



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB2861

Introduced 2/17/2016, by Sen. Michael E. Hastings

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Illinois Code of Military Justice (Code) in conformity with the federal Uniform Code of Military Justice to permit discipline of the Illinois National Guard by providing a military justice system including court-martial authorities meeting current legal standards of due process. Organizes the Code into Parts concerning: general provisions; apprehension and restraint; non-judicial punishment; court martial jurisdiction; appointment and composition of courts-martial; pre-trial procedure; trial procedure; sentences; post-trial procedure and review of courts-martial; punitive articles; and miscellaneous provisions. Supersedes existing statutes, ordinances, directives, rules, regulations, orders and other laws in this State covered by the subject matter of the Code. Amends the Military Code of Illinois. Provides that Illinois National Guard members shall be separated from active service in accordance with federal laws and regulations as applicable, except as otherwise provided in the Code or in the Military Code of Illinois. Prohibits Guard members who are dismissed or dishonorably discharged from holding any elective or appointive office, position, or State or county employment for a period of 5 years unless such disability is removed by the Governor. Repeals provisions concerning: the separation of Guard members from active service; discharged Guard members ineligible to hold elective office or State or county employment; military offenses; courts-martial; board investigations of Guard members accused of certain acts while on military duty; and payment of a Guard member's defense expenses by the Adjutant General. Amends the State Finance Act. Creates the State Military Justice Fund. Effective January 1, 2017.

LRB099 20640 KTG 45234 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning military justice.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 0.01. Short title. This Act may be cited as the  
5 Illinois Code of Military Justice.

6 Section 0.02. Purpose. This Code is an exercise of the  
7 General Assembly's authority in the Constitution of the State  
8 of Illinois to provide for "discipline of the militia in  
9 conformity with the laws governing the armed forces of the  
10 United States" (Illinois Constitution, Article XII, Section  
11 3). This Code is in conformity with the Uniform Code of  
12 Military Justice, at 10 U.S.C. Chapter 47, and the military  
13 justice provisions of Title 32 of the United States Code, as  
14 modified based on the American Bar Association-drafted "Model  
15 State Code for Military Justice" for National Guard forces not  
16 subject to the Uniform Code of Military Justice, adopted  
17 February 14, 2011 with appropriate further modifications  
18 specifically tailored for the Illinois National Guard. The  
19 purpose of this Act is to permit discipline of the Illinois  
20 National Guard by providing a military justice system that  
21 includes court-martial authorities meeting current legal  
22 standards of due process.

1 Section 0.03. References. Sections 1 through 149 of this  
2 Code are also designated as Articles to conform to the federal  
3 Uniform Code of Military Justice to the extent possible.

4 PART I. GENERAL PROVISIONS

5 Section 1. Article 1. Definitions; gender neutrality.

6 (a) In this Code, unless the context otherwise requires:

7 (1) "Accuser" means a person who signs and swears to  
8 charges, any person who directs that charges nominally be  
9 signed and sworn to by another, and any other person who  
10 has an interest other than an official interest in the  
11 prosecution of the accused.

12 (2) "Cadet" or "candidate" means a person who is  
13 enrolled in or attending a State military academy, a  
14 regional training institute, or any other formal education  
15 program for the purpose of becoming a commissioned officer  
16 in the State military forces.

17 (3) "Classified information" means:

18 (A) any information or material that has been  
19 determined by an official of the United States or any  
20 state pursuant to law, an Executive order, or  
21 regulation to require protection against unauthorized  
22 disclosure for reasons of national or state security,  
23 and

24 (B) any restricted data, as defined in Section

1           11(y) of the Atomic Energy Act of 1954 (42 U.S.C.  
2           2014(y)).

3           (4) "Code" means this Code.

4           (5) "Commanding officer" includes only commissioned or  
5           warrant officers of the State military forces and shall  
6           include officers in charge only when administering  
7           nonjudicial punishment under Article 15 of this Code. The  
8           term "commander" has the same meaning as "commanding  
9           officer" unless the context otherwise requires.

10          (6) "Convening authority" includes, in addition to the  
11          person who convened the court, a commissioned officer  
12          commanding for the time being or a successor in command to  
13          the convening authority.

14          (7) "Day" for all purposes means calendar day beginning  
15          at 0000 hours (12:00 a.m.) and ending at 2359 hours, 59  
16          seconds (12:59, 59 seconds p.m.), and is not synonymous  
17          with the term "unit training assembly". Any punishment  
18          authorized by this Article which is measured in terms of  
19          days shall, when served in a status other than annual field  
20          training, be construed to mean succeeding duty days.

21          (8) "Duty status other than State active duty" means  
22          any other type of military duty or training pursuant to a  
23          written order issued by authority of law under Title 32 of  
24          the United States Code or traditional Inactive Duty  
25          Training periods pursuant to 32 U.S.C. 502(a).

26          (9) "Enlisted member" means a person in an enlisted

1 grade.

2 (10) "Judge advocate" means a commissioned officer of  
3 the organized State military forces who is a member in good  
4 standing of the bar of the highest court of a state, and  
5 is:

6 (A) certified or designated as a judge advocate in  
7 the Judge Advocate General's Corps of the Army, Air  
8 Force, Navy, or the Marine Corps or designated as a law  
9 specialist as an officer of the Coast Guard, or a  
10 reserve or National Guard component of one of these; or

11 (B) certified as a non-federally recognized judge  
12 advocate, under regulations adopted pursuant to this  
13 paragraph, by the senior judge advocate of the  
14 commander of the force in the State military forces of  
15 which the accused is a member, as competent to perform  
16 such military justice duties required by this Code. If  
17 there is no such judge advocate available, then such  
18 certification may be made by such senior judge advocate  
19 of the commander of another force in the State military  
20 forces, as the convening authority directs.

21 (11) "May" is used in a permissive sense. The phrase  
22 "no person may . . ." means that no person is required,  
23 authorized, or permitted to do the act prescribed.

24 (12) "Military court" means a court-martial or a court  
25 of inquiry.

26 (13) "Military judge" means an official of a general or

1 special court-martial detailed in accordance with Article  
2 26 of this Code.

3 (14) "Military offenses" means those offenses  
4 proscribed under Articles 77 (Principals), 78 (Accessory  
5 after the fact), 80 (Attempts), 81 (Conspiracy), 82  
6 (Solicitation), 83 (Fraudulent enlistment, appointment, or  
7 separation), 84 (Unlawful enlistment, appointment, or  
8 separation), 85 (Desertion), 86 (Absence without leave),  
9 87 (Missing movement), 88 (Contempt toward officials), 89  
10 (Disrespect towards superior commissioned officer), 90  
11 (Assaulting or willfully disobeying superior commissioned  
12 officer), 91 (Insubordinate conduct toward warrant  
13 officer, noncommissioned officer, or petty officer), 92  
14 (Failure to obey order or regulation), 93 (Cruelty and  
15 maltreatment), 94 (Mutiny or sedition), 95 (Resistance,  
16 flight, breach of arrest, and escape), 96 (Releasing  
17 prisoner without proper authority), 97 (Unlawful  
18 detention), 98 (Noncompliance with procedural rules), 99  
19 (Misbehavior before the enemy), 100 (Subordinate  
20 compelling surrender), 101 (Improper use of countersign),  
21 102 (Forcing a safeguard), 103 (Captured or abandoned  
22 property), 104 (Aiding the enemy), 105 (Misconduct as  
23 prisoner), 107 (False official statements), 108 (Military  
24 property: loss, damage, destruction, or wrongful  
25 disposition), 109 (Property other than military property:  
26 waste, spoilage, or destruction), 110 (Improper hazarding

1 of vessel), 112 (Drunk on duty), 112a (Wrongful use,  
2 possession, etc., of controlled substances), 113  
3 (Misbehavior of sentinel), 114 (Dueling), 115  
4 (Malingering), 116 (Riot or breach of peace), 117  
5 (Provoking speeches or gestures), 132 (Frauds against the  
6 government), 133 (Conduct unbecoming an officer and a  
7 gentleman), and 134 (General Article) of this Code.

8 (15) "National security" means the national defense  
9 and foreign relations of the United States.

10 (16) "Officer" means a commissioned or warrant  
11 officer.

12 (17) "Officer in charge" means a member of the Navy,  
13 the Marine Corps, or the Coast Guard designated as such by  
14 appropriate authority.

15 (18) "Record", when used in connection with the  
16 proceedings of a court-martial, means:

17 (A) an official written transcript, written  
18 summary, or other writing relating to the proceedings;  
19 or

20 (B) an official audiotape, videotape, digital  
21 image or file, or similar material from which sound, or  
22 sound and visual images, depicting the proceedings may  
23 be reproduced.

24 (19) "Shall" is used in an imperative sense.

25 (20) "State" means one of the several states, the  
26 District of Columbia, the Commonwealth of Puerto Rico,

1 Guam, or the U.S. Virgin Islands.

2 (21) "State active duty" means active duty in the State  
3 military forces under an order of the Governor or the  
4 Adjutant General, or otherwise issued by authority of State  
5 law, and paid by State funds.

6 (22) "Senior force judge advocate" means the senior  
7 judge advocate of the commander of the same force of the  
8 State military forces as the accused and who is that  
9 commander's chief legal advisor.

10 (23) "State military forces" means the Illinois  
11 National Guard, as defined in Title 32, United States Code  
12 and the Military Code of Illinois and any other military  
13 force organized under the Constitution and laws of this  
14 State, to include the Illinois State Guard when organized  
15 by the Governor as Commander-in-Chief under the Military  
16 Code of Illinois and the Illinois State Guard Act, and when  
17 not in a status subjecting them to exclusive jurisdiction  
18 under Chapter 47 of Title 10, United States Code, and  
19 travel to and from such duty.

20 (24) "Superior commissioned officer" means a  
21 commissioned officer superior in rank or command.

22 (25) "Senior force commander" means the commander of  
23 the same force of the State military forces as the accused.

24 (b) The use of the masculine gender throughout this Code  
25 also includes the feminine gender.



1           Section 2. Article 2. Persons subject to this Code;  
2 jurisdiction.

3           (a) This Code applies to all members of the State military  
4 forces during any day or portion of a day when in State active  
5 duty or in a duty status other than State active duty and at no  
6 other times.

7           (b) Subject matter jurisdiction is established if personal  
8 jurisdiction is established in subsection (a). However,  
9 courts-martial have primary jurisdiction of military offenses  
10 as defined in paragraph (14) of subsection (a) of Article 1 of  
11 this Code. A proper civilian court has primary jurisdiction of  
12 a non-military offense when an act or omission violates both  
13 this Code and a state or local criminal law, foreign or  
14 domestic. In such a case, a court-martial may be initiated only  
15 after the civilian authority has declined to prosecute or  
16 dismissed the charge, provided jeopardy has not attached.  
17 Jurisdiction over attempted crimes, conspiracy crimes,  
18 solicitation, and accessory crimes must be determined by the  
19 underlying offense.

20           Section 3. Article 3. Jurisdiction to try certain  
21 personnel.

22           (a) Each person discharged from the State military forces  
23 who is later charged with having fraudulently obtained a  
24 discharge is, subject to Article 43 of this Code, subject to  
25 trial by court-martial on that charge and is, after

1 apprehension, subject to this Code while in custody under the  
2 direction of the State military forces for that trial. Upon  
3 conviction of that charge that person is subject to trial by  
4 court-martial for all offenses under this Code committed before  
5 the fraudulent discharge.

6 (b) No person who has deserted from the State military  
7 forces may be relieved from amenability to the jurisdiction of  
8 this Code by virtue of a separation from any later period of  
9 service.

10 Section 4. Article 4. (Reserved).

11 Section 5. Article 5. Territorial applicability of this  
12 Code.

13 (a) This Code has applicability at all times and in all  
14 places, provided that there is jurisdiction over the person  
15 pursuant to subsection (a) of Article 2; however, this grant of  
16 military jurisdiction shall neither preclude nor limit  
17 civilian jurisdiction over an offense, which is limited only by  
18 subsection (b) of Article 2 and the prohibition of double  
19 jeopardy.

