest in quarters to restriction; or
- 5 (3) Mitigate extra duties to restriction.

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

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

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

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

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

#### 36 PART IV. COURT-MARTIAL JURISDICTION

#### 37 ARTICLE 16. COURTS-MARTIAL CLASSIFIED

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

- 39 (1) General courts-martial, consisting of:
  - 40 (A) A military judge and not less than five (5) members; or
  - 41 (B) Only a military judge, if before the court is assembled the accused,  
42 knowing the identity of the military judge and after consultation with  
43 defense counsel, requests orally on the record or in writing a court  
44 composed only of a military judge and the military judge approves;
- 45 (2) Special courts-martial, consisting of:
  - 46 (A) A military judge and not less than three (3) members; or

1 (B) Only a military judge, if one (1) has been detailed to the court, and  
2 the accused under the same conditions as those prescribed in subsection  
3 (1) (B) of this article so requests; and  
4 (3) Summary courts-martial, consisting of one (1) commissioned offi-  
5 cer.

6 ARTICLE 17. JURISDICTION OF COURTS-MARTIAL IN GENERAL

7 Each component of the state military forces has court-martial jurisdiction  
8 over all members of the particular component who are subject to this code.  
9 Additionally, the army and air national guard state military forces have  
10 court-martial jurisdiction over all members subject to this code.

11 ARTICLE 18. JURISDICTION OF GENERAL COURTS-MARTIAL

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

16 ARTICLE 19. JURISDICTION OF SPECIAL COURTS-MARTIAL

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

24 ARTICLE 20. JURISDICTION OF SUMMARY COURTS-MARTIAL

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

29 (b) No person in the rank of E7 or above may be brought to trial before a  
30 summary court-martial if that person objects thereto. If objection to trial  
31 by summary court-martial is made by an accused in the rank of E7 or above,  
32 trial by special or general court-martial may be ordered, as may be appropri-  
33 ate. Members in the rank of E6 and below do not have the right to reject trial  
34 before a summary court-martial. Summary courts-martial may, under such lim-  
35 itations as the governor may prescribe, adjudge any punishment not forbidden  
36 by this code except dismissal, dishonorable or bad-conduct discharge, con-  
37 finement for more than one (1) month, restriction to specified limits for  
38 more than two (2) months, or forfeiture of more than two-thirds (2/3) of one  
39 (1) month's pay.

40 ARTICLE 21. RESERVED

## 1 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

## 2 ARTICLE 22. WHO MAY CONVENE GENERAL COURTS-MARTIAL

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

4 (1) The governor;

5 (2) The adjutant general;

6 (3) The commanding officer of a force of the state military forces;

7 (4) The commanding officer of a division or a separate brigade; or

8 (5) The commanding officer of a separate wing.

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

## 12 ARTICLE 23. WHO MAY CONVENE SPECIAL COURTS-MARTIAL

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

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

15 (2) The commanding officer of a garrison, fort, post, camp, station,  
16 air national guard base, or naval base or station;17 (3) The commanding officer of a brigade, regiment, detached battalion,  
18 or corresponding unit of the army;19 (4) The commanding officer of a wing, group, separate squadron, or cor-  
20 responding unit of the air force; or21 (5) The commanding officer or officer in charge of any other command  
22 when empowered by the adjutant general.23 (b) If any such officer is an accuser, the court shall be convened by  
24 superior competent authority and may in any case be convened by such superior  
25 authority if considered desirable by such authority.

## 26 ARTICLE 24. WHO MAY CONVENE SUMMARY COURTS-MARTIAL

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

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

29 (2) The commanding officer of a detached company or other detachment,  
30 or corresponding unit of the army;31 (3) The commanding officer of a detached squadron or other detachment,  
32 or corresponding unit of the air force; or33 (4) The commanding officer or officer in charge of any other command  
34 when empowered by the adjutant general.35 (b) When only one (1) commissioned officer is present with a command  
36 or detachment, that officer shall be the summary court-martial of that com-  
37 mand or detachment and shall hear and determine all summary court-martial  
38 cases. Summary courts-martial may, however, be convened in any case by supe-  
39 rior competent authority if considered desirable by such authority.

## 40 ARTICLE 25. WHO MAY SERVE ON COURTS-MARTIAL

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

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

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

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

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

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

41 ARTICLE 25a. RESERVED

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

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

46 (b) A military judge shall be:

1 (1) An active or retired commissioned officer of an organized state  
2 military force;

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

5 (3) Certified as qualified for duty as a military judge by the senior  
6 force judge advocate which is the same force as the accused.

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

12 (d) The military judge of a general or special court-martial shall be  
13 designated by the senior force judge advocate which is the same force as the  
14 accused, or a designee, for detail by the convening authority. Neither the  
15 convening authority nor any staff member of the convening authority shall  
16 prepare or review any report concerning the effectiveness, fitness, or ef-  
17 ficiency of the military judge so detailed, which relates to performance of  
18 duty as a military judge.

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

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

#### 25 ARTICLE 27. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL

26 (a) General provision:

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

30 (2) No person who has acted as investigating officer, military judge,  
31 witness or court member in any case may act later as trial counsel, as-  
32 sistant trial counsel, or, unless expressly requested by the accused,  
33 as defense counsel or assistant or associate defense counsel in the same  
34 case. No person who has acted for the prosecution may act later in the  
35 same case for the defense nor may any person who has acted for the de-  
36 fense act later in the same case for the prosecution.

37 (b) Except as provided in subsection (c) of this article, trial counsel  
38 or defense counsel detailed for a general or special court-martial must be:

39 (1) A judge advocate as defined in article 1(a)(10) of this code; and

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

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

46 (1) A commissioned officer of the armed forces of the United States or a  
47 component thereof; and

- 1 (2) A member in good standing of the bar of the highest court of a state;  
2 and  
3 (3) Certified as a judge advocate in the judge advocate general's corps  
4 of the army, air force, navy, or the marine corps; or  
5 (4) A judge advocate as defined in article 1(a) (10) of this code.

6 ARTICLE 28. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS

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

12 ARTICLE 29. ABSENT AND ADDITIONAL MEMBERS

13 (a) No member of a general or special court-martial may be absent or ex-  
14 cused after the court has been assembled for the trial of the accused unless  
15 excused as a result of a challenge, excused by the military judge for physi-  
16 cal disability or other good cause, or excused by order of the convening au-  
17 thority for good cause.

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

26 (c) Whenever a special court-martial, other than a special court-mar-  
27 tial composed of a military judge only, is reduced below three (3) members,  
28 the trial may not proceed unless the convening authority details new members  
29 sufficient in number to provide not less than three (3) members. The trial  
30 shall proceed with the new members present as if no evidence had been intro-  
31 duced previously at the trial, unless a verbatim record of the evidence pre-  
32 viously introduced before the members of the court or a stipulation thereof  
33 is read to the court in the presence of the military judge, the accused, and  
34 counsel for both sides.

35 (d) If the military judge of a court-martial composed of a military  
36 judge only is unable to proceed with the trial because of physical disabil-  
37 ity, as a result of a challenge, or for other good cause, the trial shall  
38 proceed, subject to any applicable conditions of article 16(1) (B) or (2) (B)  
39 of this code, after the detail of a new military judge as if no evidence had  
40 previously been introduced, unless a verbatim record of the evidence previ-  
41 ously introduced or a stipulation thereof is read in court in the presence of  
42 the new military judge, the accused, and counsel for both sides.

