

TITLE 46
MILITIA AND MILITARY AFFAIRS

CHAPTER 11
IDAHO CODE OF MILITARY JUSTICE

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

[46-1101, added 2015, ch. 268, sec. 2, p. 1078.]

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," "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 forces of which the accused is a member, as competent to perform such military justice duties required by this code. If there is no such judge advocate available, then such certification may be made by such senior judge advocate of the commander of another force in the state military forces, as the convening authority directs;

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

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

- (6) "Senior force judge advocate" means the senior judge advocate of the commander of the same force of the state military forces as the accused and who is that commander's chief legal advisor;
- (7) "State military forces" means the national guard of the state of Idaho, as defined in [title 32](#), United States Code, the organized naval militia of the state, and any other military force organized under the constitution and laws of the state of Idaho, not to include the unorganized militia, when not in a status subjecting them to exclusive jurisdiction under 10 U.S.C. chapter 47. The unorganized militia, state defense force, state national guard, home guard or any other name of any state force that does not meet this definition shall not be part of the "state military forces" under this code;
- (8) "Senior force commander" means the commander of the same force of the state military forces as the accused;
- (9) "Commanding officer" means only commissioned officers;
- (10) "Superior commissioned officer" means a commissioned officer superior in rank, grade, or command;
- (11) "Military" means any or all of the state military forces;
- (12) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused;
- (13) "Military judge" means an official of a general or special court-martial detailed in accordance with article 26;
- (14) "Legal officer" means any commissioned officer designated as a judge advocate to perform legal duties for a command;
- (15) "Record," when used in connection with the proceedings of a court-martial, means:
- (A) An official written transcript, written summary, or other writing relating to the proceedings; or
 - (B) An official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced;
- (16) "Classified information" means:
- (A) Any information or material that has been determined by an official of the United States pursuant to law, an executive order, or regulation to require protection against unauthorized disclosure for reasons of national security; and
 - (B) Any restricted data, as defined in section 11(y) of the atomic energy act of 1954, 42 U.S.C. 2014(y);
- (17) "National security" means the national defense and foreign relations of the United States;
- (18) "Military offenses" means those offenses prescribed under articles 77 through 117, 123, 124a, 124b, and 131b through 134.
- (b) The use of the masculine gender throughout this code shall also include the feminine gender.

ARTICLE 2. PERSONS SUBJECT TO THIS CODE -- JURISDICTION

- (a) This code applies to all members of the state military forces when serving in a [title 32](#) status or state active duty status as defined in article 1(a) (5) of this code. This code does not apply to members serving in a [title](#)

10 status or members of the unorganized militia as defined in section 46-102, Idaho Code.

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

ARTICLE 3. JURISDICTION TO TRY CERTAIN PERSONNEL

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

(b) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to article 43, subject to trial by court-martial on that charge and is, after apprehension, subject to this chapter while in the custody of the state military forces for that trial. Upon conviction of that charge, he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

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

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

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

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

(b) If the governor or his designated representative fails to convene a general court-martial within six (6) months from the presentation of an application for trial under this article, the adjutant general shall substitute for the dismissal ordered by the governor or his designated representative a form of discharge authorized for administrative issue.

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

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

ARTICLE 5. TERRITORIAL APPLICABILITY OF THE CODE

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

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

ARTICLE 6. JUDGE ADVOCATES AND LEGAL OFFICERS

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

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice. The staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the state judge advocate.

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

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

- (A) Preliminary hearing officer, court member, military judge, military magistrate, or appellate judge; or
- (B) Counsel who have acted in the same case or appeared in any proceeding before a military judge, military magistrate, preliminary hearing officer, or appellate court.

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

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

(b) The governor or his designee shall transmit a copy of the procedures prescribed pursuant to this article to the appropriate committees of the Idaho senate and Idaho house of representatives.

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

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

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any of the following:
 - (A) A public hearing concerning the continuation of confinement prior to trial of the accused;
 - (B) A preliminary hearing under article 32 relating to the offense;
 - (C) A court-martial relating to the offense;
 - (D) A public proceeding of the service clemency and parole board relating to the offense; and
 - (E) The release or escape of the accused, unless such notice may endanger the safety of any person.
- (3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) of this subsection unless the military judge or preliminary hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.
- (4) The right to be reasonably heard at any of the following:
 - (A) A public hearing concerning the continuation of confinement prior to trial of the accused;
 - (B) A sentencing hearing relating to the offense; and
 - (C) A public proceeding of the service clemency and parole board relating to the offense.
- (5) The reasonable right to confer with the counsel representing the government at any proceeding described in paragraph (2) of this subsection.
- (6) The right to receive restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this code.

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

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

(d) Enforcement by the Idaho state courts:

(1) If the victim of an offense under this chapter believes that an article 32 preliminary hearing ruling or a court-martial ruling violates the rights of the victim afforded by the provisions of this article, including provisions specified in subsection (a) (4) of this article, the victim may petition the Idaho state courts in accordance with the applicable rules of procedure of the Idaho state courts for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the provisions of this article.

(2) Paragraph (1) of this subsection applies with respect to the protections afforded by the following:

(A) The provisions of this article;

(B) Military rule of evidence 513, relating to the psychotherapist-patient privilege;

(C) Military rule of evidence 514, relating to the victim advocate-victim privilege; and

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

(e) Upon notice by counsel for the government to counsel for the accused of the name of an alleged victim of an offense under this article who counsel for the government intends to call as a witness at a proceeding under this article, counsel for the accused shall make any request to interview the victim through the special victims' counsel or other counsel for the victim, if applicable.

(f) If requested by an alleged victim who is subject to a request for interview under subsection (e) of this article, any interview of the victim by counsel for the accused shall take place only in the presence of the counsel for the government, a counsel for the victim, or, if applicable, a victim advocate.