20 (b) Courts-martial and courts of inquiry may be convened  
21 and held in units of the State military forces while those  
22 units are serving outside this State with the same jurisdiction  
23 and powers as to persons subject to this Code as if the  
24 proceedings were held inside this State, and offenses committed

1 outside this State may be tried and punished either inside or  
2 outside this State.

3 Section 6. Article 6. Judge Advocates.

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

8 (b) Convening authorities shall at all times communicate  
9 directly with their judge advocates in matters relating to the  
10 administration of military justice. The judge advocate of any  
11 command is entitled to communicate directly with the judge  
12 advocate of a superior or subordinate command, or with the  
13 State Judge Advocate.

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

18 Section 6a. Article 6a. Military judges. The Governor or  
19 the Adjutant General shall appoint at least one judge advocate  
20 officer from the active rolls of the Illinois National Guard  
21 who has been previously certified and qualified for duty as a  
22 military judge by the Judge Advocate General of the judge  
23 advocate officer's respective armed force under Article 26(b)  
24 of the federal Uniform Code of Military Justice to serve as a

1 military judge under this Code. The military judge shall hold  
2 the rank of Major or above.

3 PART II. APPREHENSION AND RESTRAINT

4 Section 7. Article 7. Apprehension.

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

6 (b) Any person authorized by this Code or by Chapter 47 of  
7 Title 10, United States Code, or by regulations issued under  
8 either, to apprehend persons subject to this Code, any marshal  
9 of a court-martial appointed pursuant to the provisions of this  
10 Code, and any peace officer or civil officer having authority  
11 to apprehend offenders under the laws of the United States or  
12 of a state, may do so upon probable cause that an offense has  
13 been committed and that the person apprehended committed it.

14 (c) Commissioned officers, warrant officers, petty  
15 officers, and noncommissioned officers have authority to quell  
16 quarrels, frays, and disorders among persons subject to this  
17 Code and to apprehend persons subject to this Code who take  
18 part therein.

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

22 (e) No person authorized by this Article to apprehend  
23 persons subject to this Code or the place where such offender  
24 is confined, restrained, held, or otherwise housed may require

1 payment of any fee or charge for so receiving, apprehending,  
2 confining, restraining, holding, or otherwise housing a person  
3 except as otherwise provided by law.

4 Section 8. Article 8. (Reserved).

5 Section 9. Article 9. Imposition of restraint.

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

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

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

1           (d) No person subject to this Code may be ordered into  
2 arrest or confinement except for probable cause after  
3 coordination with a judge advocate officer unless impractical  
4 or not possible.

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

8           Section 10. Article 10. Restraint of persons charged with  
9 offenses. Any person subject to this Code charged with an  
10 offense under this Code may be ordered into arrest or  
11 confinement, as circumstances may require. When any person  
12 subject to this Code is placed in arrest or confinement prior  
13 to trial, immediate steps shall be taken to inform the person  
14 of the specific wrong of which the person is accused and  
15 diligent steps shall be taken to try the person or to dismiss  
16 the charges and release the person.

17           Section 11. Article 11. Place of confinement; reports and  
18 receiving of prisoners.

19           (a) If a person subject to this Code is confined before,  
20 during, or after trial, confinement shall be in a civilian  
21 county jail, a Department of Corrections facility, or a  
22 military confinement facility.

23           (b) No person, Sheriff, or individual in a Department of  
24 Corrections facility authorized to receive prisoners pursuant

1 to subsection (a) may refuse to receive or keep any prisoner  
2 committed to the person's charge by a commissioned officer of  
3 the State military forces, when the committing officer  
4 furnishes a statement, signed by such officer, of the offense  
5 charged or conviction obtained against the prisoner, unless  
6 otherwise authorized by law.

7 (c) Every person authorized to receive prisoners pursuant  
8 to subsection (a) to whose charge a prisoner is committed  
9 shall, within 24 hours after that commitment or as soon as the  
10 person is relieved from guard, report to the commanding officer  
11 of the prisoner the name of the prisoner, the offense charged  
12 against the prisoner, and the name of the person who ordered or  
13 authorized the commitment.

14 Section 12. Article 12. Confinement with enemy prisoners  
15 prohibited. No member of the State military forces may be  
16 placed in confinement in immediate association with enemy  
17 prisoners or other foreign nationals not members of the armed  
18 forces.

19 Section 13. Article 13. Punishment prohibited before  
20 trial. No person, while being held for trial or awaiting a  
21 verdict, may be subjected to punishment or penalty other than  
22 arrest or confinement upon the charges pending against the  
23 person, nor shall the arrest or confinement imposed upon such  
24 person be any more rigorous than the circumstances required to

1 ensure the person's presence, but the person may be subjected  
2 to minor punishment during that period for infractions of  
3 discipline.

4 Section 14. Article 14. Delivery of offenders to civil  
5 authorities.

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

9 (b) When delivery under this Article is made to any civil  
10 authority of a person undergoing sentence of a court-martial,  
11 the delivery, if followed by conviction in a civil tribunal,  
12 interrupts the execution of the sentence of the court-martial,  
13 and the offender after having answered to the civil authorities  
14 for the offense shall, upon the request of competent military  
15 authority, be returned to the place of original custody for the  
16 completion of the person's sentence.

17 PART III. NON-JUDICIAL PUNISHMENT

18 Section 15. Article 15. Non-judicial punishment  
19 proceedings. Notwithstanding any other provision of law,  
20 including, but not limited to, the Illinois Administrative  
21 Procedure Act, the Governor or the Adjutant General is hereby  
22 authorized to effectuate non-judicial punishment proceedings  
23 pursuant to such regulations as prescribed in his discretion;



1 and said regulations may impose disciplinary punishments for  
2 minor offenses without the intervention of a court-martial  
3 pursuant to this Article. The Governor or the Adjutant General  
4 may delegate the powers to create the regulations under this  
5 Article to a State Judge Advocate of the State military forces.

6 PART IV. COURT-MARTIAL JURISDICTION

7 Section 16. Article 16. Courts-martial classified. The 3  
8 kinds of courts-martial in the State military forces are:

9 (1) general courts-martial, consisting of:

10 (A) a military judge and not less than 5 members;

11 or

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

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

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

20 or

21 (B) only a military judge, if one has been detailed  
22 to the court, and the accused under the same conditions  
23 as those prescribed in subparagraph (B) of paragraph

24 (1) so requests; and

1           (3) summary courts-martial consisting of one  
2           commissioned officer.

3           Section 17. Article 17. Jurisdiction of courts-martial in  
4           general. Each component of the State military forces has  
5           court-martial jurisdiction over all members of the particular  
6           component who are subject to this Code. Additionally, the Army  
7           and Air National Guard State military forces have court-martial  
8           jurisdiction over all members subject to this Code.

9           Section 18. Article 18. Jurisdiction of general  
10          courts-martial. Subject to Article 17 of this Code, general  
11          courts-martial have jurisdiction to try persons subject to this  
12          Code for any offense made punishable by this Code, and may,  
13          under such limitations as the Governor may prescribe, adjudge  
14          any punishment not forbidden by this Code.

15          Section 19. Article 19. Jurisdiction of special  
16          courts-martial. Subject to Article 17, special courts-martial  
17          have jurisdiction to try persons subject to this Code for any  
18          offense made punishable by this Code, and may, under such  
19          limitations as the Governor may prescribe, adjudge any  
20          punishment not forbidden by this Code except dishonorable  
21          discharge, dismissal, confinement for more than one year,  
22          forfeiture of pay exceeding two-thirds pay per month, or  
23          forfeiture of pay for more than one year.

1           Section 20. Article 20. Jurisdiction of summary  
2 courts-martial.

3           (a) Subject to Article 17 of this Code, summary  
4 courts-martial have jurisdiction to try persons subject to this  
5 Code, except officers, cadets, and candidates for any offense  
6 made punishable by this Code under such limitations as the  
7 Governor may prescribe.

8           (b) No person with respect to whom summary courts-martial  
9 have jurisdiction may be brought to trial before a summary  
10 court-martial if that person objects thereto. If objection to  
11 trial by summary court-martial is made by an accused, trial by  
12 special or general court-martial may be ordered, as may be  
13 appropriate. Summary courts-martial may, under such  
14 limitations as the Governor may prescribe, adjudge any  
15 punishment not forbidden by this Code except dismissal,  
16 dishonorable or bad-conduct discharge, confinement for more  
17 than one month, restriction to specified limits for more than 2  
18 months, or forfeiture of more than two-thirds of one month's  
19 pay.

20           Section 21. Article 21. (Reserved).

21           PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

22           Section 22. Article 22. Who may convene general

1 courts-martial.

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

3 (1) the Governor, or;

4 (2) the Adjutant General.

5 (b) (Reserved).

6 Section 23. Article 23. Who may convene special  
7 courts-martial.

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

9 (1) any person who may convene a general court-martial;

10 (2) the Commander of the Illinois Army National of  
11 members of the Illinois Army National Guard when empowered  
12 by the Adjutant General; or

13 (3) the Commander of the Illinois Air National Guard of  
14 members of the Illinois Air National Guard when empowered  
15 by the Adjutant General.

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

20 Section 24. Article 24. Who may convene summary  
21 courts-martial.

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

23 (1) any person who may convene a general or special  
24 court-martial;

1           (2) the commanding officer or officer in charge of any  
2           other command when empowered by the Adjutant General.

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

10           Section 25. Article 25. Who may serve on courts-martial.

11           (a) Any commissioned officer of the State military forces  
12           is eligible to serve on all courts-martial for the trial of any  
13           person subject to this Code.

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

18           (c) Any enlisted member of the State military forces who is  
19           not a member of the same unit as the accused is eligible to  
20           serve on general and special courts-martial for the trial of  
21           any enlisted member subject to this Code, but that member shall  
22           serve as a member of a court only if, before the conclusion of  
23           a session called by the military judge under subsection (a) of  
24           Article 39 of this Code prior to trial or, in the absence of  
25           such a session, before the court is assembled for the trial of

1 the accused, the accused personally has requested orally on the  
2 record or in writing that enlisted members serve on it. After  
3 such a request, the accused may not be tried by a general or  
4 special court-martial the membership of which does not include  
5 enlisted members in a number comprising at least one-third of  
6 the total membership of the court, unless eligible enlisted  
7 members cannot be obtained on account of physical conditions or  
8 military exigencies. If such members cannot be obtained, the  
9 court may be assembled and the trial held without them, but the  
10 convening authority shall make a detailed written statement, to  
11 be appended to the record, stating why they could not be  
12 obtained. In this Article, "unit" means any regularly organized  
13 body of the State military forces not larger than a company, a  
14 squadron, a division of the naval militia, or a body  
15 corresponding to one of them.

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

19 (e) When convening a court-martial, the convening  
20 authority shall detail as members thereof such members of the  
21 State military forces as, in the convening authority's opinion,  
22 are best qualified for the duty by reason of age, education,  
23 training, experience, length of service, and judicial  
24 temperament. No member of the State military forces is eligible  
25 to serve as a member of a general or special court-martial when  
26 that member is the accuser, a witness, or has acted as

1 investigating officer or as counsel in the same case.

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

7 Section 25a. Article 25a. (Reserved).

8 Section 26. Article 26. Military judge of a general or  
9 special court-martial.

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

14 (b) In addition to the requirements noted in Article 6a, a  
15 military judge shall be:

16 (1) an active commissioned officer of an organized  
17 state military force;

18 (2) a member in good standing of the bar of the highest  
19 court of a state or a member of the bar of a federal court  
20 for at least 5 years; and

21 (3) certified as qualified for duty as a military judge  
22 by the senior force judge advocate which is the same force  
23 as the accused.

24 (c) In the instance when a military judge is not a member

1 of the bar of the highest court of this State, the military  
2 judge shall be deemed admitted pro hac vice, subject to filing  
3 a certificate with the senior force judge advocate which is the  
4 same force as the accused setting forth such qualifications  
5 provided in subsection (b).