43 PART VI. PRE-TRIAL PROCEDURE

## 1 ARTICLE 30. CHARGES AND SPECIFICATIONS

2 (a) Charges and specifications shall be signed by a person subject to  
3 this code under oath before a commissioned officer authorized by article  
4 136(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; and

7 (2) That they are true in fact to the best of the signer's knowledge and  
8 belief.

9 (b) Upon the preferring of charges, the proper authority shall take im-  
10 mediate steps to determine what disposition should be made thereof in the in-  
11 terest of justice and discipline, and the person accused shall be informed of  
12 the charges as soon as practicable.

## 13 ARTICLE 31. COMPULSORY SELF-INCRIMINATION PROHIBITED

14 (a) No person subject to this code may compel any person to incriminate  
15 himself or to answer any question the answer to which may tend to incriminate  
16 him.

17 (b) No person subject to this code may interrogate or request any state-  
18 ment from an accused or a person suspected of an offense without first in-  
19 forming that person of the nature of the accusation and advising that person  
20 that the person does not have to make any statement regarding the offense of  
21 which the person is accused or suspected and that any statement made by the  
22 person may be used as evidence against the person in a trial by court-mar-  
23 tial.

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

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

## 30 ARTICLE 32. INVESTIGATION

31 (a) No charge or specification may be referred to a general court-mar-  
32 tial for trial until a thorough and impartial investigation of all the mat-  
33 ters set forth therein has been made. This investigation shall include in-  
34 quiry as to the truth of the matter set forth in the charges, consideration of  
35 the form of charges, and a recommendation as to the disposition that should  
36 be made of the case in the interest of justice and discipline.

37 (b) The accused shall be advised of the charges against the accused and  
38 of the right to be represented at that investigation by counsel. The accused  
39 has the right to be represented at that investigation as provided in arti-  
40 cle 38 of this code and in regulations prescribed under that article. At that  
41 investigation, full opportunity shall be given to the accused to cross-ex-  
42 amine witnesses against the accused, if they are available, and to present  
43 anything the accused may desire in the accused's own behalf, either in de-  
44 fense or mitigation, and the investigating officer shall examine available  
45 witnesses requested by the accused. If the charges are forwarded after the

1 investigation, they shall be accompanied by a statement of the substance of  
2 the testimony taken on both sides and a copy thereof shall be given to the ac-  
3 cused.

4 (c) If an investigation of the subject matter of an offense has been  
5 conducted before the accused is charged with the offense, and if the accused  
6 was present at the investigation and afforded the opportunities for repre-  
7 sentation, cross-examination, and presentation prescribed in subsection  
8 (b) of this article, no further investigation of that charge is necessary  
9 under this article unless it is demanded by the accused after the accused  
10 is informed of the charge. A demand for further investigation entitles the  
11 accused to recall witnesses for further cross-examination and to offer any  
12 new evidence in the accused's own behalf.

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

17 (1) Is present at the investigation;

18 (2) Is informed of the nature of each uncharged offense investigated;  
19 and

20 (3) Is afforded the opportunities for representation, cross-examina-  
21 tion, and presentation prescribed in subsection (b) of this article.

22 (e) The requirements of this article are binding on all persons admin-  
23 istering this code, but failure to follow them does not constitute jurisdic-  
24 tional error.

#### 25 ARTICLE 33. FORWARDING OF CHARGES

26 When a person is held for trial by general court-martial, the commanding of-  
27 ficer shall within eight (8) days after the accused is ordered into arrest or  
28 confinement, if practicable, forward the charges, together with the inves-  
29 tigation and allied papers, to the person exercising general court-martial  
30 jurisdiction. If that is not practicable, the commanding officer shall re-  
31 port in writing to that person the reasons for delay.

#### 32 ARTICLE 34. ADVICE OF JUDGE ADVOCATE AND REFERENCE FOR TRIAL

33 (a) Before directing the trial of any charge by general court-martial,  
34 the convening authority shall refer it to a judge advocate for consideration  
35 and advice. The convening authority may not refer a specification under a  
36 charge to a general court-martial for trial unless the convening authority  
37 has been advised in writing by a judge advocate that:

38 (1) The specification alleges an offense under this code;

39 (2) The specification is warranted by the evidence indicated in the re-  
40 port of investigation under article 32 of this code, if there is such a  
41 report; and

42 (3) A court-martial would have jurisdiction over the accused and the  
43 offense.

44 (b) The advice of the judge advocate under subsection (a) of this ar-  
45 ticle with respect to a specification under a charge shall include a written  
46 and signed statement by the judge advocate:



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

3 (2) Recommending action that the convening authority take regarding  
4 the specification. If the specification is referred for trial, the rec-  
5 ommendation of the judge advocate shall accompany the specification.

6 (c) If the charges or specifications are not correct formally or do not  
7 conform to the substance of the evidence contained in the report of the in-  
8 vestigating officer, formal corrections, and such changes in the charges and  
9 specifications as are needed to make them conform to the evidence, may be  
10 made.

#### 11 ARTICLE 35. SERVICE OF CHARGES

12 The trial counsel shall serve or caused to be served upon the accused a copy  
13 of the charges. No person may, against the person's objection, be brought  
14 to trial before a general court-martial case within a period of five (5) days  
15 after the service of charges upon the accused, or in a special court-martial  
16 within a period of three (3) days after the service of charges upon the ac-  
17 cused.

#### 18 PART VII. TRIAL PROCEDURE

#### 19 ARTICLE 36. GOVERNOR OR THE ADJUTANT GENERAL MAY PRESCRIBE RULES

20 Pretrial, trial, and post-trial procedures, including modes of proof, for  
21 courts-martial cases arising under this code, and for courts of inquiry, may  
22 be prescribed by the governor or the adjutant general by regulations, or as  
23 otherwise provided by law, which shall apply the principles of law and the  
24 rules of evidence generally recognized in military criminal cases in the  
25 courts of the armed forces but which may not be contrary to or inconsistent  
26 with this code.

#### 27 ARTICLE 37. UNLAWFULLY INFLUENCING ACTION OF COURT

28 (a) No authority convening a general, special, or summary court-mar-  
29 tial, nor any other commanding officer, or officer serving on the staff  
30 thereof, may censure, reprimand, or admonish the court or any member, the  
31 military judge, or counsel thereof, with respect to the findings or sentence  
32 adjudged by the court or with respect to any other exercise of its or their  
33 functions in the conduct of the proceedings. No person subject to this code  
34 may attempt to coerce or, by any unauthorized means, influence the action of  
35 a court-martial or court of inquiry or any member thereof, in reaching the  
36 findings or sentence in any case, or the action of any convening, approving,  
37 or reviewing authority with respect to their judicial acts. The foregoing  
38 provisions of this subsection shall not apply with respect to: (1) general  
39 instructional or informational courses in military justice if such courses  
40 are designed solely for the purpose of instructing members of a command in  
41 the substantive and procedural aspects of courts-martial; or (2) to state-  
42 ments and instructions given in open court by the military judge, summary  
43 court-martial officer, or counsel.

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

11 ARTICLE 38. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL

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

16 (b) Defense counsel:

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

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

22 (3) The accused may be represented:

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

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

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

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

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

38 (A) May detail additional military counsel as assistant defense  
39 counsel; and

40 (B) If the accused is represented by military counsel of the ac-  
41 cused's own selection under paragraph (3) (B) of this subsection,  
42 may approve a request from the accused that military counsel de-  
43 tailed under paragraph (3) (A) of this subsection act as associate  
44 defense counsel.

