

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 100

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO MILITIA AND MILITARY AFFAIRS; AMENDING SECTION 46-1102, IDAHO CODE, TO REVISE DEFINITIONS, TO REVISE TERMINOLOGY, TO REVISE PROVISIONS REGARDING APPREHENSION AND RESTRAINT, TO REVISE PROVISIONS REGARDING NONJUDICIAL PUNISHMENT, TO REVISE PROVISIONS REGARDING COUNSEL QUALIFICATIONS, AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

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

46-1102. MODEL STATE CODE OF MILITARY JUSTICE. The "Model State Code of Military Justice" is hereby enacted into law and entered into by this state with any other states legally joining therein in the form 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 "cadet," or "candidate," ~~or "midshipman"~~ means a person who is enrolled in or attending ~~the United States military academy, the United States air force academy, the United States coast guard academy,~~ officer candidate school, a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the state military forces;

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

(3) The term "judge advocate" means a commissioned officer of the organized state military forces who is a member in good standing of the bar of the highest court of a state and is:

(A) Certified or designated as a judge advocate in the judge advocate general's corps of the army, air force, navy, or the marine corps or designated as a law specialist as an officer of the coast guard, or a reserve component of one of these; or

(B) Certified as a nonfederally recognized judge advocate, under regulations promulgated pursuant to this provision, by the senior judge advocate of the commander of the force in the state military

- 1 forces of which the accused is a member, as competent to perform  
2 such military justice duties required by this code. If there is no  
3 such judge advocate available, then such certification may be made  
4 by such senior judge advocate of the commander of another force in  
5 the state military forces, as the convening authority directs;
- 6 (4) "State" means one of the several states, the District of Columbia,  
7 the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands;
- 8 (5) "State active duty" means full-time duty in the state military  
9 forces under an order of the governor or otherwise issued by authority  
10 of law, and paid by state funds, and includes travel to and from such  
11 duty;
- 12 (6) "Senior force judge advocate" means the senior judge advocate of  
13 the commander of the same force of the state military forces as the ac-  
14 cused and who is that commander's chief legal advisor;
- 15 (7) "State military forces" means the national guard of the state of  
16 Idaho, as defined in ~~title 32, United States Code, the organized naval~~  
17 ~~militia of the state,~~ 32 U.S.C., and any other military force organized  
18 under the constitution and laws of the state of Idaho, not to include  
19 the unorganized militia, when not in a status subjecting them to exclu-  
20 sive jurisdiction under 10 U.S.C. chapter 47. The unorganized militia,  
21 state defense force, state national guard, home guard or any other name  
22 of any state force that does not meet this definition shall not be part  
23 of the "state military forces" under this code;
- 24 (8) "Senior force commander" means the commander of the same force of  
25 the state military forces as the accused;
- 26 (9) "Commanding officer" means only commissioned officers~~r~~. A commis-  
27 sioned officer who, by virtue of that officer's grade and assignment,  
28 exercises primary command authority over a state militia organization  
29 or prescribed territorial area under pertinent official directives is  
30 recognized as a commanding officer. "Commanding officer" shall include  
31 officers in charge when administering nonjudicial punishment under  
32 article 15 of this code. The term "commander" has the same meaning as  
33 "commanding officer" unless the context otherwise requires;
- 34 (10) "Superior commissioned officer" means a commissioned officer su-  
35 perior in rank, grade, or command;
- 36 (11) "Military" means any or all of the state military forces;
- 37 (12) "Accuser" means a person who signs and swears to charges, any  
38 person who directs that charges nominally be signed and sworn to by an-  
39 other, and any other person who has an interest other than an official  
40 interest in the prosecution of the accused;
- 41 (13) "Military judge" means an official of a general or special court-  
42 martial detailed in accordance with article 26;
- 43 (14) "Legal officer" means any commissioned officer designated as a  
44 judge advocate to perform legal duties for a command;
- 45 (15) "Record," when used in connection with the proceedings of a court-  
46 martial, means:
- 47 (A) An official written transcript, written summary, or other  
48 writing relating to the proceedings; or

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

4 (16) "Classified information" means:

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

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

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

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

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

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

18 (a) This code applies to all members of the state military forces when  
 19 serving in a title 32 status or state active duty status as defined in article  
 20 1(a) (5) of this code. This code does not apply to members serving in a title  
 21 10 status or members of the unorganized militia as defined in section 46-102,  
 22 Idaho Code.

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

34 ARTICLE 3. JURISDICTION TO TRY CERTAIN PERSONNEL

35 (a) Subject to article 43, a person who is in a status in which the  
 36 person is subject to this chapter and who committed an offense against this  
 37 chapter while formerly in a status in which the person was subject to this  
 38 chapter is not relieved from amenability to the jurisdiction of this chapter  
 39 for that offense by reason of a termination of that person's former status.

40 (b) Each person discharged from the state military forces who is later  
 41 charged with having fraudulently obtained his discharge is, subject to ar-  
 42 ticle 43, subject to trial by court-martial on that charge and is, after ap-  
 43 prehension, subject to this chapter while in the custody of the state mili-  
 44 tary forces for that trial. Upon conviction of that charge, he is subject to  
 45 trial by court-martial for all offenses under this chapter committed before  
 46 the fraudulent discharge.

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

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

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

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

24 (b) If the governor or his designated representative fails to convene a  
25 general court-martial within six (6) months from the presentation of an ap-  
26 plication for trial under this article, the adjutant general shall substi-  
27 tute for the dismissal ordered by the governor or his designated representa-  
28 tive a form of discharge authorized for administrative issue.

29 (c) If a discharge is substituted for a dismissal under this article,  
30 the governor or his designated representative alone may reappoint the offi-  
31 cer to such commissioned grade and with such rank as, in the opinion of the  
32 governor or his designated representative, that former officer would have  
33 attained had he not been dismissed. The reappointment of such a former offi-  
34 cer shall be without regard to the existence of a vacancy and shall affect the  
35 promotion status of other officers only insofar as the governor or his des-  
36 ignated representative may direct. All time between the dismissal and the  
37 reappointment shall be considered as actual service for all purposes, in-  
38 cluding the right to pay and allowances.

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

42 ARTICLE 5. TERRITORIAL APPLICABILITY OF THE CODE

43 (a) This code has applicability at all times and in all places subject  
44 to the personal jurisdiction as provided in article 2 of this code, or, if  
45 not in a duty status, that there is a nexus between the act or omission con-  
46 stituting the offense and the efficient functioning of the state military

1 forces; however, this grant of military jurisdiction shall neither preclude  
 2 nor limit civilian jurisdiction over an offense, which is limited only by the  
 3 prohibition of double jeopardy.

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

10 ARTICLE 6. JUDGE ADVOCATES AND LEGAL OFFICERS

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

15 (b) Convening authorities shall at all times communicate directly with  
 16 their staff judge advocates or legal officers in matters relating to the ad-  
 17 ministration of military justice. The staff judge advocate or legal officer  
 18 of any command is entitled to communicate directly with the staff judge advo-  
 19 cate or legal officer of a superior or subordinate command, or with the state  
 20 judge advocate.

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

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

27 (A) Preliminary hearing officer, court member, military judge,  
 28 military magistrate, or appellate judge; or

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

32 ARTICLE 6a. INVESTIGATION AND DISPOSITION OF MAT-  
 33 TERS PERTAINING TO THE FITNESS OF MILITARY JUDGES

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

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

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

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

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

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

3 (A) A public hearing concerning the continuation of confinement  
4 prior to trial of the accused;

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

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

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

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

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

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

19 (A) A public hearing concerning the continuation of confinement  
20 prior to trial of the accused;

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

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

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

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

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

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

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

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

40 (d) Enforcement by the Idaho state courts:

41 (1) If the victim of an offense under this chapter believes that an ar-  
42 ticle 32 preliminary hearing ruling or a court-martial ruling violates  
43 the rights of the victim afforded by the provisions of this article, in-  
44 cluding provisions specified in subsection (a) (4) of this article, the  
45 victim may petition the Idaho state courts in accordance with the appli-  
46 cable rules of procedure of the Idaho state courts for a writ of mandamus  
47 to require the preliminary hearing officer or the court-martial to com-  
48 ply with the provisions of this article.

