**Section 400.105 Definitions and Referenced Materials**

a) Definitions. Except as modified in this Manual, the definitions and rules of construction in RCM 103, as incorporated by reference in subsection (b), apply to courts-martial under the Code and this Manual.

*"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.* (Code Section 1(a)(1))

"AGR" means Active Guard Reserve.

"ANG" means the Illinois Air National Guard.

"Appropriate Nonpunitive Administrative Measures" means such actions as reprimands, administrative reduction in rank, administrative separation from SMF, etc.).

"ARNG" means the Illinois Army National Guard.

*"Cadet" or "Candidate" means a person who is enrolled in or attending a State military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the State military forces.* (Code Section 1(a)(2))

*"Classified Information" means:*

*any information or material that has been determined by an official of the United States or any state pursuant to law, an Executive Order, or regulation to require protection against unauthorized disclosure for* reasons *of national or State security; and*

*any restricted data, as defined in section* 2014*(y) of the Atomic Energy Act of 1954 (42 USC 2014(y)).* (Code Section 1(a)(3))

"Code" means the Illinois Code of Military Justice [20 ILCS 1807].

"Commander" or *"Commanding Officer"*, for purposes of this Part, means a commissioned or warrant officer who, by virtue of his or her or grade and assignment, exercises primary command authority over a military unit or organization recognized as a command. This term includes active duty and SMF commanders, whether in a Title 10 (U.S. Military) or Title 32 (National Guard) status, of installations or schools when a member's SMF commander is not also at the installation or school. This term *shall include officers in charge only when* they are *administering nonjudicial punishment* under Subpart K. (Code Section 1(a)(5))

*"Convening Authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being or a successor in command to the convening authority.* (Code Section 1(a)(6))

*"Day" means a calendar day beginning at 0000 hours (12:00 a.m.) and ending at 2359 hours, 59 seconds (11:59, 59 seconds p.m.). Any punishment authorized by this Manual that is measured in terms of days shall, when served in a status other than annual field training, be construed to mean succeeding duty days.* (Code Section 1(a)(7))

"Declination to Prosecute" or "Declination to Further Prosecute" is a written statement that, in the opinion of the appropriate civil authority:

there is insufficient evidence to prove guilt beyond a reasonable doubt; or

the offense does not otherwise merit prosecution or further prosecution and states the basis for that opinion.

"Department" or "DMA" means the Illinois Department of Military Affairs.

"Derivative Evidence" means facts, information or physical objects that tend to prove an issue in a court-martial, but that are excluded from consideration by the trier of fact because they were learned directly from information illegally obtained.

*"Duty Status Other Than State Active Duty"* or "OTAD" *means any other type of military duty or training pursuant to a written order issued under* 32 USC, *or traditional Inactive Duty Training periods pursuant to 32 USC 502(a)*. (Code Section 1(a)(8)) It does not include "active duty" under 10 USC, i.e., "full-time duty in the active military service of the United States".

*"Enlisted Member" means a person in an enlisted grade.*

"ETS" means expiration of term of service.

"Government" means the U.S. Government or the State of Illinois or, in a trial setting, the trial counsel or the prosecution, as the context indicates.

"IDT" means inactive duty training.

*"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:*

*certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy or Marine Corps, or designated as a law specialist as an officer of the Coast Guard, or a reserve or National Guard component of one of these; or*

*certified as a non-federally recognized judge advocate* *by the senior judge advocate of the commander of the force in the SMF of which the accused is a member, as competent to perform such military justice duties required by the Code. If there is no such judge advocate available, then certification may be made by such senior judge advocate of the commander of another force in the SMF, as the convening authority directs.* (Code Section 1(a)(10))

"MCM" means the Manual for Courts-Martial, United States referenced in subsection (b).

"Manual" means this Part, the Illinois Manual for Courts-Martial and Nonjudicial Punishment.

"Member" means a member of the State Military Force.

"Members of His or Her Command" refers to the assigned members of the unit or organization commanded, and to other members who are on temporary duty with, or otherwise attached to, the unit or organization. Attachment orders are not necessary if the commander exercises the usual responsibilities and attributes of command over the member.

*"Military Court" means a court-martial or a court of inquiry.* (Code Section 1(a)(12))

*"Military Judge" means an official of a general or special court-martial detailed in accordance with Code Section 26.* (Code Section 1(a)(13))

"Military Offenses" means those offenses proscribed under Code Section 1(a)(14), the Code and Subpart J of this Manual.