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

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

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

7 (2) May assist the accused in the submission of any matter under article  
8 60 of this code; and

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

10 ARTICLE 39. SESSIONS

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

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

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

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

22 (4) Performing any other procedural function which does not require the  
23 presence of the members of the court under this code. These proceedings  
24 shall be conducted in the presence of the accused, the defense counsel,  
25 and the trial counsel and shall be made a part of the record. These pro-  
26 ceedings may be conducted notwithstanding the number of court members  
27 and without regard to article 29.

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

33 ARTICLE 40. CONTINUANCES

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

37 ARTICLE 41. CHALLENGES

38 (a) Challenges generally.

39 (1) The military judge and members of a general or special court-mar-  
40 tial may be challenged by the accused or the trial counsel for cause  
41 stated to the court. The military judge or the court shall determine  
42 the relevancy and validity of challenges for cause and may not receive a  
43 challenge to more than one (1) person at a time. Challenges by the trial

1 counsel shall ordinarily be presented and decided before those by the  
2 accused are offered.

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

9 (b) Preemptory challenges.

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

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

19 (3) Whenever additional members are detailed to the court, and after  
20 any challenges for cause against such additional members are presented  
21 and decided, each accused and the trial counsel are entitled to one (1)  
22 preemptory challenge against members not previously subject to preemp-  
23 tory challenge.

#### 24 ARTICLE 42. OATHS OR AFFIRMATIONS

25 (a) Before performing their respective duties, military judges, gen-  
26 eral and special courts-martial members, trial counsel, defense counsel,  
27 reporters, and interpreters shall take an oath or affirmation in the pres-  
28 ence of the accused to perform their duties faithfully. The form of the  
29 oath or affirmation, the time and place of the taking thereof, the manner  
30 of recording the same, and whether the oath or affirmation shall be taken  
31 for all cases in which these duties are to be performed or for a particular  
32 case, shall be as prescribed in regulation or as provided by law. These reg-  
33 ulations may provide that an oath or affirmation to perform faithfully the  
34 duties as a military judge, trial counsel, or defense counsel may be taken  
35 at any time by any judge advocate or other person certified or designated to  
36 be qualified or competent for the duty, and if such an oath or affirmation  
37 is taken, it need not again be taken at the time the judge advocate or other  
38 person is detailed to that duty.

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

#### 41 ARTICLE 43. STATUTE OF LIMITATIONS

42 (a) Except as otherwise provided in this article, a person charged with  
43 any offense is not liable to be tried by court-martial or punished under ar-  
44 ticle 15 of this code if the offense was committed more than three (3) years  
45 before the receipt of sworn charges and specifications by an officer exer-

1 cising court-martial jurisdiction over the command or before the imposition  
2 of punishment under article 15 of this code.

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

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

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

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

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

18 (3) Committed in connection with the negotiation, procurement, award,  
19 performance, payment, interim financing, cancellation, or other termi-  
20 nation or settlement, of any contract, subcontract, or purchase order  
21 which is connected with or related to the prosecution of the war, or with  
22 any disposition of termination inventory by any war contractor or gov-  
23 ernment agency;

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

26 (e) Exception.

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

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

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

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

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

41 (B) Allege the same acts or omissions that were alleged in the dis-  
42 missed charges or specifications (or allege acts or omissions that  
43 were included in the dismissed charges or specifications).

#### 44 ARTICLE 44. FORMER JEOPARDY

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

47 (b) No proceeding in which an accused has been found guilty by a court-  
48 martial upon any charge or specification is a trial in the sense of this arti-

1 cle until the finding of guilty has become final after review of the case has  
2 been fully completed.

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

7 ARTICLE 45. PLEAS OF THE ACCUSED

8 (a) If an accused after arraignment makes an irregular pleading, or  
9 after a plea of guilty sets up matter inconsistent with the plea, or if it  
10 appears that the accused has entered the plea of guilty improvidently or  
11 through lack of understanding of its meaning and effect, or if the accused  
12 fails or refuses to plead, a plea of not guilty shall be entered in the  
13 record, and the court shall proceed as though the accused had pleaded not  
14 guilty.

15 (b) With respect to any charge or specification to which a plea of  
16 guilty has been made by the accused and accepted by the military judge or by a  
17 court-martial without a military judge, a finding of guilty of the charge or  
18 specification may be entered immediately without vote. This finding shall  
19 constitute the finding of the court unless the plea of guilty is withdrawn  
20 prior to announcement of the sentence, in which event the proceedings shall  
21 continue as though the accused had pleaded not guilty.

22 ARTICLE 46. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE

23 The trial counsel, the defense counsel, and the court-martial shall have  
24 equal opportunity to obtain witnesses and other evidence as prescribed by  
25 regulations and provided by law. Process issued in court-martial cases to  
26 compel witnesses to appear and testify and to compel the production of other  
27 evidence shall apply the principles of law and the rules of courts-martial  
28 generally recognized in military criminal cases in the courts of the armed  
29 forces of the United States, but which may not be contrary to or inconsistent  
30 with this code. Process shall run to any part of the United States, or the  
31 territories, commonwealths, and possessions, and may be executed by civil  
32 officers as prescribed by the laws of the place where the witness or evidence  
33 is located or of the United States.

34 ARTICLE 47. REFUSAL TO APPEAR OR TESTIFY

35 (a) Any person not subject to this code who:

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

40 (2) Has been duly paid or tendered the fees and mileage of a witness at  
41 the rates allowed to witnesses attending a criminal court of the state;  
42 and

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

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

8 ARTICLE 48. CONTEMPTS

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

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

15 (b) A person not subject to this code may be punished for contempt by a  
16 military court in the same manner as a criminal court of the state.

17 ARTICLE 49. DEPOSITIONS

18 (a) At any time after charges have been signed as provided in article  
19 30 of this code, any party may take oral or written depositions unless the  
20 military judge or summary court-martial officer hearing the case or, if the  
21 case is not being heard, an authority competent to convene a court-martial  
22 for the trial of those charges forbids it for good cause.

23 (b) The party at whose instance a deposition is to be taken shall give to  
24 every other party reasonable written notice of the time and place for taking  
25 the deposition.

26 (c) Depositions may be taken before and authenticated by any military  
27 or civil officer authorized by the laws of the state or by the laws of the  
28 place where the deposition is taken to administer oaths.

29 (d) A duly authenticated deposition taken upon reasonable notice to the  
30 other parties, so far as otherwise admissible under the rules of evidence,  
31 may be read in evidence or, in the case of audiotape, videotape, digital im-  
32 age or file, or similar material, may be played in evidence before any mili-  
33 tary court, if it appears:

34 (1) That the witness resides or is beyond the state in which the court is  
35 ordered to sit, or beyond one hundred (100) miles from the place of trial  
36 or hearing;

37 (2) That the witness by reason of death, age, sickness, bodily infir-  
38 mity, imprisonment, military necessity, non-amenability to process,  
39 or other reasonable cause is unable or refuses to appear and testify in  
40 person at the place of trial or hearing; or

41 (3) That the present whereabouts of the witness is unknown.

42 ARTICLE 50. ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY

43 (a) In any case not extending to the dismissal of a commissioned offi-  
44 cer, the sworn testimony, contained in the duly authenticated record of pro-

1 proceedings of a court of inquiry, of a person whose oral testimony cannot be ob-  
2 tained, may, if otherwise admissible under the rules of evidence, be read in  
3 evidence by any party before a court-martial if the accused was a party be-  
4 fore the court of inquiry and if the same issue was involved or if the accused  
5 consents to the introduction of such evidence.

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

8 (c) Such testimony may also be read in evidence before a court of in-  
9 quiry.

