

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, a court-martial may be initiated only after the  
15 civilian authority has declined to prosecute or dismissed the  
16 charge, provided jeopardy has not attached. Jurisdiction over  
17 attempted crimes, conspiracy crimes, solicitation, and  
18 accessory crimes must be determined by the underlying offense.

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

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



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

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

9 Section 4. Article 4. (Reserved).

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

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

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

1 outside this State.

2 Section 6. Article 6. Judge Advocates.

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

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

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

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

1 the rank of Major or above.

2 PART II. APPREHENSION AND RESTRAINT

3 Section 7. Article 7. Apprehension.

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

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

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

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

21 (e) No person authorized by this Article to apprehend  
22 persons subject to this Code or the place where such offender  
23 is confined, restrained, held, or otherwise housed may require  
24 payment of any fee or charge for so receiving, apprehending,

1 confining, restraining, holding, or otherwise housing a person  
2 except as otherwise provided by law.

3 Section 8. Article 8. (Reserved).

4 Section 9. Article 9. Imposition of restraint.

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

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

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

24 (d) No person subject to this Code may be ordered into

1 arrest or confinement except for probable cause after  
2 coordination with a judge advocate officer unless impractical  
3 or not possible.

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

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

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

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

22 (b) No person, Sheriff, or individual in a Department of  
23 Corrections facility authorized to receive prisoners pursuant  
24 to subsection (a) may refuse to receive or keep any prisoner

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

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

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

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

1 to minor punishment during that period for infractions of  
2 discipline.

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

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

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

16 PART III. NON-JUDICIAL PUNISHMENT

17 Section 15. Article 15. Non-judicial punishment  
18 proceedings. The Adjutant General may adopt rules to effectuate  
19 non-judicial punishment proceedings in accordance with the  
20 Illinois Administrative Procedure Act which may impose  
21 disciplinary punishments for minor offenses without the  
22 intervention of a court-martial pursuant to this Article.

1                   PART IV. COURT-MARTIAL JURISDICTION

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

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

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

6           or

7                   (B) only a military judge, if before the court is  
8 assembled the accused, knowing the identity of the  
9 military judge and after consultation with defense  
10 counsel, requests orally on the record or in writing a  
11 court composed only of a military judge and the  
12 military judge approves;

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

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

15           or

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

19                   (1) so requests; and

20                   (3) summary courts-martial consisting of one  
21 commissioned officer.

22           Section 17. Article 17. Jurisdiction of courts-martial in  
23 general. Each component of the State military forces has  
24 court-martial jurisdiction over all members of the particular



1 component who are subject to this Code. Additionally, the Army  
2 and Air National Guard State military forces have court-martial  
3 jurisdiction over all members subject to this Code.

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

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

19 Section 20. Article 20. Jurisdiction of summary  
20 courts-martial.

21 (a) Subject to Article 17 of this Code, summary  
22 courts-martial have jurisdiction to try persons subject to this  
23 Code, except officers, cadets, and candidates for any offense

1 made punishable by this Code under such limitations as the  
2 Governor may prescribe.

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

15 Section 21. Article 21. (Reserved).

16 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

17 Section 22. Article 22. Who may convene general  
18 courts-martial.

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

20 (1) the Governor, or;

21 (2) the Adjutant General.

22 (b) (Reserved).

1           Section 23. Article 23. Who may convene special  
2 courts-martial.

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

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

5                 (2) the Commander of the Illinois Army National of  
6 members of the Illinois Army National Guard when empowered  
7 by the Adjutant General; or

8                 (3) the Commander of the Illinois Air National Guard of  
9 members of the Illinois Air National Guard when empowered  
10 by the Adjutant General.

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

15           Section 24. Article 24. Who may convene summary  
16 courts-martial.

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

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

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

22           (b) When only one commissioned officer is present with a  
23 command or detachment that officer shall be the summary  
24 court-martial of that command or detachment and shall hear and  
25 determine all summary court-martial cases. Summary

1 courts-martial may, however, be convened in any case by  
2 superior competent authority if considered desirable by such  
3 authority.

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

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

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

12 (c) Any enlisted member of the State military forces who is  
13 not a member of the same unit as the accused is eligible to  
14 serve on general and special courts-martial for the trial of  
15 any enlisted member subject to this Code, but that member shall  
16 serve as a member of a court only if, before the conclusion of  
17 a session called by the military judge under subsection (a) of  
18 Article 39 of this Code prior to trial or, in the absence of  
19 such a session, before the court is assembled for the trial of  
20 the accused, the accused personally has requested orally on the  
21 record or in writing that enlisted members serve on it. After  
22 such a request, the accused may not be tried by a general or  
23 special court-martial the membership of which does not include  
24 enlisted members in a number comprising at least one-third of  
25 the total membership of the court, unless eligible enlisted

1 members cannot be obtained on account of physical conditions or  
2 military exigencies. If such members cannot be obtained, the  
3 court may be assembled and the trial held without them, but the  
4 convening authority shall make a detailed written statement, to  
5 be appended to the record, stating why they could not be  
6 obtained. In this Article, "unit" means any regularly organized  
7 body of the State military forces not larger than a company, a  
8 squadron, a division of the naval militia, or a body  
9 corresponding to one of them.