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

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

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

21 Section 27. Article 27. Detail of trial counsel and defense  
22 counsel.

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



1           (2) No person who has acted as investigating officer,  
2 military judge, witness, or court member in any case may act  
3 later as trial counsel, assistant trial counsel, or, unless  
4 expressly requested by the accused, as defense counsel or  
5 assistant or associate defense counsel in the same case. No  
6 person who has acted for the prosecution may act later in the  
7 same case for the defense nor may any person who has acted for  
8 the defense act later in the same case for the prosecution.

9           (b) Except as provided in subsection (c), trial counsel or  
10 defense counsel detailed for a general or special court-martial  
11 must be:

12                 (1) a judge advocate as defined in paragraph (10) of  
13 Article 1 of this Code; and

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

17           (c) In the instance when a defense counsel is not a member  
18 of the bar of the highest court of this State, the defense  
19 counsel shall be deemed admitted pro hac vice, subject to  
20 filing a certificate with the military judge setting forth the  
21 qualifications that counsel is:

22                 (1) a commissioned officer of the armed forces of the  
23 United States or a component thereof; and

24                 (2) a member in good standing of the bar of the highest  
25 court of a state; and

26                 (3) certified as a judge advocate in the Judge Advocate

1 General's Corps of the Army, Air Force, Navy, or the Marine  
2 Corps; or

3 (4) a judge advocate as defined in paragraph (10) of  
4 Article 1 of this Code.

5 Section 28. Article 28. Detail or employment of reporters  
6 and interpreters. Under such regulations as may be prescribed,  
7 the convening authority of a general or special court-martial  
8 or court of inquiry shall detail or employ qualified court  
9 reporters, who shall record the proceedings of and testimony  
10 taken before that court and may detail or employ interpreters  
11 who shall interpret for the court.

12 Section 29. Article 29. Absent and additional members.

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

19 (b) Whenever a general court-martial, other than a general  
20 court-martial composed of a military judge only, is reduced  
21 below 5 members, the trial may not proceed unless the convening  
22 authority details new members sufficient in number to provide  
23 not less than the applicable minimum number of 5 members. The  
24 trial may proceed with the new members present after the

1 recorded evidence previously introduced before the members of  
2 the court has been read to the court in the presence of the  
3 military judge, the accused, and counsel for both sides.

4 (c) Whenever a special court-martial, other than a special  
5 court-martial composed of a military judge only, is reduced  
6 below 3 members, the trial may not proceed unless the convening  
7 authority details new members sufficient in number to provide  
8 not less than 3 members. The trial shall proceed with the new  
9 members present as if no evidence had been introduced  
10 previously at the trial, unless a verbatim record of the  
11 evidence previously introduced before the members of the court  
12 or a stipulation thereof is read to the court in the presence  
13 of the military judge, the accused, and counsel for both sides.

14 (d) If the military judge of a court-martial composed of a  
15 military judge only is unable to proceed with the trial because  
16 of physical disability, as a result of a challenge, or for  
17 other good cause, the trial shall proceed, subject to any  
18 applicable conditions of subparagraph (B) of paragraph (1) of  
19 Article 16 or subparagraph (B) of paragraph (2) of Article 16  
20 of this Code, after the detail of a new military judge as if no  
21 evidence had previously been introduced, unless a verbatim  
22 record of the evidence previously introduced or a stipulation  
23 thereof is read in court in the presence of the new military  
24 judge, the accused, and counsel for both sides.

1 Section 30. Article 30. Charges and specifications.

2 (a) Charges and specifications shall be signed by a person  
3 subject to this Code under oath before a commissioned officer  
4 authorized by subsection (a) of Article 136 of this Code to  
5 administer oaths and shall state:

6 (1) that the signer has personal knowledge of, or has  
7 investigated, the matters set forth therein; and

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

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

15 Section 31. Article 31. Compulsory self-incrimination  
16 prohibited.

17 (a) No person subject to this Code may compel any person to  
18 incriminate himself or to answer any question the answer to  
19 which may tend to incriminate him.

20 (b) No person subject to this Code may interrogate or  
21 request any statement from an accused or a person suspected of  
22 an offense without first informing that person of the nature of  
23 the accusation and advising that person that the person does  
24 not have to make any statement regarding the offense of which

1 the person is accused or suspected and that any statement made  
2 by the person may be used as evidence against the person in a  
3 trial by court-martial.

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

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

12 Section 32. Article 32. Investigation.

13 (a) No charge or specification may be referred to a general  
14 or special court-martial for trial until a thorough and  
15 impartial investigation of all the matters set forth therein  
16 has been made. This investigation shall include inquiry as to  
17 the truth of the matter set forth in the charges, consideration  
18 of the form of charges, and a recommendation as to the  
19 disposition which should be made of the case in the interest of  
20 justice and discipline.

21 (b) The accused shall be advised of the charges against the  
22 accused and of the right to be represented at that  
23 investigation by counsel. The accused has the right to be  
24 represented at that investigation as provided in Article 38 of  
25 this Code and in regulations prescribed under that Article. At

1 that investigation, full opportunity shall be given to the  
2 accused to cross-examine witnesses against the accused, if they  
3 are available, and to present anything the accused may desire  
4 in the accused's own behalf, either in defense or mitigation,  
5 and the investigating officer shall examine available  
6 witnesses requested by the accused. If the charges are  
7 forwarded after the investigation, they shall be accompanied by  
8 a statement of the substance of the testimony taken on both  
9 sides and a copy thereof shall be given to the accused.

10 (c) If an investigation of the subject matter of an offense  
11 has been conducted before the accused is charged with the  
12 offense, and if the accused was present at the investigation  
13 and afforded the opportunities for representation,  
14 cross-examination, and presentation prescribed in subsection  
15 (b), no further investigation of that charge is necessary under  
16 this Article unless it is demanded by the accused after the  
17 accused is informed of the charge. A demand for further  
18 investigation entitles the accused to recall witnesses for  
19 further cross-examination and to offer any new evidence in the  
20 accused's own behalf.

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

26 (1) is present at the investigation;

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

3           (3) is afforded the opportunities for representation,  
4           cross-examination, and presentation prescribed in  
5           subsection (b).

6           (e) The requirements of this Article are binding on all  
7           persons administering this Code but failure to follow them does  
8           not constitute jurisdictional error.

9           Section 33. Article 33. Forwarding of charges. When a  
10          person is held for trial by general court-martial, the  
11          commanding officer shall within 15 days after the accused is  
12          ordered into arrest or confinement, if practicable, forward the  
13          charges, together with the investigation and allied papers, to  
14          the person exercising general court-martial jurisdiction. If  
15          that is not practicable, the commanding officer shall report in  
16          writing to that person the reasons for delay.

17          Section 34. Article 34. Advice of judge advocate and  
18          reference for trial.

19          (a) Before directing the trial of any charge by general or  
20          special court-martial, the convening authority shall refer it  
21          to a judge advocate for consideration and advice. The convening  
22          authority may not refer a specification under a charge to a  
23          general or special court-martial for trial unless the convening  
24          authority has been advised in writing by a judge advocate that:

1           (1) the specification alleges an offense under this  
2 Code;

3           (2) the specification is warranted by the evidence  
4 indicated in the report of investigation under Article 32  
5 of this Code, if there is such a report; and

6           (3) a court-martial would have jurisdiction over the  
7 accused and the offense.

8           (b) The advice of the judge advocate under subsection (a)  
9 with respect to a specification under a charge shall include a  
10 written and signed statement by the judge advocate:

11           (1) expressing conclusions with respect to each matter  
12 set forth in subsection (a); and

13           (2) recommending action that the convening authority  
14 take regarding the specification.

15 If the specification is referred for trial, the recommendation  
16 of the judge advocate shall accompany the specification.

17           (c) If the charges or specifications are not correct  
18 formally or do not conform to the substance of the evidence  
19 contained in the report of the investigating officer, formal  
20 corrections, and such changes in the charges and specifications  
21 as are needed to make them conform to the evidence, may be  
22 made.

23           Section 35. Article 35. Service of charges. The trial  
24 counsel shall serve or caused to be served upon the accused a  
25 copy of the charges. No person may, against the person's



1 objection, be brought to trial before a general court-martial  
2 case within a period of 60 days after the service of charges  
3 upon the accused, or in a special court-martial, within a  
4 period of 45 days after the service of charges upon the  
5 accused.

6 PART VII. TRIAL PROCEDURE

7 Section 36. Article 36. Governor or the Adjutant General  
8 may prescribe rules. Notwithstanding any other provision of  
9 law, including, but not limited to, the Illinois Administrative  
10 Procedure Act, the Governor or the Adjutant General may  
11 prescribe pretrial, trial, and post-trial procedures,  
12 including modes of proof, for courts-martial cases arising  
13 under this Code, and for courts of inquiry, by Executive Order  
14 or regulations, which shall apply the principles of law and the  
15 rules of evidence generally recognized in military criminal  
16 cases in the courts of the Armed Forces of the United States  
17 but which may not be contrary to or inconsistent with this  
18 Code. The Governor or the Adjutant General may prescribe courts  
19 of inquiry by regulations, or as otherwise provided by law,  
20 which shall apply the principles of law and the rules of  
21 evidence generally recognized in military cases.

22 Section 37. Article 37. Unlawfully influencing action of  
23 court.

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

21           (b) In the preparation of an effectiveness, fitness, or  
22 efficiency report, or any other report or document used in  
23 whole or in part for the purpose of determining whether a  
24 member of the State military forces is qualified to be advanced  
25 in grade, or in determining the assignment or transfer of a  
26 member of the State military forces, or in determining whether

1 a member of the State military forces should be retained on  
2 active status, no person subject to this Code may, in preparing  
3 any such report, (1) consider or evaluate the performance of  
4 duty of any such member as a member of a court-martial or  
5 witness therein or (2) give a less favorable rating or  
6 evaluation of any counsel of the accused because of zealous  
7 representation before a court-martial.

8 Section 38. Article 38. Duties of trial counsel and defense  
9 counsel.

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

15 (b) (1) The accused has the right to be represented in  
16 defense before a general or special court-martial or at an  
17 investigation under Article 32 of this Code as provided in this  
18 subsection.

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

21 (3) The accused may be represented:

22 (A) by military counsel detailed under Article 27 of  
23 this Code; or

24 (B) by military counsel of the accused's own selection  
25 if that counsel is reasonably available as determined under

1 paragraph (7).

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

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

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

15 (A) may detail additional military counsel as  
16 assistant defense counsel; and

17 (B) if the accused is represented by military counsel  
18 of the accused's own selection under subparagraph (B) of  
19 paragraph (3), may approve a request from the accused that  
20 military counsel detailed under subparagraph (A) of  
21 paragraph (3) act as associate defense counsel.

22 (7) The senior State Judge Advocate of the same state of  
23 which the accused is a member shall determine whether the  
24 military counsel selected by an accused is reasonably  
25 available.

26 (c) In any court-martial proceeding resulting in a

1 conviction, the defense counsel:

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

7 (2) may assist the accused in the submission of any  
8 matter under Article 60 of this Code; and

9 (3) may take other action authorized by this Code.

10 Section 39. Article 39. Sessions.

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

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

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

23 (3) holding the arraignment and receiving the pleas of  
24 the accused; and

25 (4) performing any other procedural function which

1 does not require the presence of the members of the court  
2 under this Code.

3 These proceedings shall be conducted in the presence of the  
4 accused, the defense counsel, and the trial counsel and shall  
5 be made a part of the record. These proceedings may be  
6 conducted notwithstanding the number of court members and  
7 without regard to Article 29.

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

14 Section 40. Article 40. Continuances. The military judge of  
15 a court-martial may, for reasonable cause, grant a continuance  
16 to any party for such time, and as often, as may appear to be  
17 just.