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

1 (A) The provisions of this article;

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

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

6 (D) Military rule of evidence 615, relating to the exclusion of  
7 witnesses.

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

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

19 PART II. APPREHENSION AND RESTRAINT

20 ARTICLE 7. APPREHENSION

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

22 (b) Any person authorized by this code or by 10 U.S.C. chapter 47, or by  
23 regulations issued under either, to apprehend persons subject to this code,  
24 any marshal of a court-martial appointed pursuant to the provisions of this  
25 code, and any peace officer or civil officer having authority to apprehend  
26 offenders under the laws of the United States or of a state, including, but  
27 not limited to, section 46-1103, Idaho Code, may do so upon probable cause  
28 that an offense has been committed and that the person apprehended committed  
29 it. However, no warrantless arrest is authorized for misdemeanor offenses  
30 under title 18, Idaho Code, that did not occur in the presence of the appre-  
31 hender.

32 (c) Commissioned officers, warrant officers, petty officers, and non-  
33 commissioned officers have authority to quell quarrels, frays, and disor-  
34 ders among persons subject to this code and to apprehend persons subject to  
35 this code who take part therein.

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

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

44 ARTICLE 8. APPREHENSION OF DESERTERS

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

5 ARTICLE 9. IMPOSITION OF RESTRAINT

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

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

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

21 (d) No person may be ordered into arrest or confinement except for prob-  
22 able cause. However, no warrantless arrest is authorized for a misdemeanor  
23 offense under title 18, Idaho Code, that did not occur in the presence of the  
24 apprehender.

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

29 (a) In general.

30 (1) Subject to article 9 and paragraph (2) of this subsection, any per-  
31 son subject to this chapter who is charged with an offense under this  
32 chapter may be ordered into arrest or confinement as the circumstances  
33 require.

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

37 (b) Notification to accused and related procedures.

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

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

42 (B) To try the person or to dismiss the charges and release the  
43 person.

44 (2) To facilitate compliance with paragraph (1) of this subsection, the  
45 governor or his designee shall prescribe regulations setting forth pro-  
46 cedures relating to referral for trial, including procedures for prompt



1 forwarding of the charges and specifications and, if applicable, the  
2 preliminary hearing report submitted under article 32.

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

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

7 (b) No person authorized to receive prisoners pursuant to subsection  
8 (a) of this article may refuse to receive or keep any prisoner committed to  
9 the person's charge by a commissioned officer of the state military forces,  
10 when the committing officer furnishes a statement, signed by such officer,  
11 of the offense charged against the prisoner, unless otherwise authorized by  
12 law.

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

19 ARTICLE 12. CONFINEMENT WITH ENEMY PRISONERS PROHIBITED

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

24 ARTICLE 13. PUNISHMENT PROHIBITED BEFORE TRIAL

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

30 ARTICLE 14. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES

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

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

## PART III. NONJUDICIAL PUNISHMENT

## ARTICLE 15. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

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

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

- (1) An admonition;
- (2) A reprimand;
- (3) The withholding of privileges for not more than six (6) months;
- (4) The forfeiture of pay of not more than seven (7) days' pay;
- (5) A fine of not more than seven (7) days' pay;
- (6) A reduction to the next inferior pay grade, ~~if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;~~
- (7) Extra duties, including fatigue or other duties, for not more than fourteen (14) days, which need not be consecutive; and
- (8) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive.

(c) Any commanding officer of the grade of ~~major or lieutenant commander~~, O-4 or above, may impose upon enlisted members of the officer's command:

- (1) Any punishment authorized in subsection (b) (1), (2) and (3) of this article;
- (2) The forfeiture of not more than one-half (1/2) of one (1) month's pay per month for two (2) months;
- (3) A fine of not more than one (1) month's pay;
- (4) A reduction to the lowest or any intermediate pay grade, ~~if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction,~~ but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;
- (5) Extra duties, including fatigue or other duties, for not more than forty-five (45) days, which need not be consecutive; and
- (6) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days, which need not be consecutive.

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

- (1) Upon officers of the officer's command:
  - (A) Any punishment authorized in subsection (c) (1), (2), (3) and (6) of this article; and

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

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

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

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

10 (f) ~~Except in the case of a member attached to or embarked in a vessel,~~  
11 ~~punishment under this article may not be imposed on any member under this ar-~~  
12 ~~ticle if the member has, before the imposition of such punishment, demanded~~  
13 ~~trial by court-martial in lieu of such punishment. Except when punishment~~  
14 ~~includes arrest, confinement, or restriction to certain specified limits,~~  
15 ~~a member may not demand trial by court-martial. If any punishment sought~~  
16 ~~includes arrest, confinement, or restriction, a member may demand trial by~~  
17 ~~court-martial if the demand occurs before the imposition of punishment.~~

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

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

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

24 (3) Mitigate extra duties to restriction.

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

30 (h) A person punished under this article who considers the punishment  
31 unjust or disproportionate to the offense may, through the proper channel,  
32 appeal to the next superior authority within fifteen (15) days after the pun-  
33 ishment is either announced or sent to the accused, as the commander may de-  
34 termine. The appeal shall be promptly forwarded and decided, but the person  
35 punished may in the meantime be required to undergo the punishment adjudged.  
36 The superior authority may exercise the same powers with respect to the pun-  
37 ishment imposed as may be exercised under subsection (g) of this article by  
38 the officer who imposed the punishment. Unless the superior authority is an  
39 O-7, the member may appeal up through and to the member's O-7 commander. All  
40 superior authorities who review such appeal shall exercise the same powers  
41 with respect to the punishment as the officer who imposed the original pun-  
42 ishment. Before acting on an appeal from a punishment, the authority that is  
43 to act on the appeal may refer the case to a judge advocate for consideration  
44 and advice.

45 (i) The imposition and enforcement of disciplinary punishment under  
46 this article for any act or omission is not a bar to trial by court-martial  
47 or a civilian court of competent jurisdiction for a serious crime or offense  
48 growing out of the same act or omission and not properly punishable under  
49 this article; but the fact that a disciplinary punishment has been enforced  
50 may be shown by the accused upon trial and, when so shown, it shall be consid-

1 ered in determining the measure of punishment to be adjudged in the event of  
2 a finding of guilty.

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

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

9 PART IV. COURT-MARTIAL JURISDICTION

10 ARTICLE 16. COURTS-MARTIAL CLASSIFIED

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

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

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

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

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

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

20 (B) Only a military judge, if one has been detailed to the court, and the  
21 accused under the same conditions as those prescribed in subsection (1)  
22 (B) of this article so requests; and

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

25 ARTICLE 17. JURISDICTION OF COURTS-MARTIAL IN GENERAL

26 Each component of the state military forces has court-martial jurisdiction  
27 over all members of the particular component who are subject to this code.  
28 Additionally, the army and air national guard state military forces have  
29 court-martial jurisdiction over all members subject to this code.

30 ARTICLE 18. JURISDICTION OF GENERAL COURTS-MARTIAL

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

35 ARTICLE 19. JURISDICTION OF SPECIAL COURTS-MARTIAL

36 Subject to article 17 of this code, special courts-martial have jurisdiction  
37 to try persons subject to this code for any offense made punishable by this  
38 code and may, under such limitations as the governor may prescribe, adjudge  
39 any punishment not forbidden by this code except dishonorable discharge,  
40 dismissal, confinement for more than one (1) year, forfeiture of pay exceed-

1 ing two-thirds (2/3) pay per month, or forfeiture of pay for more than one (1)  
2 year.

3 ARTICLE 20. JURISDICTION OF SUMMARY COURTS-MARTIAL

4 (a) Subject to article 17 of this code, summary courts-martial have ju-  
5 risdiction to try persons subject to this code, except officers, cadets, and  
6 officer candidates, and midshipmen, for any offense made punishable by this  
7 code under such limitations as the governor may prescribe.