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

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

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

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

2           Section 26. Article 26. Military judge of a general or  
3 special court-martial.

4           (a) A military judge shall be detailed to each general and  
5 special court-martial. The military judge shall preside over  
6 each open session of the court-martial to which the military  
7 judge has been detailed.

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

10           (1) an active commissioned officer of an organized  
11 state military force;

12           (2) a member in good standing of the bar of the highest  
13 court of a state or a member of the bar of a federal court  
14 for at least 5 years; and

15           (3) certified as qualified for duty as a military judge  
16 by the senior force judge advocate which is the same force  
17 as the accused.

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

24           (d) The military judge of a general or special

1 court-martial shall be designated by the senior force judge  
2 advocate which is the same force as the accused, or a designee,  
3 for detail by the convening authority. Neither the convening  
4 authority nor any staff member of the convening authority shall  
5 prepare or review any report concerning the effectiveness,  
6 fitness, or efficiency of the military judge so detailed, which  
7 relates to performance of duty as a military judge.

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

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

15 Section 27. Article 27. Detail of trial counsel and defense  
16 counsel.

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

20 (2) No person who has acted as investigating officer,  
21 military judge, witness, or court member in any case may act  
22 later as trial counsel, assistant trial counsel, or, unless  
23 expressly requested by the accused, as defense counsel or  
24 assistant or associate defense counsel in the same case. No  
25 person who has acted for the prosecution may act later in the

1 same case for the defense nor may any person who has acted for  
2 the defense act later in the same case for the prosecution.

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

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

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

11 (c) In the instance when a defense counsel is not a member  
12 of the bar of the highest court of this State, the defense  
13 counsel shall be deemed admitted pro hac vice, subject to  
14 filing a certificate with the military judge setting forth the  
15 qualifications that counsel is:

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

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

20 (3) certified as a judge advocate in the Judge Advocate  
21 General's Corps of the Army, Air Force, Navy, or the Marine  
22 Corps; or

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

25 Section 28. Article 28. Detail or employment of reporters



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

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

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

14 (b) Whenever a general court-martial, other than a general  
15 court-martial composed of a military judge only, is reduced  
16 below 5 members, the trial may not proceed unless the convening  
17 authority details new members sufficient in number to provide  
18 not less than the applicable minimum number of 5 members. The  
19 trial may proceed with the new members present after the  
20 recorded evidence previously introduced before the members of  
21 the court has been read to the court in the presence of the  
22 military judge, the accused, and counsel for both sides.

23 (c) Whenever a special court-martial, other than a special  
24 court-martial composed of a military judge only, is reduced  
25 below 3 members, the trial may not proceed unless the convening

1 authority details new members sufficient in number to provide  
2 not less than 3 members. The trial shall proceed with the new  
3 members present as if no evidence had been introduced  
4 previously at the trial, unless a verbatim record of the  
5 evidence previously introduced before the members of the court  
6 or a stipulation thereof is read to the court in the presence  
7 of the military judge, the accused, and counsel for both sides.

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

19 PART VI. PRE-TRIAL PROCEDURE

20 Section 30. Article 30. Charges and specifications.

21 (a) Charges and specifications shall be signed by a person  
22 subject to this Code under oath before a commissioned officer  
23 authorized by subsection (a) of Article 136 of this Code to  
24 administer oaths and shall state:

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

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

5           (b) Upon the preferring of charges, the proper authority  
6           shall take immediate steps to determine what disposition should  
7           be made thereof in the interest of justice and discipline, and  
8           the person accused shall be informed of the charges as soon as  
9           practicable.

10          Section 31. Article 31. Compulsory self-incrimination  
11          prohibited.

12           (a) No person subject to this Code may compel any person to  
13           incriminate himself or to answer any question the answer to  
14           which may tend to incriminate him.

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

23           (c) No person subject to this Code may compel any person to  
24           make a statement or produce evidence before any military court  
25           if the statement or evidence is not material to the issue and

1 may tend to degrade the person.

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

6 Section 32. Article 32. Investigation.

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

15 (b) The accused shall be advised of the charges against the  
16 accused and of the right to be represented at that  
17 investigation by counsel. The accused has the right to be  
18 represented at that investigation as provided in Article 38 of  
19 this Code and in regulations prescribed under that Article. At  
20 that investigation, full opportunity shall be given to the  
21 accused to cross-examine witnesses against the accused, if they  
22 are available, and to present anything the accused may desire  
23 in the accused's own behalf, either in defense or mitigation,  
24 and the investigating officer shall examine available  
25 witnesses requested by the accused. If the charges are

1 forwarded after the investigation, they shall be accompanied by  
2 a statement of the substance of the testimony taken on both  
3 sides and a copy thereof shall be given to the accused.

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

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

20 (1) is present at the investigation;

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

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

26 (e) The requirements of this Article are binding on all

1 persons administering this Code but failure to follow them does  
2 not constitute jurisdictional error.

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

11 Section 34. Article 34. Advice of judge advocate and  
12 reference for trial.

13 (a) Before directing the trial of any charge by general or  
14 special court-martial, the convening authority shall refer it  
15 to a judge advocate for consideration and advice. The convening  
16 authority may not refer a specification under a charge to a  
17 general or special court-martial for trial unless the convening  
18 authority has been advised in writing by a judge advocate that:

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

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

24 (3) a court-martial would have jurisdiction over the

1 accused and the offense.