"National Guard Bureau" or "NGB" means the channel of communications on all matters pertaining the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between Department of the Army, the Department of the Air Force, and the several states. (10 USC 10501(b))

*"National Security" means the national defense and foreign relations of the United States.* (Code Section 1(a)(15))

"NGIL-JA" means the Illinois National Guard Office of the Staff Judge Advocate.

"Nonjudicial Punishment" or "NJP" means action under Code Section 15 and Subpart K of this Manual.

*"Officer" means a commissioned or warrant officer.* (Code Section 1(a)(16))

*"Officer in Charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as the officer in charge by the appropriate authority.* (Code Section 1(a)(17))

"Principal Assistant" means a commissioned officer of the State military forces serving in a position immediately subordinate to the convening authority who would assume command in the event of the commander's death, prolonged absence, or disability, or to the vice-commander of the organization. However, in the case of the Air National Guard, the principal assistant may include an officer who is not "air rated" (as defined in the applicable service regulation pertaining to commanders) and is serving in a position immediately subordinate to the convening authority. Any delegation of authority to a "principal assistant" shall be in writing, unless exigencies prevent such written delegation. Verbal authorization shall be reduced to writing as soon as possible.

*"Record", when used in connection with the proceedings of a court-martial, means:*

*an official written transcript, written summary, or other writing relating to the proceedings; or*

*an official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.* (Code Section 1(a)(18))

*"Senior Force Judge Advocate" means the senior judge advocate of the commander of the same force of the SMF as the accused and who is that commander's chief legal advisor.* (Code Section 1(a)(22))

"SMF" means the State military forces subject to the Illinois Code of Military Justice.

"State", when not capitalized, means *one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam or the U.S. Virgin Islands.* (Code Section 1(a)(20)) When capitalized "State" means the State of Illinois.

"State Active Duty" means active duty in the SMF under an order of the Governor or the Adjutant General, or otherwise issued by authority of State law and paid by State funds.

"State Military Forces" or "SMF" means the Illinois *National Guard* *and any other military force organized under the Constitution and laws of* Illinois. This includes *the Illinois State Guard when*:

*organized by the Governor as Commander-in-Chief under the Military Code of Illinois and the Illinois State Guard Act*;

*not in a status subjecting* those forces *to* the *exclusive jurisdiction of* the UCMJ; and

traveling *to and from duty*. *(Code Section 1(a)(23))*

*"Superior Commissioned Officer" means a commissioned officer superior in rank or command*. (Code Section 1(a)(24))

"Uniform Code of Military Justice" or "UCMJ" means 10 USC 801 et seq.

b) Referenced Materials

1) The Constitution of the State of Illinois; Article XII (Militia)

2) Illinois Statutes:

Appellate Court Act [705 ILCS 25]

Code of Civil Procedure of 1963 [735 ILCS 5]

Code of Criminal Procedure [725 ILCS 5]

Criminal Code of 2012 [720 ILCS 5]

Firearm Owners Identification Card Act (FOID Act) [430 ILCS 65]

Freedom of Information Act [5 ILCS 140] (FOIA)

Illinois Code of Military Justice [20 ILCS 1807] (the Code)

Military Code of Illinois [20 ILCS 1805]

State Finance Act [30 ILCS 105]

State Guard Act [20 ILCS 1815]

3) Illinois Materials:

Illinois Rules of Evidence (http://www.illinoiscourts.gov/

SupremeCourt/Evidence/Evidence.asp)

4) Federal Statutes:

Armed Forces (10 USC)

Atomic Energy Act of 1954 (42 USC 2014)

Controlled Substances Act (21 USC 812).

Criminal laws of the United States (18 USC and other non-military federal criminal laws)

National Guard (32 USC)

Uniform Code of Military Justice (10 USC 801 et seq.) (UCMJ)

3) Incorporations by Reference

A) The following materials are incorporated by reference:

Federal Rules of Evidence, United States Supreme Court (2017), www.rulesofevidence.org.

Manual for Courts-Martial, United States (2012 Edition) (MCM) (jsc.defense.gov/Portals/99/Documents/MCM2012.pdf)

Part II: Rules for Courts-Martial (2012 Edition) (RCM)

Part III: Military Rules of Evidence (2012 Edition)

Appendix 3: Department of Defense Directive 5525.7 (Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes)

B) This subsection (b)(3) incorporates no later amendments or editions.