8 (b) ~~No person in the rank of E-7 or above may be brought to trial before~~  
9 ~~a summary court-martial if that person objects thereto. If objection to~~  
10 ~~trial by summary court-martial is made by an accused in the rank of E-7 or~~  
11 ~~above, trial by special or general court-martial may be ordered, as may be~~  
12 ~~appropriate. Members in the rank of E-6 and below do not have the right to~~  
13 ~~reject trial before a summary court-martial. Summary courts-martial may,~~  
14 ~~under such limitations as the governor may prescribe, adjudge any punishment~~  
15 ~~not forbidden by this code except dismissal, dishonorable or bad-conduct~~  
16 ~~discharge, confinement for more than one (1) month, restriction to specified~~  
17 ~~limits for more than two (2) months, or forfeiture of more than two-thirds~~  
18 ~~(2/3) of one (1) month's pay.~~

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

21 ARTICLE 21. RESERVED

22 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

23 ARTICLE 22. WHO MAY CONVENE GENERAL COURTS-MARTIAL

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

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

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

33 ARTICLE 23. WHO MAY CONVENE SPECIAL COURTS-MARTIAL

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

- 35 (1) Any person who may convene a general court-martial;  
36 (2) The commanding officer of a garrison, fort, post, camp, station, or  
37 air national guard base, ~~or naval base or station~~;  
38 (3) The commanding officer of a brigade, regiment, detached battalion,  
39 or corresponding unit of the army;  
40 (4) The commanding officer of a wing, group, separate squadron, or cor-  
41 responding unit of the air force; or

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

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

6 ARTICLE 24. WHO MAY CONVENE SUMMARY COURTS-MARTIAL

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

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

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

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

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

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

20 ARTICLE 25. WHO MAY SERVE ON COURTS-MARTIAL

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

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

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

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

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

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

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

42 (4) If, because of physical conditions or military exigencies, a suf-  
43 ficient number of eligible officers or enlisted members, as the case may  
44 be, is not available to carry out the provisions of paragraph (2) of this  
45 subsection, the trial may nevertheless be held. In that event, the con-

1           vening authority shall make a detailed written statement of the reasons  
2           for nonavailability. The statement shall be appended to the record.

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

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

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

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

21                                   ARTICLE 25a.   RESERVED

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

23           (a) A military judge shall be detailed to each general and special  
24          court-martial.

25           (b) A military judge shall be:

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

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

31           (3) Certified as a military judge by the senior force judge advocate  
32          which is the same force as the accused; and

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

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

40           (d) The military judge of a general or special court-martial shall be  
41          designated by the senior force judge advocate which is the same force as the  
42          accused, or a designee, for detail by the convening authority. Neither the  
43          convening authority nor any staff member of the convening authority shall  
44          prepare or review any report concerning the effectiveness, fitness, or ef-  
45          ficiency of the military judge so detailed, which relates to performance of  
46          duty as a military judge.

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

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

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

11 ARTICLE 26a. MILITARY MAGISTRATES

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

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

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

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

22 ARTICLE 27. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL

23 (a) General provision:

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

27 (2) No person who, with respect to a case, has served as a preliminary  
28 hearing officer, court member, military judge, military magistrate, or  
29 appellate judge may later serve as trial counsel, assistant trial counsel,  
30 or, unless expressly requested by the accused, as defense counsel  
31 or assistant or associate defense counsel in the same case. No person  
32 who has acted for the prosecution may act later in the same case for the  
33 defense nor may any person who has acted for the defense act later in the  
34 same case for the prosecution.

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

38 (1) A judge advocate as defined in article 1(a) (3) of this code; and

39 (2) A member in good standing of the bar of the highest court of ~~the~~  
40 ~~state where the court-martial is held~~ any state or territory.

41 (c) Defense counsel and assistant defense counsel detailed for a spe-  
42 cial or general court-martial shall have the qualifications set forth in  
43 subsection (b) of this article.

44 (d) Trial counsel, assistant trial counsel, defense counsel, and as-  
45 sistant defense counsel detailed for a special court-martial must be deter-



1 mined to be competent to perform such duties by the senior force judge advoca-  
2 cate, under such rules as the governor or his designee may prescribe.

3 ARTICLE 28. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS

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

9 ARTICLE 29. ASSEMBLY AND IMPANELING OF MEM-  
10 BERS -- DETAIL OF NEW MEMBERS AND MILITARY JUDGES

11 (a) The military judge shall announce the assembly of a general or spe-  
12 cial court-martial with members. After such a court-martial is assembled,  
13 no member may be absent, unless the member is excused:

- 14 (1) As a result of a challenge;  
15 (2) Under subsection (b) (1) (B) of this article; or  
16 (3) By order of the military judge or the convening authority for dis-  
17 ability or other good cause.

18 (b) Impaneling.

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

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

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

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

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

30 (c) In addition to members under subsection (b) of this article, the  
31 military judge shall impanel alternate members, if the convening authority  
32 authorizes alternate members.

33 (d) Detail of new members.

34 (1) If, after members are impaneled, the membership of the court-mar-  
35 tial is reduced to fewer than twelve (12) members with respect to a  
36 general court-martial in a capital case, fewer than six (6) members with  
37 respect to a general court-martial in a noncapital case, or fewer than  
38 four (4) members with respect to a special court-martial, the trial may  
39 not proceed unless the convening authority details new members and,  
40 from among the members so detailed, the military judge impanels new  
41 members sufficient in number to provide the membership specified in  
42 paragraph (2) of this subsection.

43 (2) Membership shall be as follows:

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

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

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

4 (f) Evidence.

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

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

15 PART VI. PRE-TRIAL PROCEDURE

16 ARTICLE 30. CHARGES AND SPECIFICATIONS

17 (a) In general. Charges and specifications:

18 (1) May be preferred only by a person subject to this chapter; and

19 (2) Shall be preferred by presentment in writing, signed under oath be-  
20 fore a commissioned officer of the state military forces who is autho-  
21 rized to administer oaths.

22 (b) The writing under subsection (a) of this article shall state that:

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

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

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

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

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

32 ARTICLE 31. COMPULSORY SELF-INCRIMINATION PROHIBITED

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

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

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

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

4 ARTICLE 32. INVESTIGATION

5 (a) In general.

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

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

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

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

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

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

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

27 (b) Hearing officer.

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

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

32 (B) When it is not practicable to appoint a judge advocate because  
33 of exceptional circumstances, is not a judge advocate so certi-  
34 fied.

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

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

41 (c) Report to convening authority. After a preliminary hearing under  
42 this article, the hearing officer shall submit to the convening authority a  
43 written report, accompanied by a recording of the preliminary hearing, that  
44 includes the following:

45 (1) For each specification, a statement of the reasoning and conclu-  
46 sions of the hearing officer with respect to determinations under sub-  
47 section (a) (2) of this article, including a summary of relevant witness  
48 testimony and documentary evidence presented at the hearing and any ob-

1 observations of the hearing officer concerning the testimony of witnesses  
2 and the availability and admissibility of evidence at trial;

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

5 (3) An analysis of any additional information submitted after the hear-  
6 ing by the parties or by a victim of an offense, that, under such rules  
7 as the governor or his designated representative may prescribe, is rel-  
8 evant to disposition under articles 30 and 34; and

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

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

15 (1) Is present at the investigation;

16 (2) Is informed of the nature of each uncharged offense investigated;  
17 and

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

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 under such rules as the governor or his designated representa-  
25 tive may prescribe.

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

### 29 ARTICLE 33. DISPOSITION GUIDANCE

30 The governor or his designated representative shall issue nonbinding guid-  
31 ance regarding factors that commanders, convening authorities, staff judge  
32 advocates, and judge advocates should take into account when exercising  
33 their duties with respect to disposition of charges and specifications in  
34 the interest of justice and discipline under articles 30 and 34. Such guid-  
35 ance shall take into account, with appropriate consideration of military  
36 requirements, the principles of fair and evenhanded administration of Idaho  
37 and federal criminal law.

### 38 ARTICLE 34. ADVICE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL

39 (a) Staff judge advocate advice required before referral. Before re-  
40 ferral of charges and specifications to a general court-martial for trial,  
41 the convening authority shall submit the matter to the staff judge advocate  
42 for advice, which the staff judge advocate shall provide to the convening au-  
43 thority in writing. The convening authority may not refer a specification  
44 under a charge to a general court-martial unless the staff judge advocate ad-  
45 vises the convening authority in writing that:

46 (1) The specification alleges an offense under this chapter;

1 (2) There is probable cause to believe that the accused committed the  
2 offense charged; and

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

5 (b) Staff judge advocate recommendation as to disposition. Together  
6 with the written advice provided under subsection (a) of this article, the  
7 staff judge advocate shall provide a written recommendation to the convening  
8 authority as to the disposition that should be made of the specification in  
9 the interest of justice and discipline.