10 ARTICLE 50a. DEFENSE OF LACK OF MENTAL RESPONSIBILITY

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

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

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

22 (1) Guilty;

23 (2) Not guilty; or

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

25 (d) Subsection (c) of this article does not apply to a court-martial  
26 composed of a military judge only. In the case of a court-martial composed  
27 of a military judge only or a summary court-martial officer, whenever lack of  
28 mental responsibility of the accused with respect to an offense is properly  
29 at issue, the military judge or summary court-martial officer shall find the  
30 accused:

31 (1) Guilty;

32 (2) Not guilty; or

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

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

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

40 (2) In the case of a court-martial composed of a military judge only or  
41 a summary court-martial officer, the military judge or summary court-  
42 martial officer determines that the defense of lack of mental responsi-  
43 bility has been established.

44 ARTICLE 51. VOTING AND RULINGS

45 (a) Voting by members of a general or special court-martial on the find-  
46 ings and on the sentence shall be by secret written ballot. The junior member



1 of the court shall count the votes. The count shall be checked by the presi-  
2 dent, who shall forthwith announce the result of the ballot to the members of  
3 the court.

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

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

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

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

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

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

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

#### 34 ARTICLE 52. NUMBER OF VOTES REQUIRED

35 (a) No person may be convicted of an offense except as provided in arti-  
36 cle 45(b) of this code or by the concurrence of two-thirds (2/3) of the mem-  
37 bers present at the time the vote is taken.

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

## 1 ARTICLE 53. COURT TO ANNOUNCE ACTION

2 A court-martial shall announce its findings and sentence to the parties as  
3 soon as determined.

## 4 ARTICLE 54. RECORD OF TRIAL

5 (a) Each general and special court-martial shall keep a separate record  
6 of the proceedings in each case brought before it, and the record shall be  
7 authenticated by the signature of the military judge. If the record cannot  
8 be authenticated by the military judge by reason of his death, disability,  
9 or absence, it shall be authenticated by the signature of the trial counsel  
10 or by that of a member, if the trial counsel is unable to authenticate it by  
11 reason of his death, disability, or absence. In a court-martial consisting  
12 of only a military judge, the record shall be authenticated by the court re-  
13 porter under the same conditions which would impose such a duty on a member  
14 under this subsection.

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

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

20 (c) Each summary court-martial shall keep a separate record of the pro-  
21 ceedings in each case, and the record shall be authenticated in the manner as  
22 may be prescribed by regulations.

23 (d) A copy of the record of the proceedings of each general and special  
24 court-martial shall be given to the accused as soon as it is authenticated.

## 25 PART VIII. SENTENCES

## 26 ARTICLE 55. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED

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

## 31 ARTICLE 56. MAXIMUM LIMITS

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

40 (b) The limits of punishment for violations of the punitive articles  
41 prescribed herein shall be lesser of the sentences prescribed by the manual

1 for courts-martial of the United States in effect on January 1, 2004, and the  
2 state manual for courts-martial, but in no instance shall any punishment ex-  
3 ceed that authorized by this code.

4 ARTICLE 56a. RESERVED

5 ARTICLE 57. EFFECTIVE DATE OF SENTENCES

6 (a) Whenever a sentence of a court-martial as lawfully adjudged and ap-  
7 proved includes a forfeiture of pay or allowances in addition to confinement  
8 not suspended, the forfeiture may apply to pay or allowances becoming due on  
9 or after the date the sentence is approved by the convening authority. No  
10 forfeiture may extend to any pay or allowances accrued before that date.

11 (b) Any period of confinement included in a sentence of a court-mar-  
12 tial begins to run from the date the sentence is adjudged by the court-mar-  
13 tial, but periods during which the sentence to confinement is suspended or  
14 deferred shall be excluded in computing the service of the term of confine-  
15 ment.

16 (c) All other sentences of courts-martial are effective on the date or-  
17 dered executed.

18 ARTICLE 57a. DEFERMENT OF SENTENCES

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

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

35 (2) Paragraph (1) of this subsection applies to a person subject to this  
36 code who:

37 (A) While in the custody of a state, the United States, or a fore-  
38 eign country is temporarily returned by that state, the United  
39 States, or a foreign country to the state military forces for trial  
40 by court-martial; and

41 (B) After the court-martial, is returned to that state, the United  
42 States, or a foreign country under the authority of a mutual agree-  
43 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 includes:

- 24 (1) A dishonorable or bad-conduct discharge; or  
 25 (2) Confinement;

26 reduces that member to pay grade E-1, effective on the date of that approval.

27 (b) If the sentence of a member who is reduced in pay grade under sub-  
 28 section (a) of this article is set aside or disapproved, or, as finally ap-  
 29 proved, does not include any punishment named in subsection (a) (1) or (2) of  
 30 this article, the rights and privileges of which the person was deprived be-  
 31 cause of that reduction shall be restored, including pay and allowances.

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

34 (a) Generally.

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

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

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

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

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

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

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

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

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

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

25 ARTICLE 60. ACTION BY THE CONVENING AUTHORITY

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

28 (b) Matters in extenuation.

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

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

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

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

7 (c) Discretion of convening authority.

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

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

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

25 (A) Dismiss any charge or specification by setting aside a finding  
26 of guilty thereto; or

27 (B) Change a finding of guilty to a charge or specification to a  
28 finding of guilty to an offense that is a lesser included offense  
29 of the offense stated in the charge or specification.

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

42 (e) Proceedings in revision.

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

46 (2) A proceeding in revision may be ordered if there is an apparent er-  
47 ror or omission in the record or if the record shows improper or incon-  
48 sistent action by a court-martial with respect to the findings or sen-  
49 tence that can be rectified without material prejudice to the substan-

1 tial rights of the accused. In no case, however, may a proceeding in re-  
2 vision:

3 (A) Reconsider a finding of not guilty of any specification or a  
4 ruling which amounts to a finding of not guilty;

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

9 (C) Increase the severity of the sentence unless the sentence pre-  
10 scribed for the offense is mandatory.

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

20 ARTICLE 61. WITHDRAWAL OF APPEAL

21 (a) In each case subject to appellate review under this code, the  
22 accused may file with the convening authority a statement expressly with-  
23 drawing the right of the accused to such appeal. Such a withdrawal shall be  
24 signed by both the accused and his defense counsel and must be filed in accor-  
25 dance with appellate procedures as provided by law.

26 (b) The accused may withdraw an appeal at any time in accordance with  
27 appellate procedures as provided by law.

28 ARTICLE 62. APPEAL BY THE STATE

29 (a) Generally.

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

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

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

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

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

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

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

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

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

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

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

#### 21 ARTICLE 63. REHEARINGS

22 Each rehearing under this code shall take place before a court-martial com-  
23 posed of members not members of the court-martial which first heard the case.  
24 Upon a rehearing, the accused may not be tried for any offense of which he was  
25 found not guilty by the first court-martial, and no sentence in excess of or  
26 more severe than the original sentence may be approved, unless the sentence  
27 is based upon a finding of guilty of an offense not considered upon the merits  
28 in the original proceedings, or unless the sentence prescribed for the of-  
29 fense is mandatory. If the sentence approved after the first court-martial  
30 was in accordance with a pretrial agreement and the accused at the rehearing  
31 changes a plea with respect to the charges or specifications upon which the  
32 pretrial agreement was based, or otherwise does not comply with the pretrial  
33 agreement, the approved sentence as to those charges or specifications may  
34 include any punishment not in excess of that lawfully adjudged at the first  
35 court-martial.