PART II. APPREHENSION AND RESTRAINT

ARTICLE 7. APPREHENSION

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

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

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

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

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

ARTICLE 8. APPREHENSION OF DESERTERS

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

ARTICLE 9. IMPOSITION OF RESTRAINT

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

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement.

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

(d) No person may be ordered into arrest or confinement except for probable cause.

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

ARTICLE 10. RESTRAINT OF PERSONS CHARGED

(a) In general.

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

(2) When a person subject to this chapter is charged only with an offense that is normally tried by summary court-martial, the person ordinarily shall not be ordered into confinement.

(b) Notification to accused and related procedures.

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

(A) To inform the person of the specific offense of which the person is accused; and

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

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

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

(a) If a person subject to this code is confined before, during, or after trial, confinement shall be in a civilian or military confinement facility.

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

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

ARTICLE 12. CONFINEMENT WITH ENEMY PRISONERS PROHIBITED

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

ARTICLE 13. PUNISHMENT PROHIBITED BEFORE TRIAL

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

ARTICLE 14. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES

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

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence

of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to the place of original custody for the completion of 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, 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

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

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

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

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

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

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

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

(2) Mitigate arrest in quarters to restriction; or

(3) Mitigate extra duties to restriction.

The mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

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

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

(j) Whenever a punishment of forfeiture of pay is imposed under this article, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed.

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

PART IV. COURT-MARTIAL JURISDICTION

ARTICLE 16. COURTS-MARTIAL CLASSIFIED

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

- (1) General courts-martial, consisting of:
 - (A) A military judge and not less than five (5) members; or
 - (B) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;
- (2) Special courts-martial, consisting of:
 - (A) A military judge and not less than three (3) members; or
 - (B) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in subsection (1) (B) of this article so requests; and
- (3) Summary courts-martial, consisting of one (1) commissioned officer.

ARTICLE 17. JURISDICTION OF COURTS-MARTIAL IN GENERAL

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

ARTICLE 18. JURISDICTION OF GENERAL COURTS-MARTIAL

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

ARTICLE 19. JURISDICTION OF SPECIAL COURTS-MARTIAL

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

ARTICLE 20. JURISDICTION OF SUMMARY COURTS-MARTIAL

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

(b) No person in the rank of E-7 or above may be brought to trial before a summary court-martial if that person objects thereto. If objection to trial by summary court-martial is made by an accused in the rank of E-7 or above, trial by special or general court-martial may be ordered, as may be

appropriate. Members in the rank of E-6 and below do not have the right to reject trial before a summary court-martial. Summary courts-martial may, under such limitations as the governor may prescribe, adjudge any punishment not forbidden by this code except dismissal, dishonorable or bad-conduct discharge, confinement for more than one (1) month, restriction to specified limits for more than two (2) months, or forfeiture of more than two-thirds (2/3) of one (1) month's pay.

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

ARTICLE 21. RESERVED

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

ARTICLE 22. WHO MAY CONVENE GENERAL COURTS-MARTIAL

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

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

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

ARTICLE 23. WHO MAY CONVENE SPECIAL COURTS-MARTIAL

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

- (1) Any person who may convene a general court-martial;
- (2) The commanding officer of a garrison, fort, post, camp, station, air national guard base, or naval base or station;
- (3) The commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the army;
- (4) The commanding officer of a wing, group, separate squadron, or corresponding unit of the air force; or
- (5) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

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

ARTICLE 24. WHO MAY CONVENE SUMMARY COURTS-MARTIAL

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

- (1) Any person who may convene a general or special court-martial;
- (2) The commanding officer of a detached company or other detachment, or corresponding unit of the army;
- (3) The commanding officer of a detached squadron or other detachment, or corresponding unit of the air force; or
- (4) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

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

ARTICLE 25. WHO MAY SERVE ON COURTS-MARTIAL

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

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

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

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that:

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

(B) Enlisted members comprise at least one-third (1/3) of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

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

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

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

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

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

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

ARTICLE 25a. RESERVED

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

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

(b) A military judge shall be:

(1) An active or retired commissioned officer of an organized state military force and qualified, by reason of education, training, experience, and judicial temperament, for duty;

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

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

(4) Certified as qualified, by reason of education, training, experience, and judicial temperament, for duty.

(c) In the instance when a military judge is not a member of the bar of the highest court of the state, the military judge shall be deemed admitted pro hac vice, subject to filing a certificate with the senior force judge advocate which is the same force as the accused setting forth such qualifications provided in subsection (b) of this article.

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

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

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

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

ARTICLE 26a. MILITARY MAGISTRATES

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

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

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

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

ARTICLE 27. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL

(a) General provision:

(1) For each general and special court-martial, the authority convening the court shall detail trial counsel, defense counsel, and such assistants as are appropriate.

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

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

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

(2) A member in good standing of the bar of the highest court of the state where the court-martial is held.

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

(d) Trial counsel, assistant trial counsel, defense counsel, and assistant defense counsel detailed for a special court-martial must be determined to be competent to perform such duties by the senior force judge advocate, under such rules as the governor or his designee may prescribe.

ARTICLE 28. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS

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

ARTICLE 29. ASSEMBLY AND IMPANELING OF MEMBERS -- DETAIL OF NEW MEMBERS AND MILITARY JUDGES

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

(1) As a result of a challenge;

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

(3) By order of the military judge or the convening authority for disability or other good cause.

(b) Impaneling.

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

(A) After determination of challenges, impanel the court-martial; and

(B) Excuse the members who, having been assembled, are not impaneled.