10 (c) Staff judge advocate advice and recommendation to accompany re-  
11 ferral. When a convening authority makes a referral for trial by general  
12 court-martial, the written advice of the staff judge advocate under subsec-  
13 tion (a) of this article and the written recommendation of the staff judge  
14 advocate under subsection (b) of this article with respect to each specifi-  
15 cation shall accompany the referral.

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

20 (e) General and special courts-martial; correction of charges and  
21 specifications before referral. Before referral for trial by general  
22 court-martial or special court-martial, changes may be made to charges and  
23 specifications:

24 (1) To correct errors in form; and

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

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

#### 30 ARTICLE 35. SERVICE OF CHARGES -- COMMENCEMENT OF TRIAL

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

34 (b) Commencement of trial.

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

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

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

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

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

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

4 PART VII. TRIAL PROCEDURE

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

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

13 ARTICLE 37. UNLAWFULLY INFLUENCING ACTION OF COURT

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

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

40 ARTICLE 38. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL

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

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

3 (b) Defense counsel:

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

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

9 (3) The accused may be represented:

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

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

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

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

21 (6) The accused is not entitled to be represented by more than one (1)  
22 military counsel. However, the person authorized under regulations  
23 prescribed under article 27 of this code to detail counsel, in that per-  
24 son's sole discretion:

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

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

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

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

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

41 (2) May take other action authorized by this code.

#### 42 ARTICLE 39. SESSIONS

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

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

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

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

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

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

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

#### 22 ARTICLE 40. CONTINUANCES

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

#### 26 ARTICLE 41. CHALLENGES

27 (a) Challenges generally.

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

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

41 (b) ~~Peremptory~~ Peremptory challenges.

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

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



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

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

#### 10 ARTICLE 42. OATHS OR AFFIRMATIONS

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

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

#### 27 ARTICLE 43. STATUTE OF LIMITATIONS

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

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

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

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

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

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

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

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

12 (e) Exception.

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

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

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

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

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

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

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

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

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

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

#### 45 ARTICLE 44. FORMER JEOPARDY

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

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

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

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

17 ARTICLE 45. PLEAS OF THE ACCUSED

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

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

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

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

37 (a) In a case referred for trial by court-martial, the trial counsel  
38 and the defense counsel shall have equal opportunity to obtain witnesses and  
39 other evidence as prescribed by regulations and provided by law. Process is-  
40 sued in court-martial cases to compel witnesses to appear and testify and to  
41 compel the production of other evidence shall apply the principles of law and  
42 the rules of courts-martial generally recognized in military criminal cases  
43 in the courts of the armed forces of the United States, but which may not be  
44 contrary to or inconsistent with this code. Process shall run to any part of  
45 the United States, or the territories, commonwealths, and possessions, and

1 may be executed by civil officers as prescribed by the laws of the place where  
2 the witness or evidence is located or of the United States.

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

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

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

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

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

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

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

15 (3) As otherwise authorized under this chapter.

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

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

19 (2) For a deposition under article 49;

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

21 (4) As otherwise authorized under this chapter.

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

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

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

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

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

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

45 (a) In general.

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

- 1 (A) Willfully neglects or refuses to appear; or  
 2 (B) Willfully refuses to qualify as a witness or to testify or to  
 3 produce any evidence which that person is required to produce.  
 4 (2) The persons referred to in paragraph (1) of this subsection are the  
 5 following:  
 6 (A) Any person not subject to this chapter who is issued a subpoena  
 7 or other process described in subsection (c) of article 46 and is  
 8 provided a means for reimbursement from the government for fees  
 9 and mileage at the rates allowed to witnesses attending the courts  
 10 of the United States or, in the case of extraordinary hardship, is  
 11 advanced such fees and mileage; and  
 12 (B) Any person not subject to this chapter who is issued a subpoena  
 13 or other process described in subsection (d) of article 46.  
 14 (b) The fees and mileage of witnesses shall be advanced or paid out of  
 15 the appropriations for the compensation of witnesses.

16 ARTICLE 48. CONTEMPT

- 17 (a) Authority to punish.  
 18 (1) With respect to any proceeding under this chapter, a judicial of-  
 19 ficer specified in paragraph (2) of this subsection may punish for con-  
 20 tempt any person who:  
 21 (A) Uses any menacing word, sign, or gesture in the presence of the  
 22 judicial officer during the proceeding;  
 23 (B) Disturbs the proceeding by any riot or disorder; or  
 24 (C) Willfully disobeys a lawful writ, process, order, rule, de-  
 25 cree, or command issued with respect to the proceeding.  
 26 (2) A judicial officer referred to in paragraph (1) of this subsection  
 27 is any of the following:  
 28 (A) Any military judge detailed to a court-martial, a provost  
 29 court, a military commission, or any other proceeding under this  
 30 chapter;  
 31 (B) Any military magistrate designated to preside under this  
 32 code; or  
 33 (C) The governor or his designated representative of a court of  
 34 inquiry.  
 35 (b) Review. A punishment under this article:  
 36 (1) If imposed by a military judge or military magistrate, may be re-  
 37 viewed by the district court of the judicial district where the proceed-  
 38 ing was conducted in accordance with the applicable rules of procedure  
 39 of the Idaho state courts; and  
 40 (2) If imposed by a court of inquiry, shall be subject to review by the  
 41 convening authority in accordance with rules prescribed by the governor  
 42 or his designated representative.

43 ARTICLE 49. DEPOSITIONS

- 44 (a) In general.  
 45 (1) Subject to paragraph (2) of this subsection, a convening authority  
 46 or a military judge may order depositions at the request of any party.

1 (2) A deposition may be ordered under paragraph (1) of this subsection  
2 only if the requesting party demonstrates that, due to exceptional cir-  
3 cumstances, it is in the interest of justice that the testimony of a  
4 prospective witness be preserved for use at a court-martial, military  
5 commission, court of inquiry, or other military court or board.

6 (3) A party who requests a deposition under this article shall give to  
7 every other party reasonable written notice of the time and place for  
8 the deposition.

9 (4) A deposition under this article shall be taken before, and authen-  
10 ticated by, an impartial officer, as follows:

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

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

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

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

27 ARTICLE 50. ADMISSIBILITY OF SWORN TES-  
28 TIMONY FROM RECORDS OF COURTS OF INQUIRY

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

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

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

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

## 1 ARTICLE 50a. DEFENSE OF LACK OF MENTAL RESPONSIBILITY

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

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

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

13 (1) Guilty;

14 (2) Not guilty; or

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

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

22 (1) Guilty;

23 (2) Not guilty; or

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

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

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

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

## 35 ARTICLE 51. VOTING AND RULINGS

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

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

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

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

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

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

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

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

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

#### 24 ARTICLE 52. VOTES REQUIRED FOR CONVICTION, SENTENCING, AND OTHER MATTERS

25 (a) In general. No person may be convicted of an offense in a general or  
 26 special court-martial, other than:

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

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

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

33 (b) Level of concurrence required.

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

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

#### 45 ARTICLE 53. FINDINGS AND SENTENCING



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

3 (b) Sentencing generally.

4 (1) General and special courts-martial.

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

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

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

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

19 ARTICLE 53a. PLEA AGREEMENTS

20 (a) In general.

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

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

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

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

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

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

37 (4) Is prohibited by law; or

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

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

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

45 (2) Upon recommendation of the trial counsel, in exchange for substan-  
46 tial assistance by the accused in the investigation or prosecution of  
47 another person who has committed an offense, the military judge may ac-



1 or inflicted upon any person subject to this code. The use of irons, single  
2 or double, except for the purpose of safe custody, is prohibited.

3 ARTICLE 56. SENTENCING

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

12 (b) The limits of punishment for violations of the punitive articles  
13 prescribed herein shall be the lesser of the sentences prescribed by the  
14 manual for courts-martial of the United States currently in effect, and the  
15 state manual for courts-martial, but in no instance shall any punishment  
16 exceed that authorized by this code.

17 (c) Imposition of sentence.