#### 36 ARTICLE 64. REVIEW BY THE SENIOR FORCE JUDGE ADVOCATE

37 (a) Each general and special court-martial case in which there has been  
38 a finding of guilty shall be reviewed by the senior force judge advocate, or  
39 a designee. The senior force judge advocate, or designee, may not review a  
40 case under this subsection if that person has acted in the same case as an ac-  
41 cuser, investigating officer, member of the court, military judge, or coun-  
42 sel or has otherwise acted on behalf of the prosecution or defense. The se-  
43 nior force judge advocate's review shall be in writing and shall contain the  
44 following:

45 (1) Conclusions as to whether:

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



- 1 (B) The charge and specification stated an offense; and  
2 (C) The sentence was within the limits prescribed as a matter of  
3 law.
- 4 (2) A response to each allegation of error made in writing by the ac-  
5 cused.
- 6 (3) If the case is sent for action under subsection (b) of this article,  
7 a recommendation as to the appropriate action to be taken and an opinion  
8 as to whether corrective action is required as a matter of law.
- 9 (b) The record of trial and related documents in each case reviewed un-  
10 der subsection (a) of this article shall be sent for action to the adjutant  
11 general if:
- 12 (1) The judge advocate who reviewed the case recommends corrective ac-  
13 tion;
- 14 (2) The sentence approved under article 60(c) of this code extends to  
15 dismissal, a bad-conduct or dishonorable discharge, or confinement for  
16 more than six (6) months; or
- 17 (3) Such action is otherwise required by regulations of the adjutant  
18 general.
- 19 (c) The adjutant general's discretion.
- 20 (1) The adjutant general may:
- 21 (A) Disapprove or approve the findings or sentence, in whole or in  
22 part;
- 23 (B) Remit, commute, or suspend the sentence in whole or in part;
- 24 (C) Except where the evidence was insufficient at the trial to  
25 support the findings, order a rehearing on the findings, on the  
26 sentence, or on both; or
- 27 (D) Dismiss the charges.
- 28 (2) If a rehearing is ordered but the convening authority finds a  
29 rehearing impracticable, the convening authority shall dismiss the  
30 charges.
- 31 (3) If the opinion of the senior force judge advocate, or designee, in  
32 the senior force judge advocate's review under subsection (a) of this  
33 article is that corrective action is required as a matter of law and if  
34 the adjutant general does not take action that is at least as favorable  
35 to the accused as that recommended by the judge advocate, the record of  
36 trial and action thereon shall be sent to the governor for review and ac-  
37 tion as deemed appropriate.
- 38 (d) The senior force judge advocate, or a designee, may review any case  
39 in which there has been a finding of not guilty of all charges and specifica-  
40 tions. The senior force judge advocate, or designee, may not review a case  
41 under this subsection if that person has acted in the same case as an ac-  
42 cuser, investigating officer, member of the court, military judge, or coun-  
43 sel or has otherwise acted on behalf of the prosecution or defense. The se-  
44 nior force judge advocate's review shall be limited to questions of subject  
45 matter jurisdiction.
- 46 (e) The record of trial and related documents in each case reviewed un-  
47 der subsection (d) of this article shall be sent for action to the adjutant  
48 general.
- 49 (1) The adjutant general may:

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

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

7 ARTICLE 65.

8 DISPOSITION OF RECORDS AFTER REVIEW BY THE CONVENING AUTHORITY

9 Except as otherwise required by this code, all records of trial and related  
 10 documents shall be transmitted and disposed of as prescribed by regulation  
 11 and provided by law.

12 ARTICLE 66. RESERVED

13 ARTICLE 67. RESERVED

14 ARTICLE 67a. REVIEW BY STATE APPELLATE AUTHORITY

15 Decisions of a court-martial are from a court with jurisdiction to issue  
 16 felony convictions and appeals therefrom will be made to the Idaho supreme  
 17 court. The appellate procedures to be followed shall be those provided by  
 18 law and rule for the appeal of criminal cases thereto.

19 ARTICLE 68. RESERVED

20 ARTICLE 69. RESERVED

21 ARTICLE 70. APPELLATE COUNSEL

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

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

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

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

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

## 1           ARTICLE 71. EXECUTION OF SENTENCE -- SUSPENSION OF SENTENCE

2           (a) If the sentence of the court-martial extends to dismissal or a dis-  
3 honorable or bad-conduct discharge and if the right of the accused to appel-  
4 late review is not waived, and an appeal is not withdrawn under article 61 of  
5 this code, that part of the sentence extending to dismissal or a dishonorable  
6 or bad-conduct discharge may not be executed until there is a final judgment  
7 as to the legality of the proceedings. A judgment as to the legality of the  
8 proceedings is final in such cases when review is completed by an appellate  
9 court prescribed in article 67a. of this code and is deemed final by the law  
10 of state where the judgment was had.

11           (b) If the sentence of the court-martial extends to dismissal or a dis-  
12 honorable or bad conduct discharge and if the right of the accused to appel-  
13 late review is waived, or an appeal is withdrawn under article 61 of this  
14 code, that part of the sentence extending to dismissal or a dishonorable or  
15 bad-conduct discharge may not be executed until review of the case by the se-  
16 nior force judge advocate and any action on that review under article 64 of  
17 this code is completed. Any other part of a court-martial sentence may be or-  
18 dered executed by the convening authority or other person acting on the case  
19 under article 60 of this code when so approved under that article.

## 20           ARTICLE 72. VACATION OF SUSPENSION

21           (a) Before the vacation of the suspension of a special court-martial  
22 sentence, which as approved includes a bad-conduct discharge, or of any gen-  
23 eral court-martial sentence, the officer having special court-martial ju-  
24 risdiction over the probationer shall hold a hearing on an alleged violation  
25 of probation. The probationer shall be represented at the hearing by mili-  
26 tary counsel if the probationer so desires.

27           (b) The record of the hearing and the recommendation of the officer hav-  
28 ing special court-martial jurisdiction shall be sent for action to the offi-  
29 cer exercising general court-martial jurisdiction over the probationer. If  
30 the officer vacates the suspension, any unexecuted part of the sentence, ex-  
31 cept a dismissal, shall be executed, subject to applicable restrictions in  
32 this code.

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

## 36           ARTICLE 73. PETITION FOR A NEW TRIAL

37           At any time within two (2) years after approval by the convening authority  
38 of a court-martial sentence, the accused may petition the adjutant general  
39 for a new trial on the grounds of newly discovered evidence or fraud on the  
40 court-martial.

## 41           ARTICLE 74. REMISSION AND SUSPENSION

42           (a) Any authority competent to convene, for the command in which the ac-  
43 cused is serving or assigned, a court of the kind that imposed the sentence

1 may remit or suspend any part or amount of the unexecuted part of any sen-  
 2 tence, including all uncollected forfeitures other than a sentence approved  
 3 by the governor.

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

7 ARTICLE 75. RESTORATION

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

14 (b) If a previously executed sentence of dishonorable or bad-conduct  
 15 discharge is not imposed on a new trial, the governor may substitute there-  
 16 fore a form of discharge authorized for administrative issuance unless the  
 17 accused is to serve out the remainder of the accused's enlistment.

18 (c) If a previously executed sentence of dismissal is not imposed on a  
 19 new trial, the governor may substitute therefore a form of discharge autho-  
 20 rized for administrative issue, and the commissioned officer dismissed by  
 21 that sentence may be reappointed by the governor alone to such commissioned  
 22 grade and with such rank as in the opinion of the governor that former offi-  
 23 cer would have attained had he not been dismissed. The reappointment of such  
 24 a former officer shall be without regard to the existence of a vacancy and  
 25 shall affect the promotion status of other officers only insofar as the gov-  
 26 ernor may direct. All time between the dismissal and the reappointment shall  
 27 be considered as actual service for all purposes, including the right to pay  
 28 and allowances.