- (2) In a general court-martial, the military judge shall impanel eight (8) members.
- (3) In a special court-martial, the military judge shall impanel four (4) members.
- (c) In addition to members under subsection (b) of this article, the military judge shall impanel alternate members, if the convening authority authorizes alternate members.
- (d) Detail of new members.
 - (1) If, after members are impaneled, the membership of the court-martial is reduced to fewer than twelve (12) members with respect to a general court-martial in a capital case, fewer than six (6) members with respect to a general court-martial in a noncapital case, or fewer than four (4) members with respect to a special court-martial, the trial may not proceed unless the convening authority details new members and, from among the members so detailed, the military judge impanels new members sufficient in number to provide the membership specified in paragraph (2) of this subsection.
 - (2) Membership shall be as follows:
 - (A) At least six (6) but not more than eight (8) members with respect to a general court-martial; and
 - (B) Four (4) members with respect to a special court-martial.
 - (e) If the military judge is unable to proceed with the trial because of disability or otherwise, a new military judge shall be detailed to the court-martial.
 - (f) Evidence.
 - (1) In the case of new members under subsection (d) of this article, the trial may proceed with the new members present after the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new members, the military judge, the accused, and counsel for both sides.
 - (2) In the case of a new military judge under subsection (e) of this article, the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.

PART VI. PRE-TRIAL PROCEDURE

ARTICLE 30. CHARGES AND SPECIFICATIONS

- (a) In general. Charges and specifications:
 - (1) May be preferred only by a person subject to this chapter; and
 - (2) Shall be preferred by presentment in writing, signed under oath before a commissioned officer of the state military forces who is authorized to administer oaths.
 - (b) The writing under subsection (a) of this article shall state that:
 - (1) The signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and
 - (2) The matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.
 - (c) When charges and specifications are preferred under subsection (a) of this article, the proper authority shall, as soon as practicable:
 - (1) Inform the person accused of the charges and specifications; and

(2) Determine what disposition should be made of the charges and specifications in the interest of justice and discipline.

ARTICLE 31. COMPULSORY SELF-INCRIMINATION PROHIBITED

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

(b) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

(c) No person subject to this code may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade the person.

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

ARTICLE 32. INVESTIGATION

(a) In general.

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

(B) Under regulations prescribed by the governor or his designated representative, a preliminary hearing need not be held if the accused submits a written waiver to the convening authority and the convening authority determines that a hearing is not required.

(2) The purpose of the preliminary hearing shall be limited to determining the following:

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

(B) Whether or not there is probable cause to believe that the accused committed the offense charged;

(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense; and

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

(b) Hearing officer.

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

(A) Whenever practicable, shall be a judge advocate who is certified under article 27 (b); or

(B) When it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

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

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

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

(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a) (2) of this article, including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

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

(3) An analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that under such rules as the governor or his designated representative may prescribe, is relevant to disposition under articles 30 and 34; and

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

(d) If evidence adduced in an investigation under this article indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused:

(1) Is present at the investigation;

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

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

(e) The requirements of this article are binding on all persons administering this code, but failure to follow them does not constitute jurisdictional error under such rules as the governor or his designated representative may prescribe.

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

ARTICLE 33. DISPOSITION GUIDANCE

The governor or his designated representative shall issue nonbinding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under articles 30 and 34. Such guid-

ance shall take into account, with appropriate consideration of military requirements, the principles of fair and evenhanded administration of Idaho and federal criminal law.

ARTICLE 34. ADVICE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL

(a) Staff judge advocate advice required before referral. Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that:

- (1) The specification alleges an offense under this chapter;
- (2) There is probable cause to believe that the accused committed the offense charged; and
- (3) A court-martial would have jurisdiction over the accused and the offense.

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

(c) Staff judge advocate advice and recommendation to accompany referral. When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under subsection (a) of this article and the written recommendation of the staff judge advocate under subsection (b) of this article with respect to each specification shall accompany the referral.

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

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

- (1) To correct errors in form; and
- (2) When applicable, to conform to the substance of the evidence contained in a report under article 32(c).

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

ARTICLE 35. SERVICE OF CHARGES -- COMMENCEMENT OF TRIAL

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

(b) Commencement of trial.

- (1) Subject to paragraphs (2) and (3) of this subsection, no trial or other proceeding of a general court-martial or a special court-martial,

including any session under article 39(a), may be held over the objection of the accused:

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

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

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

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

PART VII. TRIAL PROCEDURE

ARTICLE 36. GOVERNOR OR THE ADJUTANT GENERAL MAY PRESCRIBE RULES

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

ARTICLE 37. UNLAWFULLY INFLUENCING ACTION OF COURT

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

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on active status, no person subject to this code may, in preparing any such report: (1) consider or evaluate the performance of duty of any such member as a member of a court-martial or wit-

ness therein; or (2) give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

ARTICLE 38. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL

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

(b) Defense counsel:

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

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

(3) The accused may be represented:

- (A) By military counsel detailed under article 27 of this code; or
- (B) By military counsel of the accused's own selection if that counsel is reasonably available as determined under paragraph (7) of this subsection.

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

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

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

- (A) May detail additional military counsel as assistant defense counsel; and
- (B) If the accused is represented by military counsel of the accused's own selection under paragraph (3) (B) of this subsection, may approve a request from the accused that military counsel detailed under paragraph (3) (A) of this subsection act as associate defense counsel.

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

(c) In any court-martial proceeding resulting in a conviction, the defense counsel:

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

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

ARTICLE 39. SESSIONS

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the

military judge may, subject to article 35 of this code, call the court into session without the presence of the members for the purpose of:

- (1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;
- (2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court;
- (3) Holding the arraignment and receiving the pleas of the accused;
- (4) Conducting a sentencing proceeding and sentencing the accused in noncapital cases unless the accused requests sentencing by members under article 25; and
- (5) Performing any other procedural function which does not require the presence of the members of the court under this code. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of court members and without regard to article 29.

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

ARTICLE 40. CONTINUANCES

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

ARTICLE 41. CHALLENGES

(a) Challenges generally.