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

22 (A) The nature and circumstances of the offense and the history  
23 and characteristics of the accused;

24 (B) The impact of the offense on:

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

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

29 (C) The need for the sentence:

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

31 (ii) To promote respect for the law;

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

33 (iv) To promote adequate deterrence of misconduct;

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

35 (vi) To rehabilitate the accused; and

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

39 (D) The sentences available under this chapter.

40 (2) Sentencing by military judge. In announcing the sentence in a gen-  
41 eral or special court-martial in which the accused is sentenced by a  
42 military judge alone under article 53, the military judge shall, with  
43 respect to each offense of which the accused is found guilty, specify  
44 the term of confinement, if any, and the amount of the fine, if any. If  
45 the accused is sentenced to confinement for more than one (1) offense,  
46 the military judge shall specify whether the terms of confinement are to  
47 run consecutively or concurrently.

1 (3) Sentencing by members. In a general or special court-martial in  
 2 which the accused has elected sentencing by members, the court-martial  
 3 shall announce a single sentence for all of the offenses of which the ac-  
 4 cused was found guilty.

5 (d) Appeal of sentence to the district court of the county where the  
 6 court-martial is held.

7 (1) With the approval of the senior force judge advocate concerned, the  
 8 government may appeal a sentence, on the grounds that the sentence vio-  
 9 lates the law or the sentence is unreasonable.

10 (2) An appeal under this subsection must be filed within forty-two (42)  
 11 days after the date of entry of judgment.

12 ARTICLE 56a. RESERVED

13 ARTICLE 57. EFFECTIVE DATE OF SENTENCES

14 (a) Execution of sentences. A court-martial sentence shall be executed  
 15 and take effect as follows:

16 (1) Forfeiture and reduction. A forfeiture of pay or allowances shall  
 17 be applicable to pay and allowances accruing on and after the date on  
 18 which the sentence takes effect. Any forfeiture of pay or allowances  
 19 or reduction in grade that is included in a sentence of a court-martial  
 20 takes effect on the earlier of:

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

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

25 (2) Confinement. Any period of confinement included in a sentence of  
 26 a court-martial begins to run from the date the sentence is adjudged by  
 27 the court-martial, but periods during which the sentence to confinement  
 28 is suspended or deferred shall be excluded in computing the service of  
 29 the term of confinement.

30 (3) Approval of dismissal. If, in the case of a commissioned officer,  
 31 ~~or cadet, or midshipman,~~ the sentence of a court-martial extends to dis-  
 32 missal, that part of the sentence providing for dismissal may not be ex-  
 33 ecuted until approved by the secretary concerned or such undersecretary  
 34 or assistant secretary as may be designated by the secretary concerned.  
 35 In such a case, the secretary, undersecretary, or assistant secretary,  
 36 as the case may be, may commute, remit, or suspend the sentence, or any  
 37 part of the sentence, as the secretary sees fit. In time of war or na-  
 38 tional emergency, he may commute a sentence of dismissal to reduction to  
 39 any enlisted grade. A person so reduced may be required to serve for the  
 40 duration of the war or emergency and six (6) months thereafter.

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

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

5 (b) Deferral of sentences.

6 (1) In general. On application by an accused, the convening authority  
7 or, if the accused is no longer under his jurisdiction, the officer ex-  
8 exercising general court-martial jurisdiction over the command to which  
9 the accused is currently assigned may, in his sole discretion, defer the  
10 effective date of a sentence of confinement, reduction, or forfeiture.  
11 The deferment shall terminate upon entry of judgment or, in the case of  
12 a summary court-martial, when the convening authority acts on the sen-  
13 tence. The deferment may be rescinded at any time by the officer who  
14 granted it or, if the accused is no longer under his jurisdiction, by the  
15 officer exercising general court-martial jurisdiction over the command  
16 to which the accused is currently assigned.

17 (2) Deferral of certain persons sentenced to confinement. In any case  
18 in which a court-martial sentences a person referred to in paragraph (3)  
19 of this subsection to confinement, the convening authority may defer  
20 the service of the sentence to confinement, without the consent of that  
21 person, until after the person has been permanently released to the  
22 state military forces by a state or foreign country referred to in that  
23 paragraph.

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

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

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

37 (c) Appellate review.

38 (1) Completion of appellate review. Appellate review is complete under  
39 this article when a review under this code is completed or a review is  
40 completed by the Idaho state courts in accordance with the applicable  
41 rules of procedure of the Idaho state courts.

42 (2) Completion as final judgment of legality of proceedings. The com-  
43 pletion of appellate review shall constitute a final judgment as to the  
44 legality of the proceedings.

45 ARTICLE 58. EXECUTION OF CONFINEMENT

46 (a) A sentence of confinement adjudged by a court-martial, whether or  
47 not the sentence includes discharge or dismissal, and whether or not the dis-  
48 charge or dismissal has been executed, may be carried into execution by con-

1 confinement in any place authorized by this code. Persons so confined are sub-  
 2 ject to the same discipline and treatment as persons regularly confined or  
 3 committed to that place of confinement.

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

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

9 ARTICLE 58a. SENTENCES -- REDUCTION IN ENLISTED GRADE

10 (a) A court-martial sentence of an enlisted member in a pay grade above  
 11 E-1, as set forth in the judgment of the court-martial entered into the  
 12 record, includes:

13 (1) A dishonorable or bad-conduct discharge;

14 (2) Confinement; or

15 (3) Reduction of that member to pay grade E-1, if such a reduction is  
 16 authorized by regulation prescribed by the governor or his designated  
 17 representative. The reduction in pay grade shall take effect on the  
 18 date on which the judgment is so entered.

19 (b) If the sentence of a member who is reduced in pay grade under sub-  
 20 section (a) of this article is set aside or reduced, or, as finally affirmed,  
 21 does not include any punishment named in subsection (a) (1) or (2) of this ar-  
 22 ticle, the rights and privileges of which the person was deprived because of  
 23 that reduction shall be restored, including pay and allowances.

24 ARTICLE 58b. SENTENCES -- FORFEITURE OF  
 25 PAY AND ALLOWANCES DURING CONFINEMENT

26 (a) Generally.

27 (1) A court-martial sentence described in paragraph (2) of this subsec-  
 28 tion shall result in the forfeiture of pay, or of pay and allowances, due  
 29 that member during any period of confinement or parole. The forfeiture  
 30 pursuant to this article shall take effect on the date determined under  
 31 this code and may be deferred as provided by this code. The pay and al-  
 32 lowances forfeited, in the case of a general court-martial, shall be all  
 33 pay and allowances due that member during such period and, in the case of  
 34 a special court-martial, shall be two-thirds (2/3) of all pay due that  
 35 member during such period.

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

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

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

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

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

7 PART IX. POSTTRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

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

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

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

15 ARTICLE 60. POSTTRIAL PROCESSING IN GENERAL AND SPECIAL COURTS-MARTIAL

16 (a) Statement of trial results.

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

20 (A) Each plea and finding;

21 (B) The sentence, if any; and

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

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

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

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

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

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

36 (a) Waiver of right to appeal. After entry of judgment in a general  
37 or special court-martial, under procedures prescribed by the secretary con-  
38 cerned, the accused may waive the right to appellate review in each case sub-  
39 ject to such review under this code. Such a waiver shall be signed by the ac-  
40 cused and by defense counsel and attached to the record of trial.

41 (b) Withdrawal of appeal. In a general or special court-martial, the  
42 accused may withdraw an appeal at any time.

1 (c) Waiver or withdrawal as bar. A waiver or withdrawal under this ar-  
2 ticle bars review under this code.

3 ARTICLE 62. APPEAL BY THE STATE

4 (a) Generally.

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

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

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

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

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

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

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

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

27 (2) (A) An appeal of an order or ruling may not be taken unless  
28 the trial counsel provides the military judge with written notice  
29 of appeal from the order or ruling within seventy-two (72) hours  
30 of the order or ruling. Such notice shall include a certifica-  
31 tion by the trial counsel that the appeal is not taken for the pur-  
32 pose of delay and, if the order or ruling appealed is one which ex-  
33 cludes evidence, that the evidence excluded is substantial proof  
34 of a fact material in the proceeding.