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

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

7 (2) recommending action that the convening authority  
8 take regarding the specification.

9 If the specification is referred for trial, the recommendation  
10 of the judge advocate shall accompany the specification.

11 (c) If the charges or specifications are not correct  
12 formally or do not conform to the substance of the evidence  
13 contained in the report of the investigating officer, formal  
14 corrections, and such changes in the charges and specifications  
15 as are needed to make them conform to the evidence, may be  
16 made.

17 Section 35. Article 35. Service of charges. The trial  
18 counsel shall serve or caused to be served upon the accused a  
19 copy of the charges. No person may, against the person's  
20 objection, be brought to trial before a general court-martial  
21 case within a period of 60 days after the service of charges  
22 upon the accused, or in a special court-martial, within a  
23 period of 45 days after the service of charges upon the  
24 accused.

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## PART VII. TRIAL PROCEDURE

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Section 36. Article 36. Trial procedure. The Adjutant General may adopt rules in accordance with the Illinois Administrative Procedure Act which establish pretrial, trial, and post-trial procedures, including modes of proof, for courts-martial cases arising under this Code and for courts of inquiry, and which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the Armed Forces of the United States but which may not be contrary to or inconsistent with this Code. The Governor or the Adjutant General may prescribe courts of inquiry by regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military cases.

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

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(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, the military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to this Code may attempt to coerce or, by any



1 unauthorized means, influence the action of a court-martial or  
2 court of inquiry or any member thereof, in reaching the  
3 findings or sentence in any case, or the action of any  
4 convening, approving, or reviewing authority with respect to  
5 their judicial acts. The foregoing provisions of this  
6 subsection shall not apply with respect to (1) general  
7 instructional or informational courses in military justice if  
8 such courses are designed solely for the purpose of instructing  
9 members of a command in the substantive and procedural aspects  
10 of courts-martial or (2) statements and instructions given in  
11 open court by the military judge, summary court-martial  
12 officer, or counsel.

13 (b) In the preparation of an effectiveness, fitness, or  
14 efficiency report, or any other report or document used in  
15 whole or in part for the purpose of determining whether a  
16 member of the State military forces is qualified to be advanced  
17 in grade, or in determining the assignment or transfer of a  
18 member of the State military forces, or in determining whether  
19 a member of the State military forces should be retained on  
20 active status, no person subject to this Code may, in preparing  
21 any such report, (1) consider or evaluate the performance of  
22 duty of any such member as a member of a court-martial or  
23 witness therein or (2) give a less favorable rating or  
24 evaluation of any counsel of the accused because of zealous  
25 representation before a court-martial.

1           Section 38. Article 38. Duties of trial counsel and defense  
2 counsel.

3           (a) The trial counsel of a general or special court-martial  
4 shall be a member in good standing of the State bar and shall  
5 prosecute in the name of the State of Illinois, and shall,  
6 under the direction of the court, prepare the record of the  
7 proceedings.

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

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

14           (3) The accused may be represented:

15           (A) by military counsel detailed under Article 27 of  
16 this Code; or

17           (B) by military counsel of the accused's own selection  
18 if that counsel is reasonably available as determined under  
19 paragraph (7).

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

24           (5) Except as provided under paragraph (6), if the accused  
25 is represented by military counsel of his own selection under  
26 subparagraph (B) of paragraph (3), any military counsel

1 detailed under subparagraph (A) of paragraph (3) shall be  
2 excused.

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

7 (A) may detail additional military counsel as  
8 assistant defense counsel; and

9 (B) if the accused is represented by military counsel  
10 of the accused's own selection under subparagraph (B) of  
11 paragraph (3), may approve a request from the accused that  
12 military counsel detailed under subparagraph (A) of  
13 paragraph (3) act as associate defense counsel.

14 (7) The senior State Judge Advocate of the same state of  
15 which the accused is a member shall determine whether the  
16 military counsel selected by an accused is reasonably  
17 available.

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

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

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

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

2           Section 39. Article 39. Sessions.

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

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

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

15                   (3) holding the arraignment and receiving the pleas of  
16                   the accused; and

17                   (4) performing any other procedural function which  
18                   does not require the presence of the members of the court  
19                   under this Code.

20           These proceedings shall be conducted in the presence of the  
21           accused, the defense counsel, and the trial counsel and shall  
22           be made a part of the record. These proceedings may be  
23           conducted notwithstanding the number of court members and  
24           without regard to Article 29.

25           (b) When the members of a court-martial deliberate or vote,

1 only the members may be present. All other proceedings,  
2 including any other consultation of the members of the court  
3 with counsel or the military judge, shall be made a part of the  
4 record and shall be in the presence of the accused, the defense  
5 counsel, the trial counsel, and the military judge.

6 Section 40. Article 40. Continuances. The military judge of  
7 a court-martial may, for reasonable cause, grant a continuance  
8 to any party for such time, and as often, as may appear to be  
9 just.

10 Section 41. Article 41. Challenges.

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

19 (2) If exercise of a challenge for cause reduces the court  
20 below the minimum number of members required by Article 16 of  
21 this Code, all parties shall, notwithstanding Article 29 of  
22 this Code, either exercise or waive any challenge for cause  
23 then apparent against the remaining members of the court before  
24 additional members are detailed to the court. However,

1 peremptory challenges shall not be exercised at that time.