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

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

(b) Preemptory challenges.

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

(2) If exercise of a preemptory challenge reduces the court below the minimum number of members required by article 16 of this code, the parties shall, notwithstanding article 29 of this code, either exercise

or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

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

ARTICLE 42. OATHS OR AFFIRMATIONS

(a) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. The form of the oath or affirmation, the time and place of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulation or as provided by law. These regulations may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

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

ARTICLE 43. STATUTE OF LIMITATIONS

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

(b) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this article.

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

(d) When the United States is at war, the running of any statute of limitations applicable to any offense under this code:

- (1) Involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not;
- (2) Committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States or any state; or
- (3) Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termi-

nation or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or government agency;

is suspended until two (2) years after the termination of hostilities as proclaimed by the president or by a joint resolution of congress.

(e) Exception.

(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

(A) Has expired; or will be met.

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

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

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

(B) Allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

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

(1) In the case of an enlisted member, during the period of the enlistment or five (5) years, whichever provides a longer period.

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

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

ARTICLE 44. FORMER JEOPARDY

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

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

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

(2) A court-martial with a military judge and members is a trial in the sense of this article if, without fault of the accused after the members, having taken an oath as members under article 42 and after completion of challenges under article 41, are impaneled, and before announcement of findings under article 53, the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

ARTICLE 45. PLEAS OF THE ACCUSED

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

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

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

ARTICLE 46. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE IN TRIALS BY COURT

(a) In a case referred for trial by court-martial, the trial counsel and the defense counsel shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall apply the principles of law and the rules of courts-martial generally recognized in military criminal cases in the courts of the armed forces of the United States, but which may not be contrary to or inconsistent with this code. Process shall run to any part of the United States, or the territories, commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States.

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

- (1) Shall be similar to that which courts of the state of Idaho or courts of the United States having criminal jurisdiction may issue;
- (2) Shall be executed in accordance with regulations prescribed by the governor or his designated representative; and
- (3) Shall run to any part of the United States and to the commonwealths and possessions of the United States.

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

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

- (2) At a deposition under article 49; or
- (3) As otherwise authorized under this chapter.
- (d) In general. A subpoena or other process may be issued to compel the production of evidence:
 - (1) For a court-martial, military commission, or court of inquiry;
 - (2) For a deposition under article 49;
 - (3) For an investigation of an offense under this chapter; or
 - (4) As otherwise authorized under this chapter.
- (e) Investigative subpoena. An investigative subpoena under subsection (c) (3) of this article may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the government to issue such a subpoena or a military judge issues such a subpoena pursuant to article 30.
- (f) Warrant or order for wire or electronic communications. With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with article 26 or 30 may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the state of Idaho under [title 19](#), Idaho Code, subject to such limitations as the governor or his designated representative may prescribe.
- (g) Request for relief from subpoena or other process. If a person requests relief from a subpoena or other process under this article on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with article 26 or 30 shall review the request and shall:
 - (1) Order that the subpoena or other process be modified or withdrawn, as appropriate; or
 - (2) Order the person to comply with the subpoena or other process.

ARTICLE 47. REFUSAL OF PERSON NOT SUBJECT TO CHAPTER TO APPEAR, OR TESTIFY,
OR PRODUCE EVIDENCE

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

ARTICLE 48. CONTEMPT

(a) Authority to punish.

(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) of this subsection may punish for contempt any person who:

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

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

(C) Willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

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

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

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

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

(b) Review. A punishment under this article:

(1) If imposed by a military judge or military magistrate, may be reviewed by the district court of the judicial district where the proceeding was conducted in accordance with the applicable rules of procedure of the Idaho state courts; and

(2) If imposed by a court of inquiry, shall be subject to review by the convening authority in accordance with rules prescribed by the governor or his designated representative.

ARTICLE 49. DEPOSITIONS

(a) In general.

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

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

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

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

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

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

(b) Representation by counsel. Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under article 27. In addition, the

accused shall have the right to be represented by civilian or military counsel in the same manner as provided for in article 38(b).

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

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

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

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

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

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

ARTICLE 50a. DEFENSE OF LACK OF MENTAL RESPONSIBILITY

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

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

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

- (1) Guilty;
- (2) Not guilty; or
- (3) Not guilty only by reason of lack of mental responsibility.

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

- (1) Guilty;

- (2) Not guilty; or
- (3) Not guilty only by reason of lack of mental responsibility.
- (e) Notwithstanding the provisions of article 52 of this code, the accused shall be found not guilty only by reason of lack of mental responsibility if:
 - (1) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or
 - (2) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

ARTICLE 51. VOTING AND RULINGS

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

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

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

- (1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;
- (2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;
- (3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and
- (4) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

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

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

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

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

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

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

(b) Level of concurrence required.

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

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

ARTICLE 53. FINDINGS AND SENTENCING

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

(b) Sentencing generally.

(1) General and special courts-martial.

(A) Sentencing by military judge. Except as provided in subparagraph (B) of this paragraph, and in this code for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused.

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

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

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

ARTICLE 53a. PLEA AGREEMENTS

(a) In general.

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

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

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

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

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

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

(4) Is prohibited by law; or

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

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

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

(2) Upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

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

ARTICLE 54. RECORD OF TRIAL

(a) General and special courts-martial. Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a court reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the governor or his designated representative may prescribe by regulation.

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

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

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

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

(e) Contents of record.

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

(2) In accordance with regulations prescribed by the governor or his designated representative, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal,

discharge, confinement for more than six (6) months, or forfeiture of pay for more than six (6) months.

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

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

PART VIII. SENTENCES

ARTICLE 55. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED

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

ARTICLE 56. SENTENCING

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

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

(c) Imposition of sentence.