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

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

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

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

47 (d) The United States may appeal a ruling or order of a military magis-  
48 trate in the same manner as had the ruling or order been made by a military



1 judge, except that the issue shall first be presented to the military judge  
 2 who designated the military magistrate or to a military judge detailed to  
 3 hear the issue.

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

6 ARTICLE 63. REHEARINGS

7 (a) Each rehearing under this code shall take place before a court-mar-  
 8 tial composed of members not members of the court-martial which first heard  
 9 the case. Upon a rehearing, the accused may not be tried for any offense of  
 10 which he was found not guilty by the first court-martial, and no sentence  
 11 in excess of or more severe than the original sentence may be adjudged, un-  
 12 less the sentence is based upon a finding of guilty of an offense not consid-  
 13 ered upon the merits in the original proceedings, or unless the sentence pre-  
 14 scribed for the offense is mandatory.

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

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

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

31 (a) The senior force judge advocate's review shall be in writing and  
 32 shall contain the following:

33 (1) Conclusions as to whether:

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

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

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

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

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

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

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

3 (2) The sentence approved under this code extends to dismissal, a bad-  
4 conduct or dishonorable discharge, or confinement for more than six (6)  
5 months; or

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

8 (c) The adjutant general's discretion.

9 (1) The adjutant general may:

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

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

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

16 (D) Dismiss the charges.

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

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

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

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

38 (1) The adjutant general may:

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

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

#### 45 ARTICLE 65. TRANSMITTAL AND REVIEW OF RECORDS

46 (a) Finding of guilty in general or special court-martial. If the judg-  
47 ment of a general or special court-martial entered under this code includes

1 a finding of guilty, the record shall be transmitted to the state staff judge  
2 advocate.

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

6 ARTICLE 66. RESERVED

7 ARTICLE 67. RESERVED

8 ARTICLE 67a. REVIEW BY STATE APPELLATE AUTHORITY

9 Decisions of a court-martial are from a court with jurisdiction to issue  
10 felony convictions and appeals therefrom will be made to the district court  
11 of the judicial district wherein the court-martial was conducted within  
12 forty-two (42) days from the entry of judgment. For courts-martial held out-  
13 side of the state of Idaho, venue for appeal purposes shall be in the district  
14 court of the fourth judicial district, Ada county, Idaho. The appellate pro-  
15 cedures to be followed shall be those provided by law and rule for the appeal  
16 of state criminal cases.

17 ARTICLE 68. RESERVED

18 ARTICLE 69. RESERVED

19 ARTICLE 70. APPELLATE COUNSEL

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

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

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

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

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

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

38 (a) If the sentence of the court-martial extends to dismissal or a dis-  
39 honorable or bad-conduct discharge and if the right of the accused to appel-  
40 late review is not waived, and an appeal is not withdrawn under article 61 of

1 this code, that part of the sentence extending to dismissal or a dishonorable  
2 or bad-conduct discharge may not be executed until there is a final judgment  
3 as to the legality of the proceedings. A judgment as to the legality of the  
4 proceedings is final in such cases when review is completed by an appellate  
5 court prescribed in article 67a of this code and is deemed final by the law of  
6 state where the judgment was had.

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

#### 16 ARTICLE 72. VACATION OF SUSPENSION

17 (a) Before the vacation of the suspension of a special court-martial  
18 sentence, which as approved includes a bad-conduct discharge, or of any gen-  
19 eral court-martial sentence, the officer having special court-martial ju-  
20 risdiction over the probationer shall hold a hearing on an alleged violation  
21 of probation. The special court-martial convening authority may detail a  
22 judge advocate who is certified under article 27(b) of this code to conduct  
23 the hearing. The probationer shall be represented at the hearing by military  
24 counsel if the probationer so desires.

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

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

#### 34 ARTICLE 73. PETITION FOR A NEW TRIAL

35 At any time within three (3) years after approval by the convening authority  
36 of a court-martial sentence, the accused may petition the adjutant general  
37 for a new trial on the grounds of newly discovered evidence or fraud on the  
38 court-martial.

#### 39 ARTICLE 74. REMISSION AND SUSPENSION

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

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

4 ARTICLE 75. RESTORATION

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

11 (b) If a previously executed sentence of dishonorable or bad-conduct  
 12 discharge is not imposed on a new trial, the governor or his designated rep-  
 13 resentative may substitute therefor a form of discharge authorized for ad-  
 14 ministrative issuance unless the accused is to serve out the remainder of the  
 15 accused's enlistment.

16 (c) If a previously executed sentence of dismissal is not imposed on  
 17 a new trial, the governor or his designated representative may substitute  
 18 therefor a form of discharge authorized for administrative issue, and the  
 19 commissioned officer dismissed by that sentence may be reappointed by the  
 20 governor alone to such commissioned grade and with such rank as in the opin-  
 21 ion of the governor that former officer would have attained had he not been  
 22 dismissed. The reappointment of such a former officer shall be without re-  
 23 gard to the existence of a vacancy and shall affect the promotion status of  
 24 other officers only insofar as the governor may direct. All time between the  
 25 dismissal and the reappointment shall be considered as actual service for  
 26 all purposes, including the right to pay and allowances.

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

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

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

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

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

9 ARTICLE 76b. RESERVED

10 PART X. PUNITIVE ARTICLES

11 ARTICLE 77. PRINCIPALS

12 Any person subject to this code who:

- 13 (1) Commits an offense punishable by this code, or aids, abets, coun-  
 14 sels, commands, or procures its commission; or  
 15 (2) Causes an act to be done which if directly performed by him would be  
 16 punishable by this code;  
 17 is a principal.

18 ARTICLE 78. ACCESSORY AFTER THE FACT

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

23 ARTICLE 79. CONVICTION OF OFFENSE CHARGED,  
 24 LESSER INCLUDED OFFENSES, AND ATTEMPTS

- 25 (a) In general. An accused may be found guilty of any of the following:  
 26 (1) The offense charged;  
 27 (2) A lesser included offense;  
 28 (3) An attempt to commit the offense charged; or  
 29 (4) An attempt to commit a lesser included offense, if the attempt is an  
 30 offense in its own right.  
 31 (b) Definition. In this article, the term "lesser included offense"  
 32 means:  
 33 (1) An offense that is necessarily included in the offense charged; and  
 34 (2) Any lesser included offense so designated by regulation prescribed  
 35 by the adjutant general.  
 36 (c) Regulatory authority. Any designation of a lesser included offense  
 37 in a regulation referred to in subsection (b) of this article shall be rea-  
 38 sonably included in the greater offense.

39 ARTICLE 80. ATTEMPTS

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

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

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

10 ARTICLE 81. CONSPIRACY

11 Any person subject to this code who conspires with any other person to com-  
12 mit an offense under this code shall, if one (1) or more of the conspira-  
13 tors commits an act to effect the object of the conspiracy, be punished as a  
14 court-martial may direct.

15 ARTICLE 82. SOLICITATION

16 (a) Soliciting commission of offenses generally. Any person subject  
17 to this code who solicits or advises another to commit an offense under this  
18 code, other than an offense specified in subsection (b) of this article,  
19 shall be punished as a court-martial may direct.

20 (b) Soliciting desertion, mutiny, sedition, or misbehavior before the  
21 enemy. Any person subject to this code who solicits or advises another to  
22 violate article 85, article 94, or article 99:

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

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

28 ARTICLE 83. MALINGERING

29 Any person subject to this code who, for the purpose of avoiding work, duty,  
30 or service, feigns illness, physical disablement, mental lapse, or derange-  
31 ment, or who intentionally inflicts self-injury, shall be punished as a  
32 court-martial may direct.

33 ARTICLE 84. BREACH OF MEDICAL QUARANTINE

34 Any person subject to this code who is ordered into medical quarantine by a  
35 person authorized to issue such order and who, with knowledge of the quar-  
36 antine and the limits of the quarantine, goes beyond those limits before be-  
37 ing released from the quarantine by proper authority shall be punished as a  
38 court-martial may direct.

39 ARTICLE 85. DESERTION

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

1 (1) Without authority goes or remains absent from his unit, organiza-  
 2 tion, or place of duty with intent to remain away ~~there from~~ therefrom  
 3 permanently;

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

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

12 is guilty of desertion.