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

5 (2) If exercise of a peremptory challenge reduces the court  
6 below the minimum number of members required by Article 16 of  
7 this Code, the parties shall, notwithstanding Article 29 of  
8 this Code, either exercise or waive any remaining peremptory  
9 challenge, not previously waived, against the remaining  
10 members of the court before additional members are detailed to  
11 the court.

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

17 Section 42. Article 42. Oaths or affirmations.

18 (a) Before performing their respective duties, military  
19 judges, general and special courts-martial members, trial  
20 counsel, defense counsel, reporters, and interpreters shall  
21 take an oath or affirmation in the presence of the accused to  
22 perform their duties faithfully. The form of the oath or  
23 affirmation, the time and place of the taking thereof, the  
24 manner of recording the same, and whether the oath or  
25 affirmation shall be taken for all cases in which these duties

1 are to be performed or for a particular case, shall be as  
2 prescribed in regulation or as provided by law. These  
3 regulations may provide that an oath or affirmation to perform  
4 faithfully the duties as a military judge, trial counsel, or  
5 defense counsel may be taken at any time by any judge advocate  
6 or other person certified or designated to be qualified or  
7 competent for the duty, and if such an oath or affirmation is  
8 taken, it need not again be taken at the time the judge  
9 advocate or other person is detailed to that duty.

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

12 Section 43. Article 43. Statute of limitations.

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

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

23 (c) Periods in which the accused was absent from territory  
24 in which this State has the authority to apprehend him, or in  
25 the custody of civil authorities, or in the hands of the enemy,

1 shall be excluded in computing the period of limitation  
2 prescribed in this Article.

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

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

9 (2) committed in connection with the acquisition,  
10 care, handling, custody, control, or disposition of any  
11 real or personal property of the United States or any  
12 state; or

13 (3) committed in connection with the negotiation,  
14 procurement, award, performance, payment, interim  
15 financing, cancellation, or other termination or  
16 settlement, of any contract, subcontract, or purchase  
17 order which is connected with or related to the prosecution  
18 of the war, or with any disposition of termination  
19 inventory by any war contractor or Government agency;

20 is suspended until 2 years after the termination of hostilities  
21 or armed conflict as proclaimed by the President or by a joint  
22 resolution of Congress.

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

26 (A) has expired; or



1           (B) will expire within 180 days after the date of  
2           dismissal of the charges and specifications;  
3           trial and punishment under new charges and specifications are  
4           not barred by the statute of limitations if the conditions  
5           specified in paragraph (2) are met.

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

8           (A) be received by an officer exercising special  
9           court-martial jurisdiction over the command within 180  
10          days after the dismissal of the charges or specifications;  
11          and

12          (B) allege the same acts or omissions that were alleged  
13          in the dismissed charges or specifications (or allege acts  
14          or omissions that were included in the dismissed charges or  
15          specifications).

16          Section 44. Article 44. Former jeopardy.

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

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

23          (c) A proceeding which, after the introduction of evidence  
24          but before a finding, is dismissed or terminated by the  
25          convening authority or on motion of the prosecution for failure

1 of available evidence or witnesses without any fault of the  
2 accused is a trial in the sense of this Article.

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

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

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

21 Section 46. Article 46. Opportunity to obtain witnesses and  
22 other evidence. The trial counsel, the defense counsel, and the  
23 court-martial shall have equal opportunity to obtain witnesses  
24 and other evidence as prescribed by regulations and provided by

1 law. Process issued in court-martial cases to compel witnesses  
2 to appear and testify and to compel the production of other  
3 evidence shall apply the principles of law and the rules of  
4 courts-martial generally recognized in military criminal cases  
5 in the courts of the armed forces of the United States, but  
6 which may not be contrary to or inconsistent with this Code.  
7 Process shall run to any part of the United States, or the  
8 Territories, Commonwealths, and possessions, and may be  
9 executed by civil officers as prescribed by the laws of the  
10 place where the witness or evidence is located or of the United  
11 States.

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

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

14 (1) has been duly subpoenaed to appear as a witness or  
15 to produce books and records before a court-martial or  
16 court of inquiry, or before any military or civil officer  
17 designated to take a deposition to be read in evidence  
18 before such a court;

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

22 (3) willfully neglects or refuses to appear, or refuses  
23 to qualify as a witness or to testify or to produce any  
24 evidence which that person may have been legally subpoenaed  
25 to produce;

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

3 (b) The fees and mileage of witnesses shall be advanced or  
4 paid out of the appropriations for the compensation of  
5 witnesses.

6 Section 48. Article 48. Contempts. A military judge may  
7 punish for contempt any person who refuses a court order, is  
8 disrespectful to the court, or who uses any menacing word,  
9 sign, or gesture in its presence, or who disturbs its  
10 proceedings by any riot or disorder.

11 (a) A person subject to this Code may be punished for  
12 contempt by confinement not to exceed 30 days or a fine up to  
13 \$500, or both.

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

17 Section 49. Article 49. Depositions.

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

24 (b) The party at whose instance a deposition is to be taken

1 shall give to every other party reasonable written notice of  
2 the time and place for taking the deposition.