18 Section 41. Article 41. Challenges.

19 (a)(1) The military judge and members of a general or  
20 special court-martial may be challenged by the accused or the  
21 trial counsel for cause stated to the court. The military judge  
22 or the court shall determine the relevancy and validity of  
23 challenges for cause and may not receive a challenge to more  
24 than one person at a time. Challenges by the trial counsel

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

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

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

13 (2) If exercise of a peremptory challenge reduces the court  
14 below the minimum number of members required by Article 16 of  
15 this Code, the parties shall, notwithstanding Article 29 of  
16 this Code, either exercise or waive any remaining peremptory  
17 challenge, not previously waived, against the remaining  
18 members of the court before additional members are detailed to  
19 the court.

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

25 Section 42. Article 42. Oaths or affirmations.

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

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

20           Section 43. Article 43. Statute of limitations.

21           (a) Except as otherwise provided in this Article, a person  
22 charged with any offense is not liable to be tried by  
23 court-martial or punished under Article 15 of this Code if the  
24 offense was committed more than 3 years before the receipt of  
25 sworn charges and specifications by an officer exercising



1 court-martial jurisdiction over the command or before the  
2 imposition of punishment under Article 15 of this Code.

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

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

11 (d) When the United States is at war or armed conflict  
12 authorized by law, the running of any statute of limitations  
13 applicable to any offense under this Code:

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

17 (2) committed in connection with the acquisition,  
18 care, handling, custody, control, or disposition of any  
19 real or personal property of the United States or any  
20 state; or

21 (3) committed in connection with the negotiation,  
22 procurement, award, performance, payment, interim  
23 financing, cancellation, or other termination or  
24 settlement, of any contract, subcontract, or purchase  
25 order which is connected with or related to the prosecution  
26 of the war, or with any disposition of termination

1 inventory by any war contractor or Government agency;  
2 is suspended until 2 years after the termination of hostilities  
3 or armed conflict as proclaimed by the President or by a joint  
4 resolution of Congress.

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

8 (A) has expired; or

9 (B) will expire within 180 days after the date of  
10 dismissal of the charges and specifications;

11 trial and punishment under new charges and specifications are  
12 not barred by the statute of limitations if the conditions  
13 specified in paragraph (2) are met.

14 (2) The conditions referred to in paragraph (1) are that  
15 the new charges and specifications must:

16 (A) be received by an officer exercising special  
17 court-martial jurisdiction over the command within 180  
18 days after the dismissal of the charges or specifications;  
19 and

20 (B) allege the same acts or omissions that were alleged  
21 in the dismissed charges or specifications (or allege acts  
22 or omissions that were included in the dismissed charges or  
23 specifications).

24 Section 44. Article 44. Former jeopardy.

25 (a) No person may, without his consent, be tried a second

1 time for the same offense.

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

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

11 Section 45. Article 45. Pleas of the accused.

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

20 (b) With respect to any charge or specification to which a  
21 plea of guilty has been made by the accused and accepted by the  
22 military judge or by a court-martial without a military judge,  
23 a finding of guilty of the charge or specification may be  
24 entered immediately without vote. This finding shall  
25 constitute the finding of the court unless the plea of guilty

1 is withdrawn prior to announcement of the sentence, in which  
2 event, the proceedings shall continue as though the accused had  
3 pleaded not guilty.

4 Section 46. Article 46. Opportunity to obtain witnesses and  
5 other evidence. The trial counsel, the defense counsel, and the  
6 court-martial shall have equal opportunity to obtain witnesses  
7 and other evidence as prescribed by regulations and provided by  
8 law. Process issued in court-martial cases to compel witnesses  
9 to appear and testify and to compel the production of other  
10 evidence shall apply the principles of law and the rules of  
11 courts-martial generally recognized in military criminal cases  
12 in the courts of the armed forces of the United States, but  
13 which may not be contrary to or inconsistent with this Code.  
14 Process shall run to any part of the United States, or the  
15 Territories, Commonwealths, and possessions, and may be  
16 executed by civil officers as prescribed by the laws of the  
17 place where the witness or evidence is located or of the United  
18 States.

19 Section 47. Article 47. Refusal to appear or testify.

20 (a) Any person not subject to this Code who:

21 (1) has been duly subpoenaed to appear as a witness or  
22 to produce books and records before a court-martial or  
23 court of inquiry, or before any military or civil officer  
24 designated to take a deposition to be read in evidence

1 before such a court;

2 (2) has been duly paid or tendered the fees and mileage  
3 of a witness at the rates allowed to witnesses attending a  
4 criminal court of this State; and

5 (3) willfully neglects or refuses to appear, or refuses  
6 to qualify as a witness or to testify or to produce any  
7 evidence which that person may have been legally subpoenaed  
8 to produce;

9 may be punished by the military court in the same manner as a  
10 criminal court of this State.

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

14 Section 48. Article 48. Contempts. A military judge may  
15 punish for contempt any person who refuses a court order, is  
16 disrespectful to the court, or who uses any menacing word,  
17 sign, or gesture in its presence, or who disturbs its  
18 proceedings by any riot or disorder.

19 (a) A person subject to this Code may be punished for  
20 contempt by confinement not to exceed 30 days or a fine up to  
21 \$500, or both.

22 (b) A person not subject to this Code may be punished for  
23 contempt by a military court in the same manner as a criminal  
24 court of this State.

1 Section 49. Article 49. Depositions.

2 (a) At any time after charges have been signed as provided  
3 in Article 30 of this Code, any party may take oral or written  
4 depositions unless the military judge hearing the case or, if  
5 the case is not being heard, an authority competent to convene  
6 a court-martial for the trial of those charges forbids it for  
7 good cause.

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

11 (c) Depositions may be taken before and authenticated by  
12 any military or civil officer authorized by the laws of this  
13 State or by the laws of the place where the deposition is taken  
14 to administer oaths.

15 (d) A duly authenticated deposition taken upon reasonable  
16 notice to the other parties, so far as otherwise admissible  
17 under the rules of evidence, may be read in evidence or, in the  
18 case of audiotape, videotape, digital image or file, or similar  
19 material, may be played in evidence before any military court,  
20 if it appears:

21 (1) that the witness resides or is beyond the state in  
22 which the court is ordered to sit, or beyond 100 miles from  
23 the place of trial or hearing;

24 (2) that the witness by reason of death, age, sickness,  
25 bodily infirmity, imprisonment, military necessity,  
26 non-amenability to process, or other reasonable cause, is

1           unable or refuses to appear and testify in person at the  
2           place of trial or hearing; or

3                   (3) that the present whereabouts of the witness is  
4           unknown.

5           Section 50. Article 50. Admissibility of records of courts  
6           of inquiry.

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

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

19          (c) Such testimony may also be read in evidence before a  
20          court of inquiry.

21          Section 50a. Article 50a. Defense of lack of mental  
22          responsibility.

23          (a) It is an affirmative defense in a trial by  
24          court-martial that, at the time of the commission of the acts

1 constituting the offense, the accused, as a result of a severe  
2 mental disease or defect, was unable to appreciate the nature  
3 and quality or the wrongfulness of the acts. Mental disease or  
4 defect does not otherwise constitute a defense.

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

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

12 (1) guilty;

13 (2) not guilty; or

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

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

22 (1) guilty;

23 (2) not guilty; or

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

26 (e) Notwithstanding the provisions of Article 52 of this



1 Code, the accused shall be found not guilty only by reason of  
2 lack of mental responsibility if:

3 (1) a majority of the members of the court-martial  
4 present at the time the vote is taken determines that the  
5 defense of lack of mental responsibility has been  
6 established; or

7 (2) in the case of a court-martial composed of a  
8 military judge only, the military judge determines that the  
9 defense of lack of mental responsibility has been  
10 established.

11 Section 51. Article 51. Voting and rulings.

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

18 (b) The military judge shall rule upon all questions of law  
19 and all interlocutory questions arising during the  
20 proceedings. Any such ruling made by the military judge upon  
21 any question of law or any interlocutory question other than  
22 the factual issue of mental responsibility of the accused is  
23 final and constitutes the ruling of the court. However, the  
24 military judge may change the ruling at any time during the  
25 trial. Unless the ruling is final, if any member objects

1 thereto, the court shall be cleared and closed and the question  
2 decided by a voice vote as provided in Article 52 of this Code,  
3 beginning with the junior in rank.

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

8 (1) that the accused must be presumed to be innocent  
9 until his guilt is established by legal and competent  
10 evidence beyond reasonable doubt;

11 (2) that in the case being considered, if there is a  
12 reasonable doubt as to the guilt of the accused, the doubt  
13 must be resolved in favor of the accused and the accused  
14 must be acquitted;

15 (3) that, if there is a reasonable doubt as to the  
16 degree of guilt, the finding must be in a lower degree as  
17 to which there is no reasonable doubt; and

18 (4) that the burden of proof to establish the guilt of  
19 the accused beyond reasonable doubt is upon the State.

20 (d) Subsections (a), (b), and (c) do not apply to a  
21 court-martial composed of a military judge only. The military  
22 judge of such a court-martial shall determine all questions of  
23 law and fact arising during the proceedings and, if the accused  
24 is convicted, adjudge an appropriate sentence. The military  
25 judge of such a court-martial shall make a general finding and  
26 shall in addition, on request, find the facts specially. If an

1 opinion or memorandum of decision is filed, it will be  
2 sufficient if the findings of fact appear therein.

3 Section 52. Article 52. Number of votes required.

4 (a) No person may be convicted of an offense except as  
5 provided in subsection (b) of Article 45 of this Code or by the  
6 concurrence of two-thirds of the members present at the time  
7 the vote is taken.

8 (b) All other questions to be decided by the members of a  
9 general or special court-martial shall be determined by a  
10 majority vote, but a determination to reconsider a finding of  
11 guilty or to reconsider a sentence, with a view toward  
12 decreasing it, may be made by any lesser vote which indicates  
13 that the reconsideration is not opposed by the number of votes  
14 required for that finding or sentence. A tie vote on a  
15 challenge disqualifies the member challenged. A tie vote on a  
16 motion relating to the question of the accused's sanity is a  
17 determination against the accused. A tie vote on any other  
18 question is a determination in favor of the accused.

19 Section 53. Article 53. Court to announce action. A  
20 court-martial shall announce its findings and sentence to the  
21 parties as soon as determined.

22 Section 54. Article 54. Record of trial.

23 (a) Each general and special court-martial shall keep a

1 separate record of the proceedings in each case brought before  
2 it, and the record shall be authenticated by the signature of  
3 the military judge. If the record cannot be authenticated by  
4 the military judge by reason of his death, disability, or  
5 absence, it shall be authenticated by the signature of the  
6 trial counsel or by that of a member, if the trial counsel is  
7 unable to authenticate it by reason of his death, disability,  
8 or absence. In a court-martial consisting of only a military  
9 judge, the record shall be authenticated by the court reporter  
10 under the same conditions which would impose such a duty on a  
11 member under this subsection.

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

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

17 (c) A copy of the record of the proceedings of each general  
18 and special court-martial shall be given to the accused as soon  
19 as it is authenticated.

20 PART VIII. SENTENCES

21 Section 55. Article 55. Cruel and unusual punishments  
22 prohibited. Punishment by flogging, or by branding, marking, or  
23 tattooing on the body, or any other cruel or unusual punishment  
24 may not be adjudged by a court-martial or inflicted upon any

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

3 Section 56. Article 56. Maximum limits.

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

12 (b) The limits of punishment for violations of the punitive  
13 Articles prescribed herein shall be equal to or lesser of the  
14 sentences prescribed by the Manual for Courts-Martial of the  
15 United States in effect on the effective date of this Code, and  
16 in no instance shall any punishment exceed that authorized by  
17 this Code.

18 Section 56a. Article 56a. (Reserved).

19 Section 57. Article 57. Effective date of sentences.

20 (a) Whenever a sentence of a court-martial as lawfully  
21 adjudged and approved includes a forfeiture of pay or  
22 allowances in addition to confinement not suspended, the  
23 forfeiture may apply to pay or allowances becoming due on or

1 after the date the sentence is approved by the convening  
2 authority. No forfeiture may extend to any pay or allowances  
3 accrued before that date.

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

9 (c) All other sentences of courts-martial are effective on  
10 the date ordered executed.

