**Section 400.620 Confessions; Admissions; Statements**

a) Definitions. As used in this Section:

1) "Confession" means an acknowledgment of guilt.

2) "Admission" means a self-incriminating statement falling short of an acknowledgment of guilt, even if it was intended by its maker to be exculpatory.

3) "Involuntary" means "involuntary" if it is obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment to the U.S. Constitution or Code Section 31, or through the use of coercion, unlawful influence or unlawful inducement.

b) General Rule. Except as provided in subsection (c), an involuntary statement or any derivative evidence from an involuntary statement may not be received in evidence against an accused who made the statement if the accused makes a timely motion to suppress or an objection to the evidence under this Section.

c) Exceptions

1) If the statement is involuntary only in terms of noncompliance with the requirements of Section 400.625(c) or (f), or the requirements concerning counsel under Section 400.610(b) and Section 400.625(d) and (e), this Section does not prohibit use of the statement to impeach by contradiction in the court testimony of the accused or the use of that statement in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.

2) Evidence that was obtained as a result of an involuntary statement may be used when the evidence would have been obtained even if the involuntary statement had not been made.

3) Derivative Evidence. Evidence that is challenged under this subsection (c) as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the statement was made voluntarily, that the evidence was not obtained by use of the statement, or that the evidence would have been obtained even if the statement had not been made.

d) Procedure

1) Disclosure. Prior to arraignment, the prosecution shall disclose to the defense the contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces.

2) Motions and Objections

A) Motions to suppress or objections under this subsection (d)(2) or Section 400.615 or 400.625 to statements that have been disclosed shall be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the objection.

B) If the prosecution intends to offer against the accused a statement made by the accused that was not disclosed prior to arraignment, the prosecution shall provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interests of justice.

C) If evidence is disclosed as derivative evidence under this subsection (d) prior to arraignment, any motion to suppress or objection under this subsection (d) or Section 400.615 or 400.625 shall be made in accordance with the procedure for challenging a statement under subsection (d)(2)(A). If that evidence has not been so disclosed prior to arraignment, the requirements of subsection (d)(2)(B) apply.

3) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the taking of a statement, the military judge may make any order required in the interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

4) Rulings. A motion to suppress or an objection to evidence made prior to plea shall be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at trial, but no such determination shall be deferred if a party's right to appeal the ruling is affected adversely. When factual issues are involved in ruling upon the motion or objection, the military judge shall state essential findings of fact on the record.

5) Effect of Guilty Plea. Except as otherwise expressly provided in Code Section 45, a plea of guilty to an offense that results in a finding of guilty waives all privileges against self-incrimination and all motions and objections under this subsection (d) with respect to that offense, regardless of whether raised prior to plea.

e) Burden of Proof. When an appropriate motion or objection has been made by the defense under subsection (d)(2), the prosecution has the burden of establishing the admissibility of the evidence. When a specific motion or objection has been required under subsection (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

1) In General. The military judge must find by a preponderance of the evidence that a statement by the accused was made voluntarily before it may be received into evidence. When trial is by a special court-martial without a military judge, a determination by the president of the court that a statement was made voluntarily is subject to objection by any member of the court. When such an objection is made, it shall be resolved by a majority vote of the members. The court-martial shall be closed, and the members shall vote orally, beginning with the member junior in rank.

2) Weight of the Evidence. If a statement is admitted into evidence, the military judge shall permit the defense to present relevant evidence with respect to the voluntariness of the statement and shall instruct the members to give such weight to the statement as it deserves under all the circumstances. When trial is by military judge without members, the military judge shall determine the appropriate weight to give the statement.

3) Derivative Evidence. Evidence that is challenged under this subsection (e) as derivative evidence may be admitted against the accused if the military judge finds by a preponderance of the evidence that the statement was made voluntarily, that the evidence was not obtained by use of the statement, or that the evidence would have been obtained even if the statement had not been made.

f) Defense Evidence. The defense may present evidence relevant to the admissibility of evidence to which there has been an objection or motion to suppress under this Section. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily. Prior to the introduction of that testimony by the accused, the defense shall inform the military judge that the testimony is offered under this subsection (f). When the accused testifies under this subsection (f), the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or making of a false official statement.

g) Corroboration. An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been introduced that corroborates the essential facts admitted to justify sufficiently an inference of their truth. Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of some but not all of the essential facts admitted, the confession or admission may be considered as evidence against the accused only with respect to those essential facts stated in the confession or admission that are corroborated by the independent evidence. Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

1) Quantum of Evidence Needed. The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the essential facts admitted. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

2) Procedure. The military judge alone shall determine when adequate evidence of corroboration has been received. Corroborating evidence usually is to be introduced before the admission or confession is introduced, but the military judge may admit evidence subject to later corroboration.

h) Miscellaneous

1) Degrading Questions. No person may be compelled to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade that person.

2) Oral Statements. A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing cannot be made available.

3) Statements by One of Several Accused. When 2 or more accused are tried at the same trial, evidence of a statement made by one of them which is admissible only against him or her or only against some but not all of the accused may not be received in evidence unless all references inculpating an accused against whom the statement is inadmissible are deleted effectively or the maker of the statement is subject to cross-examination. (Il. Mil. R. Evid. 306)

4) Completeness. If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

5) Certain Admissions by Silence. A person's failure to deny an accusation of wrongdoing concerning an offense for which, at the time of the alleged failure, the person was under official investigation or was in confinement, arrest or custody does not support an inference of an admission of the truth of the accusation.

6) Refusal to Obey Order to Submit Body Substance. If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of that refusal may be admitted into evidence on:

A) A charge of violating an order to submit that sample; or

B) Any other charge on which the results of the chemical analysis would have been admissible. (Il. Mil. R. Evid. 304)