3 (c) Depositions may be taken before and authenticated by  
4 any military or civil officer authorized by the laws of this  
5 State or by the laws of the place where the deposition is taken  
6 to administer oaths.

7 (d) A duly authenticated deposition taken upon reasonable  
8 notice to the other parties, so far as otherwise admissible  
9 under the rules of evidence, may be read in evidence or, in the  
10 case of audiotape, videotape, digital image or file, or similar  
11 material, may be played in evidence before any military court,  
12 if it appears:

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

16 (2) that the witness by reason of death, age, sickness,  
17 bodily infirmity, imprisonment, military necessity,  
18 non-amenability to process, or other reasonable cause, is  
19 unable or refuses to appear and testify in person at the  
20 place of trial or hearing; or

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

23 Section 50. Article 50. Admissibility of records of courts  
24 of inquiry.

25 (a) In any case not extending to the dismissal of a

1 commissioned officer, the sworn testimony, contained in the  
2 duly authenticated record of proceedings of a court of inquiry,  
3 of a person whose oral testimony cannot be obtained, may, if  
4 otherwise admissible under the rules of evidence, be read in  
5 evidence by any party before a court-martial if the accused was  
6 a party before the court of inquiry and if the same issue was  
7 involved or if the accused consents to the introduction of such  
8 evidence.

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

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

14 Section 50a. Article 50a. Defense of lack of mental  
15 responsibility.

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

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

24 (c) Whenever lack of mental responsibility of the accused  
25 with respect to an offense is properly at issue, the military

1 judge shall instruct the members of the court as to the defense  
2 of lack of mental responsibility under this Article and charge  
3 them to find the accused:

4 (1) guilty;

5 (2) not guilty; or

6 (3) not guilty only by reason of lack of mental  
7 responsibility.

8 (d) Subsection (c) does not apply to a court-martial  
9 composed of a military judge only. In the case of a  
10 court-martial composed of a military judge only, whenever lack  
11 of mental responsibility of the accused with respect to an  
12 offense is properly at issue, the military judge shall find the  
13 accused:

14 (1) guilty;

15 (2) not guilty; or

16 (3) not guilty only by reason of lack of mental  
17 responsibility.

18 (e) Notwithstanding the provisions of Article 52 of this  
19 Code, the accused shall be found not guilty only by reason of  
20 lack of mental responsibility if:

21 (1) a majority of the members of the court-martial  
22 present at the time the vote is taken determines that the  
23 defense of lack of mental responsibility has been  
24 established; or

25 (2) in the case of a court-martial composed of a  
26 military judge only, the military judge determines that the

1 defense of lack of mental responsibility has been  
2 established.

3 Section 51. Article 51. Voting and rulings.

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

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

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

25 (1) that the accused must be presumed to be innocent



1           until his guilt is established by legal and competent  
2           evidence beyond reasonable doubt;

3           (2) that in the case being considered, if there is a  
4           reasonable doubt as to the guilt of the accused, the doubt  
5           must be resolved in favor of the accused and the accused  
6           must be acquitted;

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

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

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

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

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

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

12           Section 53. Article 53. Court to announce action. A  
13 court-martial shall announce its findings and sentence to the  
14 parties as soon as determined.

15           Section 54. Article 54. Record of trial.

16           (a) Each general and special court-martial shall keep a  
17 separate record of the proceedings in each case brought before  
18 it, and the record shall be authenticated by the signature of  
19 the military judge. If the record cannot be authenticated by  
20 the military judge by reason of his death, disability, or  
21 absence, it shall be authenticated by the signature of the  
22 trial counsel or by that of a member, if the trial counsel is  
23 unable to authenticate it by reason of his death, disability,  
24 or absence. In a court-martial consisting of only a military

1 judge, the record shall be authenticated by the court reporter  
2 under the same conditions which would impose such a duty on a  
3 member under this subsection.

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

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

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

12 PART VIII. SENTENCES

13 Section 55. Article 55. Cruel and unusual punishments  
14 prohibited. Punishment by flogging, or by branding, marking, or  
15 tattooing on the body, or any other cruel or unusual punishment  
16 may not be adjudged by a court-martial or inflicted upon any  
17 person subject to this Code. The use of irons, single or  
18 double, except for the purpose of safe custody, is prohibited.

19 Section 56. Article 56. Maximum limits.

20 (a) The punishment which a court-martial may direct for an  
21 offense may not exceed such limits as prescribed by this Code,  
22 but in no instance may a sentence exceed more than 10 years for  
23 a military offense, nor shall a sentence of death be adjudged.

1 A conviction by general court-martial of any military offense  
2 for which an accused may receive a sentence of confinement for  
3 more than one year is a felony offense. All other military  
4 offenses are misdemeanors.

5 (b) The limits of punishment for violations of the punitive  
6 Articles prescribed herein shall be equal to or lesser of the  
7 sentences prescribed by the Manual for Courts-Martial of the  
8 United States in effect on the effective date of this Code, and  
9 in no instance shall any punishment exceed that authorized by  
10 this Code.