11 Section 57a. Article 57a. Deferment of sentences.

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

24 (b) (1) In any case in which a court-martial sentences an  
25 accused referred to in paragraph (2) to confinement, the

1 convening authority may defer the service of the sentence to  
2 confinement, without the consent of the accused, until after  
3 the accused has been permanently released to the State military  
4 forces by a state, the United States, or a foreign country  
5 referred to in that paragraph.

6 (2) Paragraph (1) applies to a person subject to this Code  
7 who:

8 (A) while in the custody of a state, the United States,  
9 or a foreign country is temporarily returned by that state,  
10 the United States, or a foreign country to the State  
11 military forces for trial by court-martial; and

12 (B) after the court-martial, is returned to that state,  
13 the United States, or a foreign country under the authority  
14 of a mutual agreement or treaty, as the case may be.

15 (3) In this subsection, the term "state" includes the  
16 District of Columbia and any Commonwealth, Territory, or  
17 possession of the United States.

18 (c) In any case in which a court-martial sentences an  
19 accused to confinement and the sentence to confinement has been  
20 ordered executed, but in which review of the case under Article  
21 67a of this Code is pending, the Adjutant General may defer  
22 further service of the sentence to confinement while that  
23 review is pending.

24 Section 58. Article 58. Execution of confinement.

25 (a) A sentence of confinement adjudged by a court-martial,

1 whether or not the sentence includes discharge or dismissal,  
2 and whether or not the discharge or dismissal has been  
3 executed, may be carried into execution by confinement in any  
4 place authorized by this Code. Persons so confined are subject  
5 to the same discipline and treatment as persons regularly  
6 confined or committed to that place of confinement.

7 (b) The omission of hard labor as a sentence authorized  
8 under this Code does not deprive the State confinement facility  
9 from employing it, if it otherwise is within the authority of  
10 that facility to do so.

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

14 Section 58a. Article 58a. Sentences: reduction in enlisted  
15 grade upon approval.

16 (a) A court-martial sentence of an enlisted member in a pay  
17 grade above E-1, as approved by the convening authority, that  
18 includes:

19 (1) a dishonorable or bad-conduct discharge; or

20 (2) confinement;

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

23 (b) If the sentence of a member who is reduced in pay grade  
24 under subsection (a) is set aside or disapproved, or, as  
25 finally approved, does not include any punishment named in



1 paragraphs (1) or (2) of subsection (a), the rights and  
2 privileges of which the person was deprived because of that  
3 reduction shall be restored, including pay and allowances.

4 Section 58b. Article 58b. Sentences: forfeiture of pay and  
5 allowances during confinement.

6 (a) (1) A court-martial sentence described in paragraph (2)  
7 shall result in the forfeiture of pay, or of pay and  
8 allowances, due that member during any period of confinement or  
9 parole. The forfeiture pursuant to this Article shall take  
10 effect on the date determined under subsection (a) of Article  
11 57 of this Code and may be deferred as provided by that  
12 Article. The pay and allowances forfeited, in the case of a  
13 general court-martial, shall be all pay and allowances due that  
14 member during such period and, in the case of a special  
15 court-martial, shall be two-thirds of all pay due that member  
16 during such period.

17 (2) A sentence covered by this Article is any sentence that  
18 includes:

19 (A) confinement for more than 6 months; or

20 (B) confinement for 6 months or less and a dishonorable  
21 or bad-conduct discharge or dismissal.

22 (b) In a case involving an accused who has dependents, the  
23 convening authority or other person acting under Article 60 of  
24 this Code may waive any or all of the forfeitures of pay and  
25 allowances required by subsection (a) for a period not to

1 exceed 6 months. Any amount of pay or allowances that, except  
2 for a waiver under this subsection, would be forfeited shall be  
3 paid, as the convening authority or other person taking action  
4 directs, to the dependents of the accused.

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

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

13 Section 59. Article 59. Error of law; lesser included  
14 offense.

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

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

22 Section 60. Article 60. Action by the convening authority.

23 (a) The findings and sentence of a court-martial shall be

1 reported promptly to the convening authority after the  
2 announcement of the sentence.

3 (b) (1) The accused may submit to the convening authority  
4 matters for consideration by the convening authority with  
5 respect to the findings and the sentence. Any such submission  
6 shall be in writing. Such a submission shall be made within 30  
7 days after the accused has been given an authenticated record  
8 of trial and, if applicable, the recommendation of a judge  
9 advocate under subsection (d).

10 (2) If the accused shows that additional time is required  
11 for the accused to submit such matters, the convening authority  
12 or other person taking action under this Article, for good  
13 cause, may extend the applicable period under paragraph (1) for  
14 not more than an additional 20 days.

15 (3) The accused may waive the right to make a submission to  
16 the convening authority under paragraph (1). Such a waiver must  
17 be made in writing and may not be revoked. For the purposes of  
18 paragraph (2) of subsection (c), the time within which the  
19 accused may make a submission under this subsection (b) shall  
20 be deemed to have expired upon the submission of such a waiver  
21 to the convening authority.

22 (c) (1) The authority under this Article to modify the  
23 findings and sentence of a court-martial is a matter of command  
24 prerogative involving the sole discretion of the convening  
25 authority. If it is impractical for the convening authority to  
26 act, the convening authority shall forward the case to a person

1 exercising general court-martial jurisdiction who may take  
2 action under this Article.

3 (2) Action on the sentence of a court-martial shall be  
4 taken by the convening authority or by another person  
5 authorized to act under this Article. Such action may be taken  
6 only after consideration of any matters submitted by the  
7 accused under subsection (b) or after the time for submitting  
8 such matters expires, whichever is earlier. The convening  
9 authority or other person taking such action, in that person's  
10 sole discretion may approve, disapprove, commute, or suspend  
11 the sentence in whole or in part.

12 (3) Action on the findings of a court-martial by the  
13 convening authority or other person acting on the sentence is  
14 not required. However, such person, in the person's sole  
15 discretion may:

16 (A) dismiss any charge or specification by setting  
17 aside a finding of guilty thereto; or

18 (B) change a finding of guilty to a charge or  
19 specification to a finding of guilty to an offense that is  
20 a lesser included offense of the offense stated in the  
21 charge or specification.

22 (d) Before acting under this Article on any general or  
23 special court-martial case in which there is a finding of  
24 guilt, the convening authority or other person taking action  
25 under this Article must obtain the written concurrence of the  
26 State Judge Advocate by means of legal review. The convening

1 authority or other person taking action under this Article  
2 shall refer the record of trial to the judge advocate, and the  
3 judge advocate shall use such record in the preparation of the  
4 review. The review of the judge advocate shall include such  
5 matters as may be prescribed by regulation and shall be served  
6 on the accused, who may submit any matter in response under  
7 subsection (b). Failure to object in the response to the legal  
8 review or to any matter attached to the recommendation waives  
9 the right to object thereto.

10 (e)(1) The convening authority or other person taking  
11 action under this Article, in the person's sole discretion, may  
12 order a proceeding in revision or a rehearing.

13 (2) A proceeding in revision may be ordered if there is an  
14 apparent error or omission in the record or if the record shows  
15 improper or inconsistent action by a court-martial with respect  
16 to the findings or sentence that can be rectified without  
17 material prejudice to the substantial rights of the accused. In  
18 no case, however, may a proceeding in revision:

19 (A) reconsider a finding of not guilty of any  
20 specification or a ruling which amounts to a finding of not  
21 guilty;

22 (B) reconsider a finding of not guilty of any charge,  
23 unless there has been a finding of guilty under a  
24 specification laid under that charge, which sufficiently  
25 alleges a violation of some Article of this Code; or

26 (C) increase the severity of the sentence.

1           (3) A rehearing may be ordered by the convening authority  
2 or other person taking action under this Article if that person  
3 disapproves the findings and sentence and states the reasons  
4 for disapproval of the findings. If such person disapproves the  
5 findings and sentence and does not order a rehearing, that  
6 person shall dismiss the charges. A rehearing as to the  
7 findings may not be ordered where there is a lack of sufficient  
8 evidence in the record to support the findings. A rehearing as  
9 to the sentence may be ordered if the convening authority or  
10 other person taking action under this subsection disapproves  
11 the sentence.

12           Section 61. Article 61. Withdrawal of appeal.

13           (a) In each case subject to appellate review under this  
14 Code, the accused may file with the convening authority a  
15 statement expressly withdrawing the right of the accused to  
16 such appeal. Such a withdrawal shall be signed by both the  
17 accused and his defense counsel and must be filed in accordance  
18 with appellate procedures as provided by law.

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

21           Section 62. Article 62. Appeal by the State.

22           (a)(1) In a trial by court-martial in which a punitive  
23 discharge may be adjudged, the State may appeal the following,  
24 other than a finding of not guilty with respect to the charge

1 or specification by the members of the court-martial, or by a  
2 judge in a bench trial so long as it is not made in  
3 reconsideration:

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

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

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

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

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

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

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

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

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

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

13           Section 63. Article 63. Rehearings. Each rehearing under  
14 this Code shall take place before a court-martial composed of  
15 members not members of the court-martial which first heard the  
16 case. Upon a rehearing the accused may not be tried for any  
17 offense of which he was found not guilty by the first  
18 court-martial, and no sentence in excess of or more severe than  
19 the original sentence may be approved, unless the sentence is  
20 based upon a finding of guilty of an offense not considered  
21 upon the merits in the original proceedings, or unless the  
22 sentence prescribed for the offense is mandatory. If the  
23 sentence approved after the first court-martial was in  
24 accordance with a pretrial agreement and the accused at the  
25 rehearing changes a plea with respect to the charges or



1 specifications upon which the pretrial agreement was based, or  
2 otherwise does not comply with the pretrial agreement, the  
3 approved sentence as to those charges or specifications may  
4 include any punishment not in excess of that lawfully adjudged  
5 at the first court-martial.

6 Section 64. Article 64. Review by the senior force judge  
7 advocate.

8 (a) Each general and special court-martial case in which  
9 there has been a finding of guilty shall be reviewed by the  
10 senior force judge advocate, or a designee. The senior force  
11 judge advocate, or designee, may not review a case under this  
12 subsection if that person has acted in the same case as an  
13 accuser, investigating officer, member of the court, military  
14 judge, or counsel or has otherwise acted on behalf of the  
15 prosecution or defense. The senior force judge advocate's  
16 review shall be in writing and shall contain the following:

17 (1) Conclusions as to whether:

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

20 (B) the charge and specification stated an  
21 offense; and

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

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

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

5           (b) The record of trial and related documents in each case  
6           reviewed under subsection (a) shall be sent for action to the  
7           Adjutant General if:

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

10          (2) the sentence approved under subsection (c) of  
11          Article 60 of this Code extends to dismissal, a bad-conduct  
12          or dishonorable discharge, or confinement for more than 6  
13          months; or

14          (3) such action is otherwise required by regulations of  
15          the Adjutant General.

16          (c) (1) The Adjutant General may:

17                (A) disapprove or approve the findings or sentence, in  
18                whole or in part;

19                (B) remit, commute, or suspend the sentence in whole or  
20                in part;

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

24                (D) dismiss the charges.

25          (2) If a rehearing is ordered but the convening authority  
26          finds a rehearing impracticable, the convening authority shall

1 dismiss the charges.

2 (3) If the opinion of the senior force judge advocate, or  
3 designee, in the senior force judge advocate's review under  
4 subsection (a) is that corrective action is required as a  
5 matter of law and if the Adjutant General does not take action  
6 that is at least as favorable to the accused as that  
7 recommended by the judge advocate, the record of trial and  
8 action thereon shall be sent to the Governor for review and  
9 action as deemed appropriate.

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

20 (e) The record of trial and related documents in each case  
21 reviewed under subsection (d) shall be sent for action to the  
22 Adjutant General. The Adjutant General may:

23 (1) when subject matter jurisdiction is found to be  
24 lacking, void the court-martial ab initio, with or without  
25 prejudice to the Government, as the Adjutant General deems  
26 appropriate; or

1           (2) return the record of trial and related documents to  
2           the senior force judge advocate for appeal by the  
3           Government as provided by law.