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

30 The appellate review of records of trial provided by this code, the proceed-  
 31 ings, findings, and sentences of courts-martial as approved, reviewed, or  
 32 affirmed as required by this code, and all dismissals and discharges car-  
 33 ried into execution under sentences by courts-martial following approval,  
 34 review, or affirmation as required by this code are final and conclusive.  
 35 Orders publishing the proceedings of courts-martial and all action taken  
 36 pursuant to those proceedings are binding upon all departments, courts,  
 37 agencies, and officers of the United States and the several states, subject  
 38 only to action upon a petition for a new trial as provided in article 73 of  
 39 this code and to action under article 74 of this code.

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

42 Under regulations prescribed, an accused who has been sentenced by a court-  
 43 martial may be required to take leave pending completion of action under this  
 44 article if the sentence, as approved under article 60 of this code, includes

1 an unsuspended dismissal or an unsuspended dishonorable or bad-conduct dis-  
2 charge. The accused may be required to begin such leave on the date on which  
3 the sentence is approved under article 60 of this code or at any time after  
4 such date, and such leave may be continued until the date on which action un-  
5 der this article is completed or may be terminated at any earlier time.

6 ARTICLE 76b. RESERVED

7 PART X. PUNITIVE ARTICLES

8 ARTICLE 77. PRINCIPALS

9 Any person subject to this code who:

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

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

14 is a principal.

15 ARTICLE 78. ACCESSORY AFTER THE FACT

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

20 ARTICLE 79. CONVICTION OF LESSER INCLUDED OFFENSE

21 An accused may be found guilty of an offense necessarily included in the of-  
22 fense charged or of an attempt to commit either the offense charged or an of-  
23 fense necessarily included therein.

24 ARTICLE 80. ATTEMPTS

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

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

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

34 ARTICLE 81. CONSPIRACY

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

## ARTICLE 82. SOLICITATION

(a) Any person subject to this code who solicits or advises another or others to desert in violation of article 85 of this code or mutiny in violation of article 94 of this code shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense; but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of article 99 of this code or sedition in violation of article 94 of this code shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense; but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct.

## ARTICLE 83. FRAUDULENT ENLISTMENT -- APPOINTMENT -- SEPARATION

Any person who:

(1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

## ARTICLE 84. UNLAWFUL ENLISTMENT -- APPOINTMENT -- SEPARATION

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

## ARTICLE 85. DESERTION

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

(1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away there from permanently;

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

(3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly

1 separated, or enters any foreign armed service except when authorized  
2 by the United States;  
3 is guilty of desertion.

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

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

13 ARTICLE 86. ABSENCE WITHOUT LEAVE

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

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

16 (2) Goes from that place; or

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

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

20 ARTICLE 87. MISSING MOVEMENT

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

24 ARTICLE 88. CONTEMPT TOWARD OFFICIALS

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

29 ARTICLE 89. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER

30 Any person subject to this code who behaves with disrespect toward his supe-  
31 rior commissioned officer shall be punished as a court-martial may direct.

32 ARTICLE 90. ASSAULTING OR WILLFULLY DIS-  
33 OBEYING SUPERIOR COMMISSIONED OFFICER

34 Any person subject to this code who:

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

38 (2) Willfully disobeys a lawful command of his superior commissioned  
39 officer;

1 shall be punished, if the offense is committed in time of war, by confinement  
 2 of not more than ten (10) years or such other punishment as a court-martial  
 3 may direct, and if the offense is committed at any other time, by such punish-  
 4 ment as a court-martial may direct.

5 ARTICLE 91. INSUBORDINATE CONDUCT TOWARD WARRANT OF-  
 6 FICER, NONCOMMISSIONED OFFICER OR PETTY OFFICER

7 Any warrant officer or enlisted member who:

- 8 (1) Strikes or assaults a warrant officer, noncommissioned officer, or  
 9 petty officer, while that officer is in the execution of his office;  
 10 (2) Willfully disobeys the lawful order of a warrant officer, noncom-  
 11 missioned officer, or petty officer; or  
 12 (3) Treats with contempt or is disrespectful in language or deportment  
 13 toward a warrant officer, noncommissioned officer, or petty officer, while  
 14 that officer is in the execution of his office;  
 15 shall be punished as a court-martial may direct.

16 ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

17 Any person subject to this code who:

- 18 (1) Violates or fails to obey any lawful general order or regulation;  
 19 (2) Having knowledge of any other lawful order issued by a member of the  
 20 state military forces, which it is his duty to obey, fails to obey the order;  
 21 or  
 22 (3) Is derelict in the performance of his duties;  
 23 shall be punished as a court-martial may direct.

24 ARTICLE 93. CRUELTY AND MALTREATMENT

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

28 ARTICLE 94. MUTINY OR SEDITION

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

- 30 (1) With intent to usurp or override lawful military authority, re-  
 31 fuses, in concert with any other person, to obey orders or otherwise do  
 32 his duty or creates any violence or disturbance is guilty of mutiny;  
 33 (2) With intent to cause the overthrow or destruction of lawful civil  
 34 authority, creates, in concert with any other person, revolt, violence,  
 35 or other disturbance against that authority is guilty of sedition;  
 36 (3) Fails to do his utmost to prevent and suppress a mutiny or sedi-  
 37 tion being committed in his presence, or fails to take all reasonable  
 38 means to inform his superior commissioned officer or commanding officer  
 39 of a mutiny or sedition which he knows or has reason to believe is taking  
 40 place, is guilty of a failure to suppress or report a mutiny or sedition.



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

4 ARTICLE 95. RESISTANCE -- FLIGHT -- BREACH OF ARREST -- ESCAPE

5 Any person subject to this code who:

- 6 (1) Resists apprehension;  
7 (2) Flees from apprehension;  
8 (3) Breaks arrest; or  
9 (4) Escapes from custody or confinement;  
10 shall be punished as a court-martial may direct.

11 ARTICLE 96. RELEASING PRISONER WITHOUT PROPER AUTHORITY

12 Any person subject to this code who, without proper authority, releases any  
13 prisoner committed to his charge, or who through neglect or design suffers  
14 any such prisoner to escape, shall be punished as a court-martial may direct,  
15 whether or not the prisoner was committed in strict compliance with law.

16 ARTICLE 97. UNLAWFUL DETENTION

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

20 ARTICLE 98. NONCOMPLIANCE WITH PROCEDURAL RULES

21 Any person subject to this code who:

- 22 (1) Is responsible for unnecessary delay in the disposition of any case  
23 of a person accused of an offense under this code; or  
24 (2) Knowingly and intentionally fails to enforce or comply with any  
25 provision of this code regulating the proceedings before, during, or after  
26 trial of an accused;  
27 shall be punished as a court-martial may direct.

28 ARTICLE 99. MISBEHAVIOR BEFORE THE ENEMY

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

- 30 (1) Runs away;  
31 (2) Shamefully abandons, surrenders, or delivers up any command, unit,  
32 place, or military property which it is his duty to defend;  
33 (3) Through disobedience, neglect, or intentional misconduct endan-  
34 gers the safety of any such command, unit, place, or military property;  
35 (4) Casts away his arms or ammunition;  
36 (5) Is guilty of cowardly conduct;  
37 (6) Quits his place of duty to plunder or pillage;  
38 (7) Causes false alarms in any command, unit, or place under control of  
39 the armed forces of the United States or the state military forces;

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

4 (9) Does not afford all practicable relief and assistance to any  
 5 troops, combatants, vessels, or aircraft of the armed forces belonging to  
 6 the United States or its allies, to the state, or to any other state, when  
 7 engaged in battle;  
 8 shall be punished as a court-martial may direct.