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

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

13 (a) Whenever a sentence of a court-martial as lawfully  
14 adjudged and approved includes a forfeiture of pay or  
15 allowances in addition to confinement not suspended, the  
16 forfeiture may apply to pay or allowances becoming due on or  
17 after the date the sentence is approved by the convening  
18 authority. No forfeiture may extend to any pay or allowances  
19 accrued before that date.

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

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

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

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

16           (b) (1) In any case in which a court-martial sentences an  
17 accused referred to in paragraph (2) to confinement, the  
18 convening authority may defer the service of the sentence to  
19 confinement, without the consent of the accused, until after  
20 the accused has been permanently released to the State military  
21 forces by a state, the United States, or a foreign country  
22 referred to in that paragraph.

23           (2) Paragraph (1) applies to a person subject to this Code  
24 who:

25           (A) while in the custody of a state, the United States,

1 or a foreign country is temporarily returned by that state,  
2 the United States, or a foreign country to the State  
3 military forces for trial by court-martial; and

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

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

10 (c) In any case in which a court-martial sentences an  
11 accused to confinement and the sentence to confinement has been  
12 ordered executed, but in which review of the case under Article  
13 67a of this Code is pending, the Adjutant General may defer  
14 further service of the sentence to confinement while that  
15 review is pending.

16 Section 58. Article 58. Execution of confinement.

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

24 (b) The omission of hard labor as a sentence authorized  
25 under this Code does not deprive the State confinement facility

1 from employing it, if it otherwise is within the authority of  
2 that facility to do so.

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

6 Section 58a. Article 58a. Sentences: reduction in enlisted  
7 grade upon approval.

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

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

12 (2) confinement;

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

15 (b) If the sentence of a member who is reduced in pay grade  
16 under subsection (a) is set aside or disapproved, or, as  
17 finally approved, does not include any punishment named in  
18 paragraphs (1) or (2) of subsection (a), the rights and  
19 privileges of which the person was deprived because of that  
20 reduction shall be restored, including pay and allowances.

21 Section 58b. Article 58b. Sentences: forfeiture of pay and  
22 allowances during confinement.

23 (a) (1) A court-martial sentence described in paragraph (2)  
24 shall result in the forfeiture of pay, or of pay and

1 allowances, due that member during any period of confinement or  
2 parole. The forfeiture pursuant to this Article shall take  
3 effect on the date determined under subsection (a) of Article  
4 57 of this Code and may be deferred as provided by that  
5 Article. The pay and allowances forfeited, in the case of a  
6 general court-martial, shall be all pay and allowances due that  
7 member during such period and, in the case of a special  
8 court-martial, shall be two-thirds of all pay due that member  
9 during such period.

10 (2) A sentence covered by this Article is any sentence that  
11 includes:

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

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

15 (b) In a case involving an accused who has dependents, the  
16 convening authority or other person acting under Article 60 of  
17 this Code may waive any or all of the forfeitures of pay and  
18 allowances required by subsection (a) for a period not to  
19 exceed 6 months. Any amount of pay or allowances that, except  
20 for a waiver under this subsection, would be forfeited shall be  
21 paid, as the convening authority or other person taking action  
22 directs, to the dependents of the accused.

23 (c) If the sentence of a member who forfeits pay and  
24 allowances under subsection (a) is set aside or disapproved or,  
25 as finally approved, does not provide for a punishment referred  
26 to in paragraph (2) of subsection (a), the member shall be paid



1 the pay and allowances which the member would have been paid,  
2 except for the forfeiture, for the period during which the  
3 forfeiture was in effect.

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

5 Section 59. Article 59. Error of law; lesser included  
6 offense.

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

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

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

15 (a) The findings and sentence of a court-martial shall be  
16 reported promptly to the convening authority after the  
17 announcement of the sentence.

18 (b) (1) The accused may submit to the convening authority  
19 matters for consideration by the convening authority with  
20 respect to the findings and the sentence. Any such submission  
21 shall be in writing. Such a submission shall be made within 30  
22 days after the accused has been given an authenticated record  
23 of trial and, if applicable, the recommendation of a judge

1 advocate under subsection (d).

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

7 (3) The accused may waive the right to make a submission to  
8 the convening authority under paragraph (1). Such a waiver must  
9 be made in writing and may not be revoked. For the purposes of  
10 paragraph (2) of subsection (c), the time within which the  
11 accused may make a submission under this subsection (b) shall  
12 be deemed to have expired upon the submission of such a waiver  
13 to the convening authority.

14 (c)(1) The authority under this Article to modify the  
15 findings and sentence of a court-martial is a matter of command  
16 prerogative involving the sole discretion of the convening  
17 authority. If it is impractical for the convening authority to  
18 act, the convening authority shall forward the case to a person  
19 exercising general court-martial jurisdiction who may take  
20 action under this Article.

21 (2) Action on the sentence of a court-martial shall be  
22 taken by the convening authority or by another person  
23 authorized to act under this Article. Such action may be taken  
24 only after consideration of any matters submitted by the  
25 accused under subsection (b) or after the time for submitting  
26 such matters expires, whichever is earlier. The convening

1 authority or other person taking such action, in that person's  
2 sole discretion may approve, disapprove, commute, or suspend  
3 the sentence in whole or in part.

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

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

10 (B) change a finding of guilty to a charge or  
11 specification to a finding of guilty to an offense that is  
12 a lesser included offense of the offense stated in the  
13 charge or specification.