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

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

(B) The impact of the offense on:

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

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

(C) The need for the sentence:

(i) To reflect the seriousness of the offense;

(ii) To promote respect for the law;

(iii) To provide just punishment for the offense;

(iv) To promote adequate deterrence of misconduct;

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

- (vi) To rehabilitate the accused; and
- (vii) To provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and

(D) The sentences available under this chapter.

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

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

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

(1) With the approval of the senior force judge advocate concerned, the government may appeal a sentence, on the grounds that the sentence violates the law or the sentence is unreasonable.

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

ARTICLE 56a. RESERVED

ARTICLE 57. EFFECTIVE DATE OF SENTENCES

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

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

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

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

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

(3) Approval of dismissal. If, in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the secretary concerned or such undersecretary or assistant secretary as may be designated by the secretary concerned. In such a case, the secretary, undersecretary, or assistant secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the secretary sees fit. In time of war or na-

tional emergency, he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six (6) months thereafter.

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

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

(b) Deferral of sentences.

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

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

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

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

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

(c) Appellate review.

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

(2) Completion as final judgment of legality of proceedings. The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.

ARTICLE 58. EXECUTION OF CONFINEMENT

(a) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

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

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

ARTICLE 58a. SENTENCES -- REDUCTION IN ENLISTED GRADE

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

- (1) A dishonorable or bad-conduct discharge;
- (2) Confinement; or
- (3) Reduction of that member to pay grade E-1, if such a reduction is authorized by regulation prescribed by the governor or his designated representative. The reduction in pay grade shall take effect on the date on which the judgment is so entered.

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

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

(a) Generally.

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

- (2) A sentence covered by this article is any sentence that includes:
- (A) Confinement for more than six (6) months; or
 - (B) Confinement for six (6) months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under article 60 of this code may waive any or all of the forfeitures of pay and allowances required by subsection (a) of this article for a period not to exceed six (6) months. Any amount of pay or allowances that, except for a waiver under this subsection, would be for-

feited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

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

PART IX. POSTTRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

ARTICLE 59. ERROR OF LAW -- LESSER INCLUDED OFFENSE

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

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

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

(a) Statement of trial results.

(1) The military judge of a general or special court-martial shall enter into the record of trial a document entitled "statement of trial results," which shall set forth:

(A) Each plea and finding;

(B) The sentence, if any; and

(C) Such other information as the governor or his designated representative may prescribe by regulation.

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

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

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

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

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

(a) Waiver of right to appeal. After entry of judgment in a general or special court-martial, under procedures prescribed by the secretary concerned, the accused may waive the right to appellate review in each case subject to such review under this code. Such a waiver shall be signed by the accused and by defense counsel and attached to the record of trial.

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

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

ARTICLE 62. APPEAL BY THE STATE

(a) Generally.

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

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

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

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

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

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

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

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

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

(B) An appeal of an order or ruling may not be taken when prohibited by article 44.

(3) An appeal under this article shall be diligently prosecuted as provided by law.

(b) An appeal under this article shall be forwarded to the court prescribed in article 67a of this code. In ruling on an appeal under this article, that court may act only with respect to matters of law.

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

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

(e) The provisions of this article shall be liberally construed to effect its purposes.

ARTICLE 63. REHEARINGS

(a) Each rehearing under this code shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be adjudged, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

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

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

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

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

(1) Conclusions as to whether:

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

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

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

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

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

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

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

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

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

(c) The adjutant general's discretion.

(1) The adjutant general may:

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

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

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

(D) Dismiss the charges.

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

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

(d) The senior force judge advocate, or a designee, may review any case in which there has been a finding of not guilty of all charges and specifications. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be limited to questions of subject matter jurisdiction.

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

(1) The adjutant general may:

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

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

ARTICLE 65. TRANSMITTAL AND REVIEW OF RECORDS

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

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

ARTICLE 66. RESERVED

ARTICLE 67. RESERVED

ARTICLE 67a. REVIEW BY STATE APPELLATE AUTHORITY

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

ARTICLE 68. RESERVED

ARTICLE 69. RESERVED

ARTICLE 70. APPELLATE COUNSEL

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

(b) Upon an appeal by the state, an accused has the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

(c) Upon the appeal by an accused, the accused has the right to be represented by military counsel before any reviewing authority.

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

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

ARTICLE 71. EXECUTION OF SENTENCE -- SUSPENSION OF SENTENCE

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

(b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn under article 61 of this code, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review under article 64 of this code is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under article 60 of this code when so approved under that article.

ARTICLE 72. VACATION OF SUSPENSION

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

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions under article 57 in this code.

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

ARTICLE 73. PETITION FOR A NEW TRIAL

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

ARTICLE 74. REMISSION AND SUSPENSION

(a) Any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the governor.

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

ARTICLE 75. RESTORATION

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

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

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the governor or his designated representative may substitute

therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the governor may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

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

ARTICLE 76. FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES

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

ARTICLE 76a. LEAVE REQUIRED TO BE TAKEN PENDING REVIEW OF CERTAIN COURT-MARTIAL CONVICTIONS

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

ARTICLE 76b. RESERVED

PART X. PUNITIVE ARTICLES

ARTICLE 77. PRINCIPALS

Any person subject to this code who:

- (1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or
- (2) Causes an act to be done which if directly performed by him would be punishable by this code;

is a principal.

ARTICLE 78. ACCESSORY AFTER THE FACT

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

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

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

- (1) The offense charged;
- (2) A lesser included offense;
- (3) An attempt to commit the offense charged; or
- (4) An attempt to commit a lesser included offense, if the attempt is an offense in its own right.

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

- (1) An offense that is necessarily included in the offense charged; and
- (2) Any lesser included offense so designated by regulation prescribed by the adjutant general.

(c) Regulatory authority. Any designation of a lesser included offense in a regulation referred to in subsection (b) of this article shall be reasonably included in the greater offense.