9 ARTICLE 100. SUBORDINATE COMPELLING SURRENDER

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

16 ARTICLE 101. IMPROPER USE OF COUNTERSIGN

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

22 ARTICLE 102. FORCING A SAFEGUARD

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

25 ARTICLE 103. CAPTURED OR ABANDONED PROPERTY

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

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

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

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

37 (3) Engages in looting or pillaging;

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

39 ARTICLE 104. AIDING THE ENEMY

40 Any person subject to this code who:

1 (1) Aids, or attempts to aid, the enemy with arms, ammunition, sup-  
 2 plies, money, or other things; or  
 3 (2) Without proper authority, knowingly harbors or protects or gives  
 4 intelligence to, or communicates or corresponds with or holds any in-  
 5 tercourse with the enemy, either directly or indirectly;  
 6 shall be punished as a court-martial may direct.

7 ARTICLE 105. MISCONDUCT AS PRISONER

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

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

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

17 ARTICLE 106. RESERVED

18 ARTICLE 106a. RESERVED

19 ARTICLE 107. FALSE OFFICIAL STATEMENTS

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

25 ARTICLE 108. MILITARY PROPERTY -- LOSS, DAM-  
 26 AGE, DESTRUCTION OR WRONGFUL DISPOSITION

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

28 (1) Sells or otherwise disposes of;

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

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

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

34 ARTICLE 109. PROPERTY OTHER THAN MILITARY  
 35 PROPERTY -- WASTE, SPOILAGE OR DESTRUCTION

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

## 1 ARTICLE 110. IMPROPER HAZARDING OF VESSEL

2 (a) Any person subject to this code who willfully and wrongfully haz-  
3 ards or suffers to be hazarded any vessel of the armed forces of the United  
4 States or any state military forces shall suffer such punishment as a court-  
5 martial may direct.

6 (b) Any person subject to this code who negligently hazards or suffers  
7 to be hazarded any vessel of the armed forces of the United States or any  
8 state military forces shall be punished as a court-martial may direct.

## 9 ARTICLE 111. RESERVED

## 10 ARTICLE 112. DRUNK ON DUTY

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

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

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

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

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

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

30 (3) Any other substance not specified in paragraph (1) of this subsec-  
31 tion or contained on a list prescribed by the president under paragraph  
32 (2) of this subsection that is listed in schedules I through V of article  
33 202 of the controlled substances act, 21 U.S.C. section 812.

## 34 ARTICLE 113. MISBEHAVIOR OF SENTINEL

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

## 40 ARTICLE 114. DUELING

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

5 ARTICLE 115. MALINGERING

6 Any person subject to this code who for the purpose of avoiding work, duty, or  
7 service:

8 (1) Feigns illness, physical disablement, mental lapse, or derange-  
9 ment; or

10 (2) Intentionally inflicts self-injury;  
11 shall be punished as a court-martial may direct.

12 ARTICLE 116. RIOT OR BREACH OF PEACE

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

15 ARTICLE 117. PROVOKING SPEECHES OR GESTURES

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

19 ARTICLE 118. RESERVED

20 ARTICLE 119. RESERVED

21 ARTICLE 120. RESERVED

22 ARTICLE 121. RESERVED

23 ARTICLE 122. RESERVED

24 ARTICLE 123. RESERVED

25 ARTICLE 123a. RESERVED

26 ARTICLE 124. RESERVED

27 ARTICLE 125. RESERVED

28 ARTICLE 126. RESERVED

29 ARTICLE 127. RESERVED

30 ARTICLE 128. RESERVED

1 ARTICLE 129. RESERVED

2 ARTICLE 130. RESERVED

3 ARTICLE 131. RESERVED

4 ARTICLE 132. FRAUDS AGAINST THE GOVERNMENT

5 Any person subject to this code who:

6 (1) Knowing it to be false or fraudulent:

7 (A) Makes any claim against the United States, the state, or any officer  
8 thereof; or

9 (B) Presents to any person in the civil or military service thereof, for  
10 approval or payment, any claim against the United States, the state, or  
11 any officer thereof;

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

14 (A) Makes or uses any writing or other paper knowing it to contain any  
15 false or fraudulent statements;

16 (B) Makes any oath, affirmation or certification to any fact or to any  
17 writing or other paper knowing the oath, affirmation or certification  
18 to be false; or

19 (C) Forges or counterfeits any signature upon any writing or other  
20 paper, or uses any such signature knowing it to be forged or counter-  
21 feited;

22 (3) Having charge, possession, custody, or control of any money or  
23 other property of the United States or the state, furnished or intended for  
24 the armed forces of the United States or the state military forces, knowingly  
25 delivers to any person having authority to receive it, any amount thereof  
26 less than that for which he receives a certificate or receipt; or

27 (4) Being authorized to make or deliver any paper certifying the  
28 receipt of any property of the United States or the state, furnished or  
29 intended for the armed forces of the United States or the state military  
30 forces, makes or delivers to any person such writing without having full  
31 knowledge of the truth of the statements therein contained and with intent to  
32 defraud the United States or the state;

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

34 ARTICLE 133. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

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

38 ARTICLE 134. GENERAL ARTICLE

39 Though not specifically mentioned in this code, all disorders and neglects  
40 to the prejudice of good order and discipline in the state military forces  
41 and all conduct of a nature to bring discredit upon the state military forces  
42 shall be taken cognizance of by a court-martial and punished at the discre-

1 tion of a military court. Offenses which may be punished under this section  
 2 include, but are not limited to, those offenses set out in the manual for  
 3 courts-martial as punishable under this article of the uniform code of mil-  
 4 itary justice. However, where a crime constitutes an offense that violates  
 5 both this code and the criminal laws of the state where the offense occurs or  
 6 criminal laws of the United States, jurisdiction of the military court must  
 7 be determined in accordance with article 2(b) of this code.

8 PART XI. MISCELLANEOUS PROVISIONS

9 ARTICLE 135. COURTS OF INQUIRY

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

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

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

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

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

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

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

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

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

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

41 (1) All judge advocates.

42 (2) All summary courts-martial.

43 (3) All adjutants, assistant adjutants, acting adjutants, and person-  
 44 nel adjutants.

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

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

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

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

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

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

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

10 (5) All recruiting officers.

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

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

15 ARTICLE 137. ARTICLES TO BE EXPLAINED

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

20 (b) Such articles shall be explained again:

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

22 (2) At the time when the member reenlists.

23 (c) This subsection applies with respect to articles 2, 3, 7 through 15,  
24 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code.

25 (d) The text of the code and of the regulations prescribed under such  
26 code shall be made available to a member of the state military forces, upon  
27 request by the member, for the member's personal examination.

28 ARTICLE 138. COMPLAINTS OF WRONGS

29 Any member of the state military forces who believes himself wronged by a  
30 commanding officer, and who, upon due application to that commanding offi-  
31 cer, is refused redress may complain to any superior commissioned officer,  
32 who shall forward the complaint to the officer exercising general court-mar-  
33 tial jurisdiction over the officer against whom it is made. The officer  
34 exercising general court-martial jurisdiction shall examine into the com-  
35 plaint and take proper measures for redressing the wrong complained of, and  
36 shall, as soon as possible, send to the adjutant general a true statement of  
37 that complaint, with the proceedings had thereon.