14 (d) Before acting under this Article on any general or  
15 special court-martial case in which there is a finding of  
16 guilt, the convening authority or other person taking action  
17 under this Article must obtain the written concurrence of the  
18 State Judge Advocate by means of legal review. The convening  
19 authority or other person taking action under this Article  
20 shall refer the record of trial to the judge advocate, and the  
21 judge advocate shall use such record in the preparation of the  
22 review. The review of the judge advocate shall include such  
23 matters as may be prescribed by regulation and shall be served  
24 on the accused, who may submit any matter in response under  
25 subsection (b). Failure to object in the response to the legal  
26 review or to any matter attached to the recommendation waives

1 the right to object thereto.

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

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

11 (A) reconsider a finding of not guilty of any  
12 specification or a ruling which amounts to a finding of not  
13 guilty;

14 (B) reconsider a finding of not guilty of any charge,  
15 unless there has been a finding of guilty under a  
16 specification laid under that charge, which sufficiently  
17 alleges a violation of some Article of this Code; or

18 (C) increase the severity of the sentence.

19 (3) A rehearing may be ordered by the convening authority  
20 or other person taking action under this Article if that person  
21 disapproves the findings and sentence and states the reasons  
22 for disapproval of the findings. If such person disapproves the  
23 findings and sentence and does not order a rehearing, that  
24 person shall dismiss the charges. A rehearing as to the  
25 findings may not be ordered where there is a lack of sufficient  
26 evidence in the record to support the findings. A rehearing as

1 to the sentence may be ordered if the convening authority or  
2 other person taking action under this subsection disapproves  
3 the sentence.

4 Section 61. Article 61. Withdrawal of appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

25          (c) Any period of delay resulting from an appeal under this  
26          Article shall be excluded in deciding any issue regarding

1 denial of a speedy trial unless an appropriate authority  
2 determines that the appeal was filed solely for the purpose of  
3 delay with the knowledge that it was totally frivolous and  
4 without merit.

5 Section 63. Article 63. Rehearings. Each rehearing under  
6 this Code shall take place before a court-martial composed of  
7 members not members of the court-martial which first heard the  
8 case. Upon a rehearing the accused may not be tried for any  
9 offense of which he was found not guilty by the first  
10 court-martial, and no sentence in excess of or more severe than  
11 the original sentence may be approved, unless the sentence is  
12 based upon a finding of guilty of an offense not considered  
13 upon the merits in the original proceedings, or unless the  
14 sentence prescribed for the offense is mandatory. If the  
15 sentence approved after the first court-martial was in  
16 accordance with a pretrial agreement and the accused at the  
17 rehearing changes a plea with respect to the charges or  
18 specifications upon which the pretrial agreement was based, or  
19 otherwise does not comply with the pretrial agreement, the  
20 approved sentence as to those charges or specifications may  
21 include any punishment not in excess of that lawfully adjudged  
22 at the first court-martial.

23 Section 64. Article 64. Review by the senior force judge  
24 advocate.

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

10           (1) Conclusions as to whether:

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

13                 (B) the charge and specification stated an  
14 offense; and

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

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

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

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

26                 (1) the judge advocate who reviewed the case recommends



1 corrective action;

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

6 (3) such action is otherwise required by regulations of  
7 the Adjutant General.

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

9 (A) disapprove or approve the findings or sentence, in  
10 whole or in part;

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

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

16 (D) dismiss the charges.

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

20 (3) If the opinion of the senior force judge advocate, or  
21 designee, in the senior force judge advocate's review under  
22 subsection (a) is that corrective action is required as a  
23 matter of law and if the Adjutant General does not take action  
24 that is at least as favorable to the accused as that  
25 recommended by the judge advocate, the record of trial and  
26 action thereon shall be sent to the Governor for review and

1 action as deemed appropriate.

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

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

15 (1) when subject matter jurisdiction is found to be  
16 lacking, void the court-martial ab initio, with or without  
17 prejudice to the Government, as the Adjutant General deems  
18 appropriate; or

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

22 Section 65. Article 65. Disposition of records after review  
23 by the convening authority. Except as otherwise required by  
24 this Code, all records of trial and related documents shall be  
25 transmitted and disposed of as prescribed by regulation and

1 provided by law.

2 Section 66. Article 66. (Reserved).

3 Section 67. Article 67. (Reserved).

4 Section 67a. Article 67a. Review by State Appellate  
5 Authority. Decisions of a court-martial are from a court with  
6 jurisdiction to issue misdemeanor and felony convictions. All  
7 appeals from final decisions of a court-martial shall be to the  
8 Illinois Appellate Court in the same manner as are final  
9 decisions of a circuit court in accordance with the Appellate  
10 Court Act. All such appeals shall be to the Illinois Appellate  
11 Court for the Fourth District. No appeal from a judgment  
12 entered upon a plea of guilty shall be taken except in  
13 accordance with applicable law and Supreme Court Rules. Unless  
14 waived, an accused may appeal as a matter of right a finding of  
15 guilt resulting in an approved sentence of one-year confinement  
16 or more, or in a dismissal for a commissioned officer or  
17 warrant officer, a dishonorable discharge, or a bad-conduct  
18 discharge. The appellate rights and procedures to be followed  
19 shall be those provided by applicable law and Supreme Court  
20 Rules for criminal appeals.