4           Section 65. Article 65. Disposition of records after review  
5           by the convening authority. Except as otherwise required by  
6           this Code, all records of trial and related documents shall be  
7           transmitted and disposed of as prescribed by regulation and  
8           provided by law.

9           Section 66. Article 66. (Reserved).

10          Section 67. Article 67. (Reserved).

11          Section 67a. Article 67a. Review by State Appellate  
12          Authority. Decisions of a court-martial are from a court with  
13          jurisdiction to issue misdemeanor and felony convictions. All  
14          appeals from final decisions of a court-martial shall be to the  
15          Illinois Appellate Court in the same manner as are final  
16          decisions of a circuit court in accordance with the Appellate  
17          Court Act. All such appeals shall be to the Illinois Appellate  
18          Court for the Fourth District. No appeal from a judgment  
19          entered upon a plea of guilty shall be taken except in  
20          accordance with applicable law and Supreme Court Rules. Unless  
21          waived, an accused may appeal as a matter of right a finding of  
22          guilt resulting in an approved sentence of one-year confinement

1 or more, or in a dismissal for a commissioned officer or  
2 warrant officer, a dishonorable discharge, or a bad-conduct  
3 discharge. The appellate rights and procedures to be followed  
4 shall be those provided by applicable law and Supreme Court  
5 Rules for criminal appeals.

6 Section 68. Article 68. (Reserved).

7 Section 69. Article 69. (Reserved).

8 Section 70. Article 70. Appellate counsel.

9 (a) The senior force judge advocate shall detail a judge  
10 advocate as appellate government counsel to represent the State  
11 in the review or appeal of cases specified in Article 67a of  
12 this Code and before any federal court when requested to do so  
13 by the Attorney General. Appellate government counsel must be a  
14 member in good standing of the bar of the highest court of the  
15 state to which the appeal is taken.

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

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

22 (d) Upon the request of an accused entitled to be so  
23 represented, the senior force judge advocate shall appoint a

1 judge advocate to represent the accused in the review or appeal  
2 of cases specified in subsections (b) and (c) of this Article.

3 (e) An accused may be represented by civilian appellate  
4 counsel at no expense to this State.

5 Section 71. Article 71. Execution of sentence; suspension  
6 of sentence.

7 (a) If the sentence of the court-martial extends to  
8 dismissal or a dishonorable or bad-conduct discharge and if the  
9 right of the accused to appellate review is not waived, and an  
10 appeal is not withdrawn under Article 61 of this Code, that  
11 part of the sentence extending to dismissal or a dishonorable  
12 or bad-conduct discharge may not be executed until there is a  
13 final judgment as to the legality of the proceedings. A  
14 judgment as to the legality of the proceedings is final in such  
15 cases when review is completed by the Illinois Appellate Court  
16 for the Fourth District as prescribed in Article 67a of this  
17 Code, and is deemed final by the law of this State.

18 (b) If the sentence of the court-martial extends to  
19 dismissal or a dishonorable or bad conduct discharge and if the  
20 right of the accused to appellate review is waived, or an  
21 appeal is withdrawn under Article 61 of this Code, that part of  
22 the sentence extending to dismissal or a dishonorable or  
23 bad-conduct discharge may not be executed until review of the  
24 case by the senior force judge advocate and any action on that  
25 review under Article 64 of this Code is completed. Any other

1 part of a court-martial sentence may be ordered executed by the  
2 convening authority or other person acting on the case under  
3 Article 60 of this Code when so approved under that Article.

4 Section 72. Article 72. Vacation of suspension.

5 (a) Before the vacation of the suspension of a special  
6 court-martial sentence, which as approved includes a  
7 bad-conduct discharge, or of any general court-martial  
8 sentence, the officer having special court-martial  
9 jurisdiction over the probationer shall hold a hearing on an  
10 alleged violation of probation. The probationer shall be  
11 represented at the hearing by military counsel if the  
12 probationer so desires.

13 (b) The record of the hearing and the recommendation of the  
14 officer having special court-martial jurisdiction shall be  
15 sent for action to the officer exercising general court-martial  
16 jurisdiction over the probationer. If the officer vacates the  
17 suspension, any unexecuted part of the sentence, except a  
18 dismissal, shall be executed, subject to applicable  
19 restrictions in this Code.

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

24 Section 73. Article 73. Petition for a new trial. At any

1 time within 2 years after approval by the convening authority  
2 of a court-martial sentence the accused may petition the  
3 Adjutant General for a new trial on the grounds of newly  
4 discovered evidence or fraud on the court-martial.

5 Section 74. Article 74. Remission and suspension.

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

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

15 Section 75. Article 75. Restoration.

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

23 (b) If a previously executed sentence of dishonorable or  
24 bad-conduct discharge is not imposed on a new trial, the



1 Governor may substitute therefor a form of discharge authorized  
2 for administrative issuance unless the accused is to serve out  
3 the remainder of the accused's enlistment.

4 (c) If a previously executed sentence of dismissal is not  
5 imposed on a new trial, the Governor may substitute therefor a  
6 form of discharge authorized for administrative issue, and the  
7 commissioned officer dismissed by that sentence may be  
8 reappointed by the Governor alone to such commissioned grade  
9 and with such rank as in the opinion of the Governor that  
10 former officer would have attained had he not been dismissed.  
11 The reappointment of such a former officer shall be without  
12 regard to the existence of a vacancy and shall affect the  
13 promotion status of other officers only insofar as the Governor  
14 may direct. All time between the dismissal and the  
15 reappointment shall be considered as actual service for all  
16 purposes, including the right to pay and allowances, as  
17 permitted by applicable financial management regulations.

18 Section 76. Article 76. Finality of proceedings, findings,  
19 and sentences. The appellate review of records of trial  
20 provided by this Code, the proceedings, findings, and sentences  
21 of courts-martial as approved, reviewed, or affirmed as  
22 required by this Code, and all dismissals and discharges  
23 carried into execution under sentences by courts-martial  
24 following approval, review, or affirmation as required by this  
25 Code, are final and conclusive. Orders publishing the

1 proceedings of courts-martial and all action taken pursuant to  
2 those proceedings are binding upon all departments, courts,  
3 agencies, and officers of the United States and the several  
4 states, subject only to action upon a petition for a new trial  
5 as provided in Article 73 of this Code and to action under  
6 Article 74 of this Code.

7 Section 76a. Article 76a. Leave required to be taken  
8 pending review of certain court-martial convictions. Under  
9 regulations prescribed, an accused who has been sentenced by a  
10 court-martial may be required to take leave pending completion  
11 of action under this Article if the sentence, as approved under  
12 Article 60 of this Code, includes an unsuspended dismissal or  
13 an unsuspended dishonorable or bad-conduct discharge. The  
14 accused may be required to begin such leave on the date on  
15 which the sentence is approved under Article 60 of this Code or  
16 at any time after such date, and such leave may be continued  
17 until the date on which action under this Article is completed  
18 or may be terminated at any earlier time.

19 Section 76b. Article 76b. Lack of mental capacity or mental  
20 responsibility: commitment of accused for examination and  
21 treatment.

22 (a) Persons incompetent to stand trial.

23 (1) In the case of a person determined under this Code  
24 to be presently suffering from a mental disease or defect

1 rendering the person mentally incompetent to the extent  
2 that the person is unable to understand the nature of the  
3 proceedings against that person or to conduct or cooperate  
4 intelligently in the defense of the case, the general  
5 court-martial convening authority for that person shall  
6 commit the person to the custody of the Attorney General.

7 (2) The Attorney General shall take action in  
8 accordance with the State statute applicable to persons  
9 incompetent to stand trial. If at the end of the period for  
10 hospitalization provided for in the State statute  
11 applicable to persons incompetent to stand trial, it is  
12 determined that the committed person's mental condition  
13 has not so improved as to permit the trial to proceed,  
14 action shall be taken in accordance with the State statute  
15 applicable to persons incompetent to stand trial.

16 (3) (A) When the director of a facility in which a  
17 person is hospitalized pursuant to paragraph (2)  
18 determines that the person has recovered to such an extent  
19 that the person is able to understand the nature of the  
20 proceedings against the person and to conduct or cooperate  
21 intelligently in the defense of the case, the director  
22 shall promptly transmit a notification of that  
23 determination to the Attorney General and to the general  
24 court-martial convening authority for the person. The  
25 director shall send a copy of the notification to the  
26 person's counsel.

1 (B) Upon receipt of a notification, the general  
2 court-martial convening authority shall promptly take  
3 custody of the person unless the person covered by the  
4 notification is no longer subject to this Code. If the  
5 person is no longer subject to this Code, the Attorney  
6 General shall take any action within the authority of the  
7 Attorney General that he or she considers appropriate  
8 regarding the person.

9 (C) The director of the facility may retain custody of  
10 the person for not more than 30 days after transmitting the  
11 notifications required by subparagraph (A) of paragraph  
12 (3).

13 (4) In the application of the State statute applicable  
14 to persons incompetent to stand trial to a case under this  
15 subsection, references to the court that ordered the  
16 commitment of a person, and to the clerk of such court,  
17 shall be deemed to refer to the general court-martial  
18 convening authority for that person. However, if the person  
19 is no longer subject to this Code at a time relevant to the  
20 application of such Article to the person, the circuit  
21 court in the county where the person is hospitalized or  
22 otherwise may be found shall be considered as the court  
23 that ordered the commitment of the person.

24 (b) Persons found not guilty by reason of lack of mental  
25 responsibility.

26 (1) If a person is found by a court-martial not guilty

1           only by reason of lack of mental responsibility, the person  
2           shall be committed to a suitable facility until the person  
3           is eligible for release in accordance with this Article.

4           (2) The court-martial shall conduct a hearing on the  
5           mental condition in accordance with the State statute  
6           applicable to persons incompetent to stand trial.

7           (3) A report of the results of the hearing shall be  
8           made to the general court-martial convening authority for  
9           the person.

10          (4) If the court-martial fails to find by the standard  
11          specified in the State statute applicable to persons  
12          incompetent to stand trial that the person's release would  
13          not create a substantial risk of bodily injury to another  
14          person or serious damage of property of another due to a  
15          present mental disease or defect:

16                 (A) the general court-martial convening authority  
17                 may commit the person to the custody of the Attorney  
18                 General; and

19                 (B) the Attorney General shall take action in  
20                 accordance with the State statute applicable to  
21                 persons incompetent to stand trial.

22          (5) The State statute applicable to persons  
23          incompetent to stand trial shall apply in the case of a  
24          person hospitalized pursuant to subparagraph (B) of  
25          paragraph (4), except that the circuit court in the county  
26          where the person is hospitalized shall be considered as the

1 court that ordered the person's commitment.

2 (c) General provisions.

3 (1) Except as otherwise provided in this subsection and  
4 paragraph (1) of subsection (d), the State statute most  
5 closely comparable to 18 U.S.C. 4247(d) applies in the  
6 administration of this Article.

7 (2) In the application of the State statute most  
8 closely comparable to 18 U.S.C. 4247(d), to hearings  
9 conducted by a court-martial under this Article or by (or  
10 by order of) a general court-martial convening authority  
11 under this Article, the reference in that Article to 18  
12 U.S.C. 3006A does not apply.

13 (d) Applicability.

14 (1) The State statute most closely comparable to  
15 Chapter 313 of Title 18, United States Code (10 U.S.C. 4241  
16 et seq.) referred to in this Article applies according to  
17 the provisions of this Article notwithstanding 18 U.S.C.  
18 4247(j).

19 (2) If the status of a person as described in Article 2  
20 terminates while the person is, pursuant to this Article,  
21 in the custody of the Attorney General, hospitalized, or on  
22 conditional release under a prescribed regimen of medical,  
23 psychiatric, or psychological care or treatment, the  
24 provisions of this Article establishing requirements and  
25 procedures regarding a person no longer subject to this  
26 Code shall continue to apply to that person notwithstanding



1 Section 80. Article 80. Attempts.

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

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

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

13 Section 81. Article 81. Conspiracy. Any person subject to  
14 this Code who conspires with any other person to commit an  
15 offense under this Code shall, if one or more of the  
16 conspirators does an act to effect the object of the  
17 conspiracy, be punished as a court-martial may direct.