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

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

22 ARTICLE 86. ABSENCE WITHOUT LEAVE

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

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

25 (2) Goes from that place; or

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

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

29 ARTICLE 87. MISSING MOVEMENT

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

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

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

37 ARTICLE 87b. OFFENSES AGAINST CORRECTIONAL CUSTODY AND RESTRICTION

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

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

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



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

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

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

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

9 (3) Who goes beyond the limits of the restraint before being released  
 10 from the correctional custody or relieved of the restraint by proper au-  
 11 thority;  
 12 shall be punished as a court-martial may direct.

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

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

16 (2) Who, with knowledge of the limits of the restriction, goes beyond  
 17 those limits before being released by proper authority;  
 18 shall be punished as a court-martial may direct.

19 ARTICLE 88. CONTEMPT TOWARD OFFICIALS

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

24 ARTICLE 89. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER

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

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

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

37 Any person subject to this code who:

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

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

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

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

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

5 Any warrant officer or enlisted member who:

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

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

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

14 ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

15 Any person subject to this code who:

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

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

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

22 ARTICLE 93. CRUELTY AND MALTREATMENT

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

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

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

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

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

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

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

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

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

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

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

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

4 (d) Definitions. In this article:

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

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

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

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

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

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

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

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

33 ARTICLE 94. MUTINY OR SEDITION

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

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

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

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

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

## 1 ARTICLE 95. OFFENSES BY SENTINEL OR LOOKOUT

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

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

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

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

## 13 ARTICLE 95a. DISRESPECT TOWARD SENTINEL OR LOOKOUT

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

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

24 ARTICLE 96. RELEASING PRISONER WITHOUT  
25 PROPER AUTHORITY -- DRINKING WITH PRISONER

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

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

## 34 ARTICLE 97. UNLAWFUL DETENTION

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

## 38 ARTICLE 98. MISCONDUCT AS PRISONER

39 Any person subject to this code who:

40 (1) For the purpose of securing favorable treatment by his captors,  
41 acts without proper authority in a manner contrary to law, custom, or regu-

1 lation, to the detriment of others of whatever nationality held by the enemy  
2 as civilian or military prisoners; or

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

6 ARTICLE 99. MISBEHAVIOR BEFORE THE ENEMY

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

8 (1) Runs away;

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

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

13 (4) Casts away his arms or ammunition;

14 (5) Is guilty of cowardly conduct;

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

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

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

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

26 ARTICLE 100. SUBORDINATE COMPELLING SURRENDER

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

33 ARTICLE 101. IMPROPER USE OF COUNTERSIGN

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

39 ARTICLE 102. FORCING A SAFEGUARD

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

## 1 ARTICLE 103. CAPTURED OR ABANDONED PROPERTY

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

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

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

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

13 (3) Engages in looting or pillaging;

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

## 15 ARTICLE 103a. SPIES -- RESERVED

## 16 ARTICLE 103b. ESPIONAGE -- RESERVED

## 17 ARTICLE 103c. AIDING THE ENEMY

18 Any person subject to this code who:

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

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

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

## 25 ARTICLE 104. PUBLIC RECORD OFFENSES

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

27 (1) Alters, conceals, removes, mutilates, obliterates, or destroys a  
28 public record; or

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

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

## 32 ARTICLE 104a. FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION

33 Any person who:

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

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

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

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

11 ARTICLE 105. RESERVED

12 ARTICLE 105a. FALSE OR UNAUTHORIZED PASS OFFENSES

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

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

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

28 ARTICLE 106. IMPERSONATION OF AN OFFICER, NONCOM-  
29 MISSIONED OR PETTY OFFICER, OR AGENT OR OFFICIAL

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

- 32 (a) An officer, a noncommissioned officer, or a petty officer;  
33 (b) An agent of superior authority of one of the armed forces; or  
34 (c) An officer of a government;

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

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

40 (3) Impersonation of government official without intent to defraud.  
41 Any person subject to this code who, wrongfully and willfully and without  
42 intent to defraud, impersonates an official of a government by committing

1 an act that exercises or asserts the authority of the office that the person  
2 claims to have shall be punished as a court-martial may direct.

3 ARTICLE 106a. WEARING UNAUTHORIZED INSIGNIA, DEC-  
4 ORATION, BADGE, RIBBON, DEVICE, OR LAPEL BUTTON

5 Any person subject to this code:

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

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

11 ARTICLE 107. FALSE OFFICIAL STATEMENTS

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

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

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

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

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

20 (a) Who is on military orders;

21 (b) Who takes an oath that:

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

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

25 (c) Who, upon such oath, makes or subscribes to a statement, if the  
26 statement is false and at the time of taking the oath the person does not  
27 believe the statement to be true;

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

29 ARTICLE 107a. PAROLE VIOLATION

30 Any person subject to this code:

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

33 (2) Who violates the conditions of parole;  
34 shall be punished as a court-martial may direct.

35 ARTICLE 108. MILITARY PROPERTY -- LOSS, DAM-  
36 AGE, DESTRUCTION OR WRONGFUL DISPOSITION

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

38 (1) Sells or otherwise disposes of;

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

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



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

3 ARTICLE 108a. CAPTURED OR ABANDONED PROPERTY

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

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

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

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

15 (c) Engages in looting or pillaging;

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

17 ARTICLE 109. PROPERTY OTHER THAN MILITARY  
18 PROPERTY -- WASTE, SPOILAGE OR DESTRUCTION

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

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

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

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

33 ARTICLE 110. IMPROPER HAZARDING OF VESSEL OR AIRCRAFT

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

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

1                   ARTICLE 111. LEAVING SCENE OF A VEHICLE ACCIDENT

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

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

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

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

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

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

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

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

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

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

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

18                 (ii) Without providing personal identification to others in-  
19 volved in the accident or to appropriate authorities;

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

21                   ARTICLE 112. DRUNKENNESS AND OTHER INCAPACITATION OFFENSES

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

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

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

31          (4) Definitions. "Drunk" means any intoxication sufficient to impair  
32 the rational and full exercise of the mental or physical faculties, or an al-  
33cohol concentration of 0.08 or more as shown by an analysis of the person's  
34 blood, breath, or urine subject to the testing standards within title 18,  
35 Idaho Code. "Incapacitated" means unfit or unable to perform duties prop-  
36 erly as a result of prior alcohol consumption.

37          (5) Testing. Commanders may order the person to provide a breath,  
38 blood, or urine sample if the commander has probable cause to believe that  
39 the person is drunk or incapacitated while on duty. Testing under this ar-  
40 ticle will be performed by a peace officer, hospital, or health care profes-  
41 sional in the jurisdiction in which a violation of this article has occurred.  
42 No military member, peace officer, hospital, or health care professional, as  
43 defined in title 18, Idaho Code, shall incur any civil or criminal liability  
44 for any act arising out of administering an evidentiary test for alcohol  
45 concentration or for the presence of drugs or other intoxicating substances  
46 at the request of a commander. In the event a person ordered to provide a

1 breath, blood, or urine sample refuses to do so, that person may be punished  
2 for violating a lawful order as a court-martial may direct.

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

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

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

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

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

20 (3) Any other substance not specified in paragraph (1) of this subsec-  
21 tion or contained on a list prescribed by the president under paragraph  
22 (2) of this subsection that is listed in schedules I through V of article  
23 202 of the controlled substances act, 21 U.S.C. 812.

24 ARTICLE 113. RESERVED

25 ARTICLE 114. ENDANGERMENT OFFENSES

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

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

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

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

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

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

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

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

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

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

1                           ARTICLE 115.   COMMUNICATING THREATS

2           (1) Communicating threats generally. Any person subject to this code  
3 who wrongfully communicates a threat to injure the person, property, or rep-  
4 utation of another shall be punished as a court-martial may direct.