38 ARTICLE 139. REDRESS OF INJURIES TO PROPERTY

39 (a) Whenever complaint is made to any commanding officer that willful  
40 damage has been done to the property of any person or that the person's prop-  
41 erty has been wrongfully taken by members of the state military forces, that  
42 officer may, under such regulations prescribed, convene a board to investi-  
43 gate the complaint. The board shall consist of from one (1) to three (3) com-  
44 missioned officers and, for the purpose of that investigation, it has power



1 to summon witnesses and examine them upon oath, to receive depositions or  
 2 other documentary evidence, and to assess the damages sustained against the  
 3 responsible parties. The assessment of damages made by the board is subject  
 4 to the approval of the commanding officer, and in the amount approved by that  
 5 officer shall be charged against the pay of the offenders. The order of the  
 6 commanding officer directing charges herein authorized is conclusive on any  
 7 disbursing officer for payment to the injured parties of the damages so as-  
 8 sessed and approved.

9 (b) If the offenders cannot be ascertained, but the organization or  
 10 detachment to which they belong is known, charges totaling the amount of  
 11 damages assessed and approved may be made in such proportion as may be con-  
 12 sidered just upon the individual members thereof who are shown to have been  
 13 present at the scene at the time the damages complained of were inflicted, as  
 14 determined by the approved findings of the board.

#### 15 ARTICLE 140. DELEGATION BY THE GOVERNOR

16 The governor may delegate any authority vested in the governor under this  
 17 code and provide for the sub-delegation of any such authority, except the  
 18 power given the governor by article 22 of this code.

#### 19 ARTICLE 141. PAYMENT OF FEES, COSTS AND EXPENSES

20 The fees and authorized travel expenses of all witnesses, experts, victims,  
 21 court reporters, and interpreters, fees for the service of process, the  
 22 costs of collection, apprehension, detention and confinement, and all other  
 23 necessary expenses of prosecution and the administration of military jus-  
 24 tice, to include courts-martial and nonjudicial punishment, not otherwise  
 25 payable by any other source, shall be paid out of the military division sup-  
 26 port fund as established in section 46-806, Idaho Code.

#### 27 ARTICLE 142. PAYMENT OF FINES AND DISPOSITION THEREOF

28 (a) Fines imposed by a military court or through imposition of nonjudi-  
 29 cial punishment may be paid to the state and delivered to the court or impos-  
 30 ing officer or to a person executing their process. Fines may be collected in  
 31 the following manner:

32 (1) By cash or money order;

33 (2) By retention of any pay or allowances due or to become due the person  
 34 fined from any state or the United States;

35 (3) By garnishment or levy, together with costs, on the wages, goods,  
 36 and chattels of a person delinquent in paying a fine, as provided by law.

37 (b) Any sum so received or retained shall be deposited in the military  
 38 division support fund as established in section 46-806, Idaho Code, or to  
 39 whomever the court so directs.

#### 40 ARTICLE 143. UNIFORMITY OF INTERPRETATION

1 This code shall be so construed as to effectuate its general purpose to make  
2 it uniform, so far as practical, with the uniform code of military justice,  
3 10 U.S.C. chapter 47.

4 ARTICLE 144. IMMUNITY FOR ACTION OF MILITARY COURTS

5 All persons acting under the provisions of this code, whether as a member of  
6 the military or as a civilian, shall be immune from any personal liability  
7 for any of the acts or omissions which they did or failed to do as part of  
8 their duties under this code.

9 ARTICLE 145. SEVERABILITY

10 The provisions of this code are hereby declared to be severable and if any  
11 provision of this code or the application of such provision to any person or  
12 circumstance is declared invalid for any reason, such declaration shall not  
13 affect the validity of the remaining portions of this code.

14 ARTICLE 146. SHORT TITLE

15 This act may be cited as the "Uniform State Code of Military Justice"  
16 (USCMJ).

17 ARTICLE 147. TIME OF TAKING EFFECT

18 This act takes effect July 1, 2015.

19 ARTICLE 148. TIME OF TAKING EFFECT

20 Upon enactment and the effective date, this law supersedes all existing  
21 statutes, ordinances, directives, rules, regulations, orders and other  
22 laws in the state covered by the subject matter of this law, and all such  
23 statutes, ordinances, directives, rules, regulations, orders and other laws  
24 are hereby repealed.

25 46-1103. ARREST. Arrest of members of the Idaho military not in fed-  
26 eral service by members of the Idaho military while acting in their military  
27 capacity is prohibited, except in the following circumstances:

28 (1) If any member fails or refuses to report to his appointed place of  
29 duty, his commanding officer in the rank of major or above is authorized to  
30 arrest or cause to be arrested such member and have him brought before the  
31 commanding officer at his unit or organization headquarters, whether such  
32 headquarters be located within or without the borders of the state. After  
33 such an arrest, the commanding officer is authorized to transport, or cause  
34 to be transported, such member to his appointed place of duty, whether within  
35 or without the borders of the state. Furthermore, if a commander, in the rank  
36 of major or above, finds that probable cause exists to believe that a minor  
37 offense has been committed by a member of his command, he may cause the member  
38 to be arrested and brought before him for the purpose of processing nonjudi-  
39 cial punishment under article 15 of the model state code of military justice

1 as provided in section 46-1102, Idaho Code. If military personnel are not  
2 available for the purpose of making the arrest or if the officer ordering the  
3 arrest deems it advisable, he may issue a warrant to any sheriff or peace of-  
4 ficer authorized to serve warrants of arrest, and such sheriff or peace of-  
5 ficer shall serve such warrants of arrest immediately, whenever practica-  
6 ble, and make return thereof to the commanding officer issuing the warrant.  
7 Upon receipt of the notification of arrest, the commanding officer shall di-  
8 rect that the arrestee be retrieved and brought before him within a reason-  
9 able time. Warrants issued under this subsection shall be the equivalent of  
10 a misdemeanor warrant issued by a court of the state of Idaho.

11 (2) If any member of the Idaho military has had charges preferred  
12 against him under this chapter, and the convening authority to whom the  
13 charges have been forwarded has found that probable cause exists that the of-  
14 fense was committed by the accused and that the incarceration of the accused  
15 pending court-martial is required because of special circumstances found  
16 to exist which warrant such incarceration, then the convening authority is  
17 authorized to arrest such member or cause him to be arrested and have him  
18 confined pending trial. If military personnel are not available for the pur-  
19 pose of making the arrest, or if the convening authority deems it advisable,  
20 he may issue a warrant to any sheriff or peace officer authorized to serve  
21 such warrant in the same manner as other warrants of arrest, and said sheriff  
22 or peace officer shall effect the arrest and hold the accused in the county  
23 jail of the county in which the arrest is effected. Upon receipt of the no-  
24 tification of arrest, in accordance with the provisions of section 46-1102,  
25 Idaho Code, the commanding officer may direct that the arrestee be retrieved  
26 and brought before him within a reasonable time. Warrants issued under this  
27 subsection shall be the equivalent of a felony warrant issued by a court of  
28 the state of Idaho.

29 46-1104. REGULATORY AUTHORITY. The adjutant general shall have au-  
30 thority to promulgate such regulations as he deems necessary and proper to  
31 carry out the intent of this code.

32 46-1105. IMMUNITY. All persons acting under the provisions of this  
33 chapter, whether as a member of the military or as a civilian, shall be immune  
34 from any personal liability for any of their acts or omissions which they did  
35 or failed to do as part of their duties under this chapter.

36 46-1106. SEVERABILITY. The provisions of this act are hereby declared  
37 to be severable and if any provision of this act or the application of such  
38 provision to any person or circumstance is declared invalid for any reason,  
39 such declaration shall not affect the validity of the remaining portions of  
40 this act.