18 Section 82. Article 82. Solicitation.

19 (a) Any person subject to this Code who solicits or advises  
20 another or others to desert in violation of Article 85 of this  
21 Code or mutiny in violation of Article 94 of this Code shall,  
22 if the offense solicited or advised is attempted or committed,  
23 be punished with the punishment provided for the commission of  
24 the offense, but, if the offense solicited or advised is not



1 committed or attempted, the person shall be punished as a  
2 court-martial may direct.

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

11 Section 83. Article 83. Fraudulent enlistment,  
12 appointment, or separation. Any person who:

13 (1) procures his own enlistment or appointment in the  
14 State military forces by knowingly false representation or  
15 deliberate concealment as to his qualifications for that  
16 enlistment or appointment and receives pay or allowances  
17 thereunder; or

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

22 Section 84. Article 84. Unlawful enlistment, appointment,  
23 or separation. Any person subject to this Code who effects an  
24 enlistment or appointment in or a separation from the State

1 military forces of any person who is known to him to be  
2 ineligible for that enlistment, appointment, or separation  
3 because it is prohibited by law, regulation, or order shall be  
4 punished as a court-martial may direct.

5 Section 85. Article 85. Desertion.

6 (a) Any member of the State military forces who:

7 (1) without authority goes or remains absent from his  
8 unit, organization, or place of duty with intent to remain  
9 away therefrom permanently;

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

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

20 is guilty of desertion.

21 (b) Any commissioned officer of the State military forces  
22 who, after tender of his resignation and before notice of its  
23 acceptance, quits his post or proper duties without leave and  
24 with intent to remain away therefrom permanently is guilty of  
25 desertion.

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

7           Section 86. Article 86. Absence without leave. Any person  
8 subject to this Code who, without authority:

9           (1) fails to go to his appointed place of duty at the  
10 time prescribed;

11           (2) goes from that place; or

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

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

16           Section 87. Article 87. Missing movement. Any person  
17 subject to this Code who through neglect or design misses the  
18 movement of a ship, aircraft, or unit with which he is required  
19 in the course of duty to move shall be punished as a  
20 court-martial may direct.

21           Section 88. Article 88. Contempt toward officials. Any  
22 commissioned officer who uses contemptuous words against the  
23 President, the Vice President, Congress, the Secretary of

1 Defense, the Secretary of a military department, the Secretary  
2 of Homeland Security, or the Governor or General Assembly shall  
3 be punished as a court-martial may direct.

4 Section 89. Article 89. Disrespect toward superior  
5 commissioned officer. Any person subject to this Code who  
6 behaves with disrespect toward his superior commissioned  
7 officer shall be punished as a court-martial may direct.

8 Section 90. Article 90. Assaulting or willfully disobeying  
9 superior commissioned officer. Any person subject to this Code  
10 who:

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

14 (2) willfully disobeys a lawful command of his superior  
15 commissioned officer;

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

21 Section 91. Article 91. Insubordinate conduct toward  
22 warrant officer, noncommissioned officer, or petty officer.  
23 Any warrant officer or enlisted member who:

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

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

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

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

11           Section 92. Article 92. Failure to obey order or  
12 regulation. Any person subject to this Code who:

13           (1) violates or fails to obey any lawful general order  
14 or regulation;

15           (2) having knowledge of any other lawful order issued  
16 by a member of the State military forces, which it is his  
17 duty to obey, fails to obey the order; or

18           (3) is derelict in the performance of his duties;

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

20           Section 93. Article 93. Cruelty and maltreatment. Any  
21 person subject to this Code who is guilty of cruelty toward, or  
22 oppression or maltreatment of, any person subject to his orders  
23 shall be punished as a court-martial may direct.

1 Section 94. Article 94. Mutiny or sedition.

2 (a) Any person subject to this Code who:

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

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

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

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

21 Section 95. Article 95. Resistance, flight, breach of  
22 arrest, and escape. Any person subject to this Code who:

23 (1) resists apprehension;

24 (2) flees from apprehension;

25 (3) breaks arrest; or

1           (4) escapes from custody or confinement;  
2 shall be punished as a court-martial may direct.

3           Section 96. Article 96. Releasing prisoner without proper  
4 authority. Any person subject to this Code who, without proper  
5 authority, releases any prisoner committed to his charge, or  
6 who through neglect or design suffers any such prisoner to  
7 escape, shall be punished as a court-martial may direct,  
8 whether or not the prisoner was committed in strict compliance  
9 with law.

10          Section 97. Article 97. Unlawful detention. Any person  
11 subject to this Code who, except as provided by law or  
12 regulation, apprehends, arrests, or confines any person shall  
13 be punished as a court-martial may direct.

14          Section 98. Article 98. Noncompliance with procedural  
15 rules. Any person subject to this Code who:

16           (1) is responsible for unnecessary delay in the  
17 disposition of any case of a person accused of an offense  
18 under this Code; or

19           (2) knowingly and intentionally fails to enforce or  
20 comply with any provision of this Code regulating the  
21 proceedings before, during, or after trial of an accused;  
22 shall be punished as a court-martial may direct.

1 Section 99. Article 99. Misbehavior before the enemy. Any  
2 person subject to this Code who before or in the presence of  
3 the enemy:

4 (1) runs away;

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

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

11 (4) casts away his arms or ammunition;

12 (5) is guilty of cowardly conduct;

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

14 (7) causes false alarms in any command, unit, or place  
15 under control of the armed forces of the United States or  
16 the State military forces;

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

21 (9) does not afford all practicable relief and  
22 assistance to any troops, combatants, vessels, or aircraft  
23 of the armed forces belonging to the United States or their  
24 allies, to the State, or to any other state, when engaged  
25 in battle;

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



1           Section 100. Article 100. Subordinate compelling  
2 surrender. Any person subject to this Code who compels or  
3 attempts to compel the commander of any of the State military  
4 forces of this State, or of any other state, place, vessel,  
5 aircraft, or other military property, or of any body of members  
6 of the armed forces, to give it up to an enemy or to abandon it,  
7 or who strikes the colors or flag to an enemy without proper  
8 authority, shall be punished as a court-martial may direct.

9           Section 101. Article 101. Improper use of countersign. Any  
10 person subject to this Code who in time of war discloses the  
11 parole or countersign to any person not entitled to receive it  
12 or who gives to another, who is entitled to receive and use the  
13 parole or countersign, a different parole or countersign from  
14 that which, to his knowledge, he was authorized and required to  
15 give, shall be punished as a court-martial may direct.

16           Section 102. Article 102. Forcing a safeguard. Any person  
17 subject to this Code who forces a safeguard shall be punished  
18 as a court-martial may direct.

19           Section 103. Article 103. Captured or abandoned property.

20           (a) All persons subject to this Code shall secure all  
21 public property taken for the service of the United States or  
22 this State, and shall give notice and turn over to the proper

1 authority without delay all captured or abandoned property in  
2 their possession, custody, or control.

3 (b) Any person subject to this Code who:

4 (1) fails to carry out the duties prescribed in  
5 subsection (a);

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

11 (3) engages in looting or pillaging;  
12 shall be punished as a court-martial may direct.

13 Section 104. Article 104. Aiding the enemy. Any person  
14 subject to this Code who:

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

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

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

22 Section 105. Article 105. Misconduct as prisoner. Any  
23 person subject to this Code who, while in the hands of the  
24 enemy in time of war:

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

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

9           Section 106. Article 106. (Reserved).

10          Section 106a. Article 106a. (Reserved).

11          Section 107. Article 107. False official statements. Any  
12          person subject to this Code who, with intent to deceive, signs  
13          any false record, return, regulation, order, or other official  
14          document made in the line of duty, knowing it to be false, or  
15          makes any other false official statement made in the line of  
16          duty, knowing it to be false, shall be punished as a  
17          court-martial may direct.

18          Section 108. Article 108. Military property: loss, damage,  
19          destruction, or wrongful disposition. Any person subject to  
20          this Code who, without proper authority:

21                 (1) sells or otherwise disposes of;

22                 (2) willfully or through neglect damages, destroys, or

1           loses; or

2                   (3) willfully or through neglect suffers to be lost,  
3           damaged, destroyed, sold, or wrongfully disposed of;  
4   any military property of the United States or of any state,  
5   shall be punished as a court-martial may direct.

6           Section 109. Article 109. Property other than military  
7   property: waste, spoilage, or destruction. Any person subject  
8   to this Code who willfully or recklessly wastes, spoils, or  
9   otherwise willfully and wrongfully destroys or damages any  
10   property other than military property of the United States or  
11   of any state shall be punished as a court-martial may direct.

12           Section 110. Article 110. Improper hazarding of vessel.

13           (a) Any person subject to this Code who willfully and  
14   wrongfully hazards or suffers to be hazarded any vessel of the  
15   armed forces of the United States or any state military forces  
16   shall suffer such punishment as a court-martial may direct.

17           (b) Any person subject to this Code who negligently hazards  
18   or suffers to be hazarded any vessel of the armed forces of the  
19   United States or any state military forces shall be punished as  
20   a court-martial may direct.

21           Section 111. Article 111. (Reserved).

22           Section 112. Article 112. Drunk on duty. Any person subject

1 to this Code other than a sentinel or look-out, who is found  
2 drunk on duty, shall be punished as a court-martial may direct.

3 Section 112a. Article 112a. Wrongful use, possession,  
4 etc., of controlled substances.

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

13 (b) The substances referred to in subsection (a) are the  
14 following:

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

19 (2) Any substance not specified in paragraph (1) that  
20 is listed on a schedule of controlled substances prescribed  
21 by the President for the purposes of the Uniform Code of  
22 Military Justice of the armed forces of the United States  
23 (10 U.S.C. 801 et seq.).

24 (3) Any other substance not specified in paragraph (1)  
25 or contained on a list prescribed by the President under

1 paragraph (2) that is listed in schedules I through V of  
2 Article 202 of the Controlled Substances Act (21 U.S.C.  
3 812).

4 Section 113. Article 113. Misbehavior of sentinel. Any  
5 sentinel or look-out who is found drunk or sleeping upon his  
6 post or leaves it before being regularly relieved shall be  
7 punished, if the offense is committed in time of war, by  
8 confinement of not more than 10 years or other punishment as a  
9 court-martial may direct, but if the offense is committed at  
10 any other time, by such punishment as a court-martial may  
11 direct.

12 Section 114. Article 114. Dueling. Any person subject to  
13 this Code who fights or promotes, or is concerned in or  
14 connives at fighting a duel, or who, having knowledge of a  
15 challenge sent or about to be sent, fails to report the fact  
16 promptly to the proper authority, shall be punished as a  
17 court-martial may direct.

18 Section 115. Article 115. Malingering. Any person subject  
19 to this Code who for the purpose of avoiding work, duty, or  
20 service:

21 (1) feigns illness, physical disablement, mental  
22 lapse, or derangement; or

23 (2) intentionally inflicts self-injury;

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

2 Section 116. Article 116. Riot or breach of peace. Any  
3 person subject to this Code who causes or participates in any  
4 riot or breach of the peace shall be punished as a  
5 court-martial may direct.

6 Section 117. Article 117. Provoking speeches or gestures.  
7 Any person subject to this Code who uses provoking or  
8 reproachful words or gestures towards any other person subject  
9 to this Code shall be punished as a court-martial may direct.