ARTICLE 80. ATTEMPTS

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

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

(c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

ARTICLE 81. CONSPIRACY

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

ARTICLE 82. SOLICITATION

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

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

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

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

ARTICLE 83. MALINGERING

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

ARTICLE 84. BREACH OF MEDICAL QUARANTINE

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

ARTICLE 85. DESERTION

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

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

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

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

is guilty of desertion.

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

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

ARTICLE 86. ABSENCE WITHOUT LEAVE

Any person subject to this code who, without authority:

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

(2) Goes from that place; or

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

shall be punished as a court-martial may direct.

ARTICLE 87. MISSING MOVEMENT

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

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

Any person subject to this code who resists apprehension, flees from apprehension, breaks arrest, or escapes from custody or confinement shall be punished as a court-martial may direct.

ARTICLE 87b. OFFENSES AGAINST CORRECTIONAL CUSTODY AND RESTRICTION

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

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

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

(3) Who escapes from the physical restraint before being released from the physical restraint by proper authority;

shall be punished as a court-martial may direct.

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

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

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

(3) Who goes beyond the limits of the restraint before being released from the correctional custody or relieved of the restraint by proper authority;

shall be punished as a court-martial may direct.

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

(1) Who is ordered to be restricted to certain limits by a person authorized to do so; and

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

shall be punished as a court-martial may direct.

ARTICLE 88. CONTEMPT TOWARD OFFICIALS

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

ARTICLE 89. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER

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

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

ARTICLE 90. ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER

Any person subject to this code who:

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

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

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

ARTICLE 91. INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER, NONCOMMISSIONED OFFICER OR PETTY OFFICER

Any warrant officer or enlisted member who:

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

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

Any person subject to this code who:

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

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

(3) Is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

ARTICLE 93. CRUELTY AND MALTREATMENT

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

ARTICLE 93a. PROHIBITED ACTIVITY WITH MILITARY RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST

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

- (1) Who is an officer or a noncommissioned officer;
- (2) Who is in a training leadership position with respect to a specially protected junior member of the state military forces; and
- (3) Who engages in prohibited sexual activity with such specially protected junior member of the state military forces;

shall be punished as a court-martial may direct.

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

- (1) Who is a military recruiter and engages in prohibited sexual activity with an applicant for state military service; or
- (2) Who is a military recruiter and engages in prohibited sexual activity with a specially protected junior member of the state military forces who is enlisted under a delayed entry program;

shall be punished as a court-martial may direct.

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

(d) Definitions. In this article:

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

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

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

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

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

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

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

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

ARTICLE 94. MUTINY OR SEDITION

(a) Any person subject to this code who:

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

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

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

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

ARTICLE 95. OFFENSES BY SENTINEL OR LOOKOUT

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

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

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

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

ARTICLE 95a. DISRESPECT TOWARD SENTINEL OR LOOKOUT

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

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

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

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

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

ARTICLE 97. UNLAWFUL DETENTION

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

ARTICLE 98. MISCONDUCT AS PRISONER

Any person subject to this code who:

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

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

ARTICLE 99. MISBEHAVIOR BEFORE THE ENEMY

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

(1) Runs away;

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

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his arms or ammunition;

(5) Is guilty of cowardly conduct;

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

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

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

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

shall be punished as a court-martial may direct.

ARTICLE 100. SUBORDINATE COMPELLING SURRENDER

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

ARTICLE 101. IMPROPER USE OF COUNTERSIGN

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another, who is entitled to receive and use the parole or countersign, a different pa-

role or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

ARTICLE 102. FORCING A SAFEGUARD

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

ARTICLE 103. CAPTURED OR ABANDONED PROPERTY

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

(b) Any person subject to this code who:

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

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

(3) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

ARTICLE 103a. SPIES -- RESERVED

ARTICLE 103b. ESPIONAGE -- RESERVED

ARTICLE 103c. AIDING THE ENEMY

Any person subject to this code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

ARTICLE 104. PUBLIC RECORD OFFENSES

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

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

(2) Takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record;

shall be punished as a court-martial may direct.

ARTICLE 104a. FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION

Any person who:

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

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

ARTICLE 104b. UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION

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

ARTICLE 105. RESERVED

ARTICLE 105a. FALSE OR UNAUTHORIZED PASS OFFENSES

(1) Wrongful making, altering, counterfeiting, tampering. Any person subject to this code who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

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

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

ARTICLE 106. IMPERSONATION OF AN OFFICER, NONCOMMISSIONED OR PETTY OFFICER, OR AGENT OR OFFICIAL

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

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

shall be punished as a court-martial may direct.

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

(3) Impersonation of government official without intent to defraud. Any person subject to this code who, wrongfully and willfully and without

intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.

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

Any person subject to this code:

- (1) Who is not authorized to wear an insignia, decoration, badge, ribbon, device, or lapel button; and
 - (2) Who wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person's uniform or civilian clothing;
- shall be punished as a court-martial may direct.

ARTICLE 107. FALSE OFFICIAL STATEMENTS

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

- (a) Signs any false record, return, regulation, order, or other official document in the line of duty, knowing it to be false; or
- (b) Makes any other false official statement in the line of duty, knowing it to be false;

shall be punished as a court-martial may direct.