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

8           (a) An explosive;

9           (b) A weapon of mass destruction;

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

11          (d) A hazardous material;

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

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

16          (a) An explosive;

17          (b) A weapon of mass destruction;

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

19          (d) A hazardous material;

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

23                           ARTICLE 116.   RIOT OR BREACH OF PEACE

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

26                           ARTICLE 117.   PROVOKING SPEECHES OR GESTURES

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

30                           ARTICLE 118.   RESERVED

31                           ARTICLE 119.   RESERVED

32                           ARTICLE 120.   RESERVED

33                           ARTICLE 121.   RESERVED

34                           ARTICLE 122.   RESERVED

35                           ARTICLE 123.   OFFENSES CONCERNING GOVERNMENT COMPUTERS

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

1 (1) Knowingly accesses a government computer, with an unauthorized  
 2 purpose, and by doing so obtains classified information, with reason  
 3 to believe such information could be used to the injury of the United  
 4 States or the state, or to the advantage of any foreign nation, and  
 5 intentionally communicates, delivers, transmits, or causes to be com-  
 6 municated, delivered, or transmitted such information to any person not  
 7 entitled to receive it;

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

11 (3) Knowingly causes the transmission of a program, information, code,  
 12 or command and, as a result of such conduct, intentionally causes damage  
 13 without authorization to a government computer;  
 14 shall be punished as a court-martial may direct.

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

18 ARTICLE 123a. RESERVED

19 ARTICLE 124. RESERVED

20 ARTICLE 124a. BRIBERY

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

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

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

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

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

37 ARTICLE 124b. GRAFT

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

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

42 (2) Who wrongfully asks, accepts, or receives a thing of value as com-  
 43 pensation for or in recognition of services rendered or to be rendered

1 by the person with respect to an official matter in which the United  
 2 States or the state is interested;  
 3 shall be punished as a court-martial may direct.

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

11 ARTICLE 125. RESERVED

12 ARTICLE 126. RESERVED

13 ARTICLE 127. RESERVED

14 ARTICLE 128. RESERVED

15 ARTICLE 129. RESERVED

16 ARTICLE 130. RESERVED

17 ARTICLE 131. RESERVED

18 ARTICLE 131a. RESERVED

19 ARTICLE 131b. OBSTRUCTING JUSTICE

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

25 ARTICLE 131c. MISPRISION OF A SERIOUS OFFENSE

26 In general. Any person subject to this code:

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

32 ARTICLE 131d. WRONGFUL REFUSAL TO TESTIFY

33 Any person subject to this code who, in the presence of a court-martial, a  
 34 board of officers, a military commission, a court of inquiry, a prelimi-  
 35 nary hearing, or an officer taking a deposition of or for the state military  
 36 forces or for the United States, wrongfully refuses to qualify as a witness

1 or to answer a question after having been directed to do so by the person  
2 presiding shall be punished as a court-martial may direct.

3 ARTICLE 131e. PREVENTION OF AUTHORIZED SEIZURE OF PROPERTY

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

9 ARTICLE 131f. NONCOMPLIANCE WITH PROCEDURAL RULES

10 Any person subject to this code who:

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

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

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

17 ARTICLE 131g. WRONGFUL INTERFERENCE WITH ADVERSE ADMINISTRATIVE PROCEEDING

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

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

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

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

24 ARTICLE 132. RETALIATION

25 (a) Any person subject to this code who, with the intent to retaliate  
26 against any person for reporting or planning to report a criminal offense,  
27 or making or planning to make a protected communication, or with the intent  
28 to discourage any person from reporting a criminal offense or making or plan-  
29 ning to make a protected communication:

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

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

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

35 (b) Definitions. In this article:

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

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

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

- 1 (A) A violation of law or regulation, including a law or reg-  
 2 ulation prohibiting sexual harassment or unlawful discrimi-  
 3 nation; or  
 4 (B) Gross mismanagement, a gross waste of funds, an abuse  
 5 of authority, or a substantial and specific danger to public  
 6 health or safety.
- 7 (2) "Inspector general" has the meaning given that term in 10 U.S.C.  
 8 1034.
- 9 (3) "Covered individual or organization" means any recipient of a  
 10 communication specified in clauses (i) through (vi) of 10 U.S.C.  
 11 1034(b) (1) (B).

12 ARTICLE 133. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

13 Any commissioned officer, cadet, or candidate, ~~or midshipman~~ who is con-  
 14 victed of conduct unbecoming an officer and a gentleman shall be punished as  
 15 a court-martial may direct.

16 ARTICLE 134. GENERAL ARTICLE

17 Though not specifically mentioned in this code, all disorders and neglects  
 18 to the prejudice of good order and discipline in the state military forces  
 19 and all conduct of a nature to bring discredit upon the state military forces  
 20 shall be taken cognizance of by a court-martial and punished at the discre-  
 21 tion of a military court. Offenses which may be punished under this article  
 22 include, but are not limited to, those offenses set out in the manual for  
 23 courts-martial as punishable under this article of the uniform code of mil-  
 24 itary justice, those offenses that violate the criminal laws of the state  
 25 where the offense occurred, and those offenses that violate the criminal  
 26 laws of the United States. However, where a crime constitutes an offense  
 27 that violates both this code and the criminal laws of the state where the of-  
 28 fense occurs or criminal laws of the United States, jurisdiction of the mili-  
 29 tary court must be determined in accordance with article 2 (b) of this code.

30 PART XI. MISCELLANEOUS PROVISIONS

31 ARTICLE 135. COURTS OF INQUIRY

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

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

39 (c) Any person subject to this code whose conduct is subject to inquiry  
 40 shall be designated as a party. Any person subject to this code who has a di-  
 41 rect interest in the subject of inquiry has the right to be designated as a  
 42 party upon request to the court. Any person designated as a party shall be



1 given due notice and has the right to be present, to be represented by coun-  
2 sel, to cross-examine witnesses, and to introduce evidence.

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

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

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

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

12 (h) Each court of inquiry shall keep a record of its proceedings, which  
13 shall be authenticated by the signatures of the president and counsel for  
14 the court and forwarded to the convening authority. If the record cannot  
15 be authenticated by the president, it shall be signed by a member in lieu of  
16 the president. If the record cannot be authenticated by the counsel for the  
17 court, it shall be signed by a member in lieu of the counsel.

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

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

21 (1) All judge advocates.

22 (2) All summary courts-martial.

23 (3) All adjutants, assistant adjutants, acting adjutants, and person-  
24 nel adjutants.

25 ~~(4) All commanding officers of the naval militia.~~

26 ~~(5)~~ (4) All other persons designated by regulations of the armed forces  
27 of the United States or by statute.

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

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

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

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

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

35 (5) All recruiting officers.

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

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

40 ARTICLE 137. ARTICLES TO BE EXPLAINED

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

45 (b) Such articles shall be explained again:

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

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

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

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

7 ARTICLE 138. COMPLAINTS OF WRONGS

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

17 ARTICLE 139. REDRESS OF INJURIES TO PROPERTY

18 (a) Whenever complaint is made to any commanding officer that willful  
19 damage has been done to the property of any person or that the person's prop-  
20 erty has been wrongfully taken by members of the state military forces, that  
21 officer may, under such regulations prescribed, convene a board to investi-  
22 gate the complaint. The board shall consist of from one (1) to three (3) com-  
23 missioned officers and, for the purpose of that investigation, it has power  
24 to summon witnesses and examine them upon oath, to receive depositions or  
25 other documentary evidence, and to assess the damages sustained against the  
26 responsible parties. The assessment of damages made by the board is subject  
27 to the approval of the commanding officer, and in the amount approved by that  
28 officer shall be charged against the pay of the offenders. The order of the  
29 commanding officer directing charges herein authorized is conclusive on any  
30 disbursing officer for payment to the injured parties of the damages so as-  
31 sessed and approved.

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

38 ARTICLE 140. DELEGATION BY THE GOVERNOR

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

42 ARTICLE 141. PAYMENT OF FEES, COSTS AND EXPENSES

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

8 ARTICLE 142. PAYMENT OF FINES AND DISPOSITION THEREOF

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

13 (1) By cash or money order;

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

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

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

21 ARTICLE 143. UNIFORMITY OF INTERPRETATION

22 This code shall be so construed as to effectuate its general purpose to make  
23 it uniform, so far as practical, with the uniform code of military justice,  
24 10 U.S.C. chapter 47.

25 ARTICLE 144. IMMUNITY FOR ACTION OF MILITARY COURTS

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

30 ARTICLE 145. SEVERABILITY

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

35 ARTICLE 146. SHORT TITLE

36 This act may be cited as the "Idaho Code of Military Justice" (ICMJ).

37 ARTICLE 147. TIME OF TAKING EFFECT

38 This act takes effect July 1, 2019.

1           SECTION 2. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after  
3 July 1, 2025.