10 Section 118. Article 118. (Reserved).

11 Section 119. Article 119. (Reserved).

12 Section 120. Article 120. (Reserved).

13 Section 121. Article 121. (Reserved).

14 Section 122. Article 122. (Reserved).

15 Section 123. Article 123. (Reserved).

16 Section 123a. Article 123a. (Reserved).

1 Section 124. Article 124. (Reserved).

2 Section 125. Article 125. (Reserved).

3 Section 126. Article 126. (Reserved).

4 Section 127. Article 127. (Reserved).

5 Section 128. Article 128. (Reserved).

6 Section 129. Article 129. (Reserved).

7 Section 130. Article 130. (Reserved).

8 Section 131. Article 131. (Reserved).

9 Section 132. Article 132. Frauds against the government.

10 Any person subject to this Code:

11 (1) who, knowing it to be false or fraudulent:

12 (A) makes any claim against the United States, this  
13 State, or any officer thereof; or

14 (B) presents to any person in the civil or military  
15 service thereof, for approval or payment, any claim  
16 against the United States, this State, or any officer  
17 thereof;

18 (2) who, for the purpose of obtaining the approval,



1 allowance, or payment of any claim against the United  
2 States, this State, or any officer thereof:

3 (A) makes or uses any writing or other paper  
4 knowing it to contain any false or fraudulent  
5 statements;

6 (B) makes any oath, affirmation, or certification  
7 to any fact or to any writing or other paper knowing  
8 the oath, affirmation, or certification to be false; or

9 (C) forges or counterfeits any signature upon any  
10 writing or other paper, or uses any such signature  
11 knowing it to be forged or counterfeited;

12 (3) who, having charge, possession, custody, or  
13 control of any money, or other property of the United  
14 States or this State, furnished or intended for the armed  
15 forces of the United States or the State military forces,  
16 knowingly delivers to any person having authority to  
17 receive it, any amount thereof less than that for which he  
18 receives a certificate or receipt; or

19 (4) who, being authorized to make or deliver any paper  
20 certifying the receipt of any property of the United States  
21 or this State, furnished or intended for the armed forces  
22 of the United States or the State military forces, makes or  
23 delivers to any person such writing without having full  
24 knowledge of the truth of the statements therein contained  
25 and with intent to defraud the United States or this State;  
26 shall, upon conviction, be punished as a court-martial may

1 direct.

2 Section 133. Article 133. Conduct unbecoming an officer and  
3 a gentleman. Any commissioned officer, cadet, candidate, or  
4 midshipman who is convicted of conduct unbecoming an officer  
5 and a gentleman shall be punished as a court-martial may  
6 direct.

7 Section 134. Article 134. General Article. Though not  
8 specifically mentioned in this Code, all disorders and neglects  
9 to the prejudice of good order and discipline in the State  
10 military forces and all conduct of a nature to bring discredit  
11 upon the State military forces shall be taken cognizance of by  
12 a court-martial and punished at the discretion of a military  
13 court. However, where a crime constitutes an offense that  
14 violates both this Code and the criminal laws of the state  
15 where the offense occurs or criminal laws of the United States,  
16 jurisdiction of the military court must be determined in  
17 accordance with subsection (b) of Article 2 of this Code.

18

#### PART XI. MISCELLANEOUS

19 Section 135. Article 135. Courts of inquiry.

20 (a) Courts of inquiry to investigate any matter of concern  
21 to the State military forces may be convened by any person  
22 authorized to convene a general court-martial, whether or not

1 the persons involved have requested such an inquiry.

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

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

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

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

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

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

24 (h) Each court of inquiry shall keep a record of its  
25 proceedings, which shall be authenticated by the signatures of  
26 the president and counsel for the court and forwarded to the

1 convening authority. If the record cannot be authenticated by  
2 the president, it shall be signed by a member in lieu of the  
3 president. If the record cannot be authenticated by the counsel  
4 for the court, it shall be signed by a member in lieu of the  
5 counsel.

6 Section 136. Article 136. Authority to administer oaths and  
7 to act as notary.

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

11 (1) All judge advocates.

12 (2) All summary courts-martial.

13 (3) All adjutants, assistant adjutants, acting  
14 adjutants, and personnel adjutants.

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

16 (5) All other persons designated by regulations of the  
17 armed forces of the United States or by State statute.

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

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

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

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

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

1 (5) All recruiting officers.

2 (6) All other persons designated by regulations of the  
3 armed forces of the United States or by State statute.

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

7 Section 137. Article 137. Articles to be explained.

8 (a) (1) The Articles of this Code specified in paragraph (3)  
9 shall be carefully explained to each enlisted member at the  
10 time of, or within 30 days after, the member's initial entrance  
11 into a duty status with the State military forces.

12 (2) Such Articles shall be explained again:

13 (A) after the member has completed basic or recruit  
14 training; and

15 (B) at the time when the member reenlists.

16 (3) This subsection applies with respect to Articles 2, 3,  
17 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137  
18 through 139 of this Code.

19 (b) The text of this Code and of the regulations or orders  
20 prescribed under this Code shall be made available to a member  
21 of the State military forces, upon request by the member, for  
22 the member's personal examination, but this Code is effective  
23 and binding upon the State military forces upon the effective  
24 date noted in Article 999, and said regulations or orders are  
25 effective upon proper publishing of same, pursuant to other law

1 or regulation.

2 Section 138. Article 138. Complaints of wrongs. Any member  
3 of the State military forces who believes himself wronged by a  
4 commanding officer, and who, upon due application to that  
5 commanding officer, is refused redress, may complain to any  
6 superior commissioned officer, who shall forward the complaint  
7 to the officer exercising general court-martial jurisdiction  
8 over the officer against whom it is made. The officer  
9 exercising general court-martial jurisdiction shall examine  
10 into the complaint and take proper measures for redressing the  
11 wrong complained of; and shall, as soon as possible, send to  
12 the Adjutant General a true statement of that complaint, with  
13 the proceedings had thereon.

14 Section 139. Article 139. Redress of injuries to property.

15 (a) Whenever complaint is made to any commanding officer  
16 that willful damage has been done to the property of any person  
17 or that the person's property has been wrongfully taken by  
18 members of the State military forces, that person may, under  
19 such regulations prescribed, convene a board to investigate the  
20 complaint. The board shall consist of from one to 3  
21 commissioned officers and, for the purpose of that  
22 investigation, it has power to summon witnesses and examine  
23 them upon oath, to receive depositions or other documentary  
24 evidence, and to assess the damages sustained against the

1 responsible parties. The assessment of damages made by the  
2 board is subject to the approval of the commanding officer, and  
3 in the amount approved by that officer shall be charged against  
4 the pay of the offenders. The order of the commanding officer  
5 directing charges herein authorized is conclusive on any  
6 disbursing officer for payment to the injured parties of the  
7 damages so assessed and approved.

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

15 Section 140. Article 140. Delegation by the Governor. The  
16 Governor may delegate any authority vested in the Governor  
17 under this Code, and provide for the subdelegation of any such  
18 authority, except the power given the Governor by Article 22 of  
19 this Code.

20 Section 141. Article 141. Payment of fees, costs, and  
21 expenses.

22 (a) The fees and authorized travel expenses of all  
23 witnesses, experts, victims, court reporters, and  
24 interpreters, fees for the service of process, the costs of

1 collection, apprehension, detention and confinement, and all  
2 other necessary expenses of prosecution and the administration  
3 of military justice, not otherwise payable by any other source,  
4 shall be paid out of the State Military Justice Fund.

5 (b) For the foregoing purposes, the State Military Justice  
6 Fund is created as a special fund in the State treasury. The  
7 Fund shall be administered by the Adjutant General, from which  
8 expenses of military justice shall be paid in the amounts and  
9 manner as prescribed by law. The General Assembly may  
10 appropriate and have deposited into the Fund such moneys as it  
11 deems necessary to carry out the purposes of this Code.

12 Section 142. Article 142. Payment of fines and disposition  
13 thereof.

14 (a) Fines imposed by a military court or through imposition  
15 of non-judicial punishment may be paid to this State and  
16 delivered to the court or imposing officer, or to a person  
17 executing their process. Fines may be collected in the  
18 following manner:

19 (1) by cash or money order;

20 (2) by retention of any pay or allowances due or to  
21 become due the person fined from any state or the United  
22 States; or

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



1           (b) Any sum so received or retained shall be deposited into  
2 the State Military Justice Fund or to whomever the court so  
3 directs.

4           Section 143. Article 143. Uniformity of interpretation.  
5 This Code shall be so construed as to effectuate its general  
6 purpose to make it in conformity, so far as practical, with the  
7 Uniform Code of Military Justice, Chapter 47 of Title 10,  
8 United States Code.

9           Section 144. Article 144. Immunity for action of military  
10 courts. All persons acting under the provisions of this Code,  
11 whether as a member of the military or as a civilian, shall be  
12 immune from any personal liability for any of the acts or  
13 omissions which they did or failed to do as part of their  
14 duties under this Code.

15           Section 145. Article 145. Severability. The provisions of  
16 this Code are hereby declared to be severable and if any  
17 provision of this Code or the application of such provision to  
18 any person or circumstance is declared invalid for any reason,  
19 such declaration shall not affect the validity of the remaining  
20 portions of this Code.

21           Section 146. Article 146. (Reserved).

1           Section 147. Article 147. Time of taking effect. (See  
2           Section 999 for effective date.)

3           Section 148. Article 148. Supersedes existing State  
4           military justice codes. On the effective date of this Code,  
5           this law supersedes all existing statutes, ordinances,  
6           directives, rules, regulations, orders and other laws in this  
7           State covered by the subject matter of this Code.

8           Section 149. Article 149. Civilian crimes assimilated. Any  
9           person subject to this Code who commits an offense not  
10          enumerated in this Code, but which is an offense under the laws  
11          of the United States, the laws of this State, or the laws of  
12          another state, U.S. Commonwealth, Territory, Possession, or  
13          District, while said person is subject to the jurisdiction of  
14          this Code under Article 2, is guilty of any act or omission  
15          which, although not made punishable by any enactment of this  
16          State, is punishable if committed or omitted within the  
17          jurisdiction of the laws of the United States, the laws of this  
18          State, or the laws of another state, Territory, Possession, or  
19          District, and said offense may be charged as an offense under  
20          Article 134 of this Code pursuant to the substantive law of the  
21          jurisdiction where the offense was committed, in force at the  
22          time of said offense, and shall be punished pursuant to said  
23          other law, subject only to the maximum punishment prescribed by  
24          this Code.

1 Section 150. The Military Code of Illinois is amended by  
2 adding Section 34.1 as follows:

3 (20 ILCS 1805/34.1 new)

4 Sec. 34.1. Separation; discharge; Illinois National Guard.

5 (a) Members of the Illinois National Guard shall be  
6 separated from the active service in accordance with federal  
7 laws and regulations as made applicable to the National Guard,  
8 except as otherwise provided herein or in the Illinois Code of  
9 Military Justice.

10 (b) Members of the Illinois National Guard who are  
11 discharged from the Illinois National Guard, in the case of  
12 officers with a dismissal or in the case of enlisted personnel  
13 with a dishonorable discharge, shall be ineligible to hold any  
14 elective or appointive office, position, or employment in the  
15 service of this State, any county, or any municipality thereof,  
16 for a period of 5 years unless such disability shall be removed  
17 by the Governor.

18 (20 ILCS 1805/34 rep.)

19 (20 ILCS 1805/47 rep.)

20 (20 ILCS 1805/Art. XIV rep.)

21 (20 ILCS 1805/Art. XV rep.)

22 (20 ILCS 1805/89 rep.)

23 (20 ILCS 1805/90 rep.)

1 (20 ILCS 1805/91 rep.)

2 Section 155. The Military Code of Illinois is amended by  
3 repealing Sections 34, 47, 89, 90, and 91 and Articles XIV and  
4 XV.

5 Section 156. The State Finance Act is amended by adding  
6 Section 5.875 as follows:

7 (30 ILCS 105/5.875 new)

8 Sec. 5.875. The State Military Justice Fund.

9 Section 999. Effective date. This Act takes effect January  
10 1, 2017.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 20 ILCS 1805/34.1 new

5 20 ILCS 1805/34 rep.

6 20 ILCS 1805/47 rep.

7 20 ILCS 1805/Art. XIV rep.

8 20 ILCS 1805/Art. XV rep.

9 20 ILCS 1805/89 rep.

10 20 ILCS 1805/90 rep.

11 20 ILCS 1805/91 rep.

12 30 ILCS 105/5.875 new