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

- (a) Who is on military orders;
- (b) Who takes an oath that:
 - (i) Is administered in a manner in which such oath is required or authorized by law; and
 - (ii) Is administered by a person with authority to do so; and

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

ARTICLE 107a. PAROLE VIOLATION

Any person subject to this code:

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

ARTICLE 108. MILITARY PROPERTY -- LOSS, DAMAGE, DESTRUCTION OR WRONGFUL DISPOSITION

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

- (1) Sells or otherwise disposes of;
- (2) Willfully or through neglect damages, destroys, or loses; or
- (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

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

ARTICLE 108a. CAPTURED OR ABANDONED PROPERTY

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

(2) Any person subject to this code who:

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

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

(c) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

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

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

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

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

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

ARTICLE 110. IMPROPER HAZARDING OF VESSEL OR AIRCRAFT

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

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

ARTICLE 111. LEAVING SCENE OF A VEHICLE ACCIDENT

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

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

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

- (3) Who, without providing assistance to an injured person; or
 - (4) Who, without providing personal identification to others involved in the accident or to appropriate authorities;
- shall be punished as a court-martial may direct.
- (b) Senior passenger. Any person subject to this code:
 - (1) Who is passenger in a vehicle that is involved in an accident that results in personal injury or property damage;
 - (2) Who is the superior commissioned or noncommissioned officer of the driver of the vehicle or is the commander of the vehicle; and
 - (3) Who wrongfully and unlawfully orders, causes, or permits the driver to leave the scene of the accident;
 - (i) Without providing assistance to an injured person; or
 - (ii) Without providing personal identification to others involved in the accident or to appropriate authorities;
- shall be punished as a court-martial may direct.

ARTICLE 112. DRUNKENNESS AND OTHER INCAPACITATION OFFENSES

- (1) Drunk on duty. Any person subject to this code who is drunk on duty shall be punished as a court-martial may direct.
- (2) Incapacitation for duty from drunkenness or drug use. Any person subject to this code who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as a court-martial may direct.
- (3) Drunk prisoner. Any person subject to this code who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.
- (4) Definitions. "Drunk" means any intoxication sufficient to impair the rational and full exercise of the mental or physical faculties, or an alcohol concentration of 0.08 or more as shown by an analysis of the person's blood, breath, or urine subject to the testing standards within [title 18](#), Idaho Code. "Incapacitated" means unfit or unable to perform duties properly as a result of prior alcohol consumption.
- (5) Testing. Commanders may order the person to provide a breath, blood, or urine sample if the commander has probable cause to believe that the person is drunk or incapacitated while on duty. Testing under this article will be performed by a peace officer, hospital, or health care professional in the jurisdiction in which a violation of this article has occurred. No military member, peace officer, hospital, or health care professional, as defined in [title 18](#), Idaho Code, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request of a commander. In the event a person ordered to provide a breath, blood, or urine sample refuses to do so, that person may be punished for violating a lawful order as a court-martial may direct.

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

- (a) Any person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces

of the United States or of any state military forces a substance described in subsection (b) of this article shall be punished as a court-martial may direct.

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

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

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

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

ARTICLE 113. RESERVED

ARTICLE 114. ENDANGERMENT OFFENSES

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

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

(2) Is likely to produce death or grievous bodily harm to another person;

shall be punished as a court-martial may direct.

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

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

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

shall be punished as a court-martial may direct.

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

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

ARTICLE 115. COMMUNICATING THREATS

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

(2) Communicating threat to use explosive, etc. Any person subject to this code who wrongfully communicates a threat to injure the person or property of another by use of:

(a) An explosive;

(b) A weapon of mass destruction;

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

(d) A hazardous material;
shall be punished as a court-martial may direct.

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

- (a) An explosive;
- (b) A weapon of mass destruction;
- (c) A biological or chemical agent, substance, or weapon; or
- (d) A hazardous material;

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

ARTICLE 116. RIOT OR BREACH OF PEACE

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

ARTICLE 117. PROVOKING SPEECHES OR GESTURES

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

ARTICLE 118. RESERVED

ARTICLE 119. RESERVED

ARTICLE 120. RESERVED

ARTICLE 121. RESERVED

ARTICLE 122. RESERVED

ARTICLE 123. OFFENSES CONCERNING GOVERNMENT COMPUTERS

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

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

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

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

shall be punished as a court-martial may direct.

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

ARTICLE 123a. RESERVED

ARTICLE 124. RESERVED

ARTICLE 124a. BRIBERY

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

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

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

shall be punished as a court-martial may direct.

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

ARTICLE 124b. GRAFT

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

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

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

shall be punished as a court-martial may direct.

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

ARTICLE 125. RESERVED

ARTICLE 126. RESERVED

ARTICLE 127. RESERVED

ARTICLE 128. RESERVED

ARTICLE 129. RESERVED

ARTICLE 130. RESERVED

ARTICLE 131. RESERVED

ARTICLE 131b. OBSTRUCTING JUSTICE

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

ARTICLE 131c. MISPRISION OF A SERIOUS OFFENSE

In general. Any person subject to this code:

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

ARTICLE 131d. WRONGFUL REFUSAL TO TESTIFY

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

ARTICLE 131e. PREVENTION OF AUTHORIZED SEIZURE OF PROPERTY

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

ARTICLE 131f. NONCOMPLIANCE WITH PROCEDURAL RULES

Any person subject to this code who:

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

ARTICLE 131g. WRONGFUL INTERFERENCE WITH ADVERSE ADMINISTRATIVE PROCEEDING

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

- (1) To influence, impede, or obstruct the conduct of the proceeding; or
- (2) Otherwise to obstruct the due administration of justice;

shall be punished as a court-martial may direct.

ARTICLE 132. RETALIATION

(a) Any person subject to this code who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication:

- (1) Wrongfully takes or threatens to take an adverse personnel action against any person; or
- (2) Wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person;

shall be punished as a court-martial may direct.

(b) Definitions. In this article:

(1) "Protected communication" means the following:

- (i) A lawful communication to a member of congress or an inspector general; or
- (ii) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination; or

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

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

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

ARTICLE 133. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

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

ARTICLE 134. GENERAL ARTICLE

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit upon the state military forces shall be taken cognizance of by a court-martial and punished at the discretion of a military court. Offenses which may be punished under this article include, but are not limited to, those offenses set out in the manual

for courts-martial as punishable under this article of the uniform code of military justice, those offenses that violate the criminal laws of the state where the offense occurred, and those offenses that violate the criminal laws of the United States. However, where a crime constitutes an offense that violates both this code and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court must be determined in accordance with article 2(b) of this code.

PART XI. MISCELLANEOUS PROVISIONS

ARTICLE 135. COURTS OF INQUIRY

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

(b) A court of inquiry consists of three (3) or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

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

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

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

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

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

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

(a) The following persons may administer oaths for the purposes of military administration, including military justice:

- (1) All judge advocates.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (4) All commanding officers of the naval militia.
- (5) All other persons designated by regulations of the armed forces of the United States or by statute.

(b) The following persons may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, and trial counsel for all general and special courts-martial.
- (2) The president and the counsel for the court of any court of inquiry.
- (3) All officers designated to take a deposition.
- (4) All persons detailed to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces of the United States or by statute.

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

ARTICLE 137. ARTICLES TO BE EXPLAINED

(a) The articles of this code specified in subsection (c) of this article shall be carefully explained to each enlisted member at the time of, or within thirty (30) days after, the member's initial entrance into a duty status with the state military forces.

(b) Such articles shall be explained again:

- (1) After the member has completed basic or recruit training; and
- (2) At the time when the member reenlists.

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

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

ARTICLE 138. COMPLAINTS OF WRONGS

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

ARTICLE 139. REDRESS OF INJURIES TO PROPERTY

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, that officer may, under such regulations prescribed, convene a board to investigate the complaint. The board shall consist of from one (1) to three (3) commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by that officer shall be charged against the pay of the offenders. The order of the

commanding officer directing charges herein authorized is conclusive on any disbursing officer for payment to the injured parties of the damages so assessed and approved.

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

ARTICLE 140. DELEGATION BY THE GOVERNOR

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

ARTICLE 141. PAYMENT OF FEES, COSTS AND EXPENSES

The fees and authorized travel expenses of all witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention and confinement, and all other necessary expenses of prosecution and the administration of military justice, to include courts-martial and nonjudicial punishment, not otherwise payable by any other source, shall be paid out of the military division support fund as established in section [46-806](#), Idaho Code.

ARTICLE 142. PAYMENT OF FINES AND DISPOSITION THEREOF

(a) Fines imposed by a military court or through imposition of nonjudicial punishment may be paid to the state and delivered to the court or imposing officer or to a person executing their process. Fines may be collected in the following manner:

- (1) By cash or money order;
- (2) By retention of any pay or allowances due or to become due the person fined from any state or the United States;
- (3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying a fine, as provided by law.

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

ARTICLE 143. UNIFORMITY OF INTERPRETATION

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

ARTICLE 144. IMMUNITY FOR ACTION OF MILITARY COURTS

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

ARTICLE 145. SEVERABILITY

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

ARTICLE 146. SHORT TITLE

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

ARTICLE 147. TIME OF TAKING EFFECT

This act takes effect July 1, 2019.

[46-1102, added 2015, ch. 268, sec. 2, p. 1079; am. 2019, ch. 113, sec. 1, p. 372.]

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

(1) If any member fails or refuses to report to his appointed place of duty, his commanding officer in the rank of major or above is authorized to arrest or cause to be arrested such member and have him brought before the commanding officer at his unit or organization headquarters, whether such headquarters be located within or without the borders of the state. After such an arrest, the commanding officer is authorized to transport, or cause to be transported, such member to his appointed place of duty, whether within or without the borders of the state. Furthermore, if a commander, in the rank of major or above, finds that probable cause exists to believe that a minor offense has been committed by a member of his command, he may cause the member to be arrested and brought before him for the purpose of processing nonjudicial punishment under article 15 of the model state code of military justice as provided in section [46-1102](#), Idaho Code. If military personnel are not available for the purpose of making the arrest or if the officer ordering the arrest deems it advisable, he may issue a warrant to any sheriff or peace officer authorized to serve warrants of arrest, and such sheriff or peace officer shall serve such warrants of arrest immediately, whenever practicable, and make return thereof to the commanding officer issuing the warrant. Upon receipt of the notification of arrest, the commanding officer shall direct that the arrestee be retrieved and brought before him within a reasonable time. Warrants issued under this subsection shall be the equivalent of a misdemeanor warrant issued by a court of the state of Idaho.

(2) If any member of the Idaho military has had charges preferred against him under this chapter, and the convening authority to whom the charges have been forwarded has found that probable cause exists that the offense was committed by the accused and that the incarceration of the accused pending court-martial is required because of special circumstances found to exist which warrant such incarceration, then the convening authority is authorized to arrest such member or cause him to be arrested and have him confined pending trial. If military personnel are not available for the purpose of making the arrest, or if the convening authority deems it advisable, he may issue a warrant to any sheriff or peace officer authorized to serve such warrant in the same manner as other warrants of arrest, and said

sheriff or peace officer shall effect the arrest and hold the accused in the county jail of the county in which the arrest is effected. Upon receipt of the notification of arrest, in accordance with the provisions of section [46-1102](#), Idaho Code, the commanding officer may direct that the arrestee be retrieved and brought before him within a reasonable time. Warrants issued under this subsection shall be the equivalent of a felony warrant issued by a court of the state of Idaho.

[46-1103, added 2015, ch. 268, sec. 2, p. 1120.]

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

[46-1104, added 2015, ch. 268, sec. 2, p. 1121.]

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

[46-1105, added 2015, ch. 268, sec. 2, p. 1121.]

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

[46-1106, added 2015, ch. 268, sec. 2, p. 1121.]

CHAPTER 12
STATEWIDE COMMUNICATIONS INTEROPERABILITY -- [REPEALED]