21 Section 68. Article 68. (Reserved).

1 Section 69. Article 69. (Reserved).

2 Section 70. Article 70. Appellate counsel.

3 (a) The Attorney General shall act as appellate government  
4 counsel to represent the State in the review or appeal of cases  
5 specified in Article 67a of this Code and before any federal  
6 court. The Attorney General may appoint a judge advocate  
7 nominated by the senior force judge advocate as a Special  
8 Assistant Attorney General to act as appellate government  
9 counsel to represent the State. Such appointment as a Special  
10 Assistant Attorney General shall be at the discretion of the  
11 Attorney General.

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

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

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

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

24 Section 71. Article 71. Execution of sentence; suspension

1 of sentence.

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

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

24 Section 72. Article 72. Vacation of suspension.

25 (a) Before the vacation of the suspension of a special

1 court-martial sentence, which as approved includes a  
2 bad-conduct discharge, or of any general court-martial  
3 sentence, the officer having special court-martial  
4 jurisdiction over the probationer shall hold a hearing on an  
5 alleged violation of probation. The probationer shall be  
6 represented at the hearing by military counsel if the  
7 probationer so desires.

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

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

19 Section 73. Article 73. Petition for a new trial. At any  
20 time within 2 years after approval by the convening authority  
21 of a court-martial sentence the accused may petition the  
22 Adjutant General for a new trial on the grounds of newly  
23 discovered evidence or fraud on the court-martial.

24 Section 74. Article 74. Remission and suspension.

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

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

10           Section 75. Article 75. Restoration.

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

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

23           (c) If a previously executed sentence of dismissal is not  
24 imposed on a new trial, the Governor may substitute therefor a  
25 form of discharge authorized for administrative issue, and the

1 commissioned officer dismissed by that sentence may be  
2 reappointed by the Governor alone to such commissioned grade  
3 and with such rank as in the opinion of the Governor that  
4 former officer would have attained had he not been dismissed.  
5 The reappointment of such a former officer shall be without  
6 regard to the existence of a vacancy and shall affect the  
7 promotion status of other officers only insofar as the Governor  
8 may direct. All time between the dismissal and the  
9 reappointment shall be considered as actual service for all  
10 purposes, including the right to pay and allowances, as  
11 permitted by applicable financial management regulations.

12 Section 76. Article 76. Finality of proceedings, findings,  
13 and sentences. The appellate review of records of trial  
14 provided by this Code, the proceedings, findings, and sentences  
15 of courts-martial as approved, reviewed, or affirmed as  
16 required by this Code, and all dismissals and discharges  
17 carried into execution under sentences by courts-martial  
18 following approval, review, or affirmation as required by this  
19 Code, are final and conclusive. Orders publishing the  
20 proceedings of courts-martial and all action taken pursuant to  
21 those proceedings are binding upon all departments, courts,  
22 agencies, and officers of the United States and the several  
23 states, subject only to action upon a petition for a new trial  
24 as provided in Article 73 of this Code and to action under  
25 Article 74 of this Code.



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

13   PART X. PUNITIVE ARTICLES

14           Section 77. Article 77. Principals. Any person subject to  
15 this Code who:

16                   (1) commits an offense punishable by this Code, or  
17                   aids, abets, counsels, commands, or procures its  
18                   commission; or

19                   (2) causes an act to be done which if directly  
20                   performed by him would be punishable by this Code;  
21 is a principal.

22           Section 78. Article 78. Accessory after the fact. Any

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

6 Section 79. Article 79. Conviction of lesser included  
7 offense. An accused may be found guilty of an offense  
8 necessarily included in the offense charged or of an attempt to  
9 commit either the offense charged or an offense necessarily  
10 included therein.

11 Section 80. Article 80. Attempts.

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

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

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

23 Section 81. Article 81. Conspiracy. Any person subject to

1 this Code who conspires with any other person to commit an  
2 offense under this Code shall, if one or more of the  
3 conspirators does an act to effect the object of the  
4 conspiracy, be punished as a court-martial may direct.

5 Section 82. Article 82. Solicitation.

6 (a) Any person subject to this Code who solicits or advises  
7 another or others to desert in violation of Article 85 of this  
8 Code or mutiny in violation of Article 94 of this Code shall,  
9 if the offense solicited or advised is attempted or committed,  
10 be punished with the punishment provided for the commission of  
11 the offense, but, if the offense solicited or advised is not  
12 committed or attempted, the person shall be punished as a  
13 court-martial may direct.

14 (b) Any person subject to this Code who solicits or advises  
15 another or others to commit an act of misbehavior before the  
16 enemy in violation of Article 99 of this Code or sedition in  
17 violation of Article 94 of this Code shall, if the offense  
18 solicited or advised is committed, be punished with the  
19 punishment provided for the commission of the offense, but, if  
20 the offense solicited or advised is not committed, the person  
21 shall be punished as a court-martial may direct.

22 Section 83. Article 83. Fraudulent enlistment,  
23 appointment, or separation. Any person who:

24 (1) procures his own enlistment or appointment in the

1 State military forces by knowingly false representation or  
2 deliberate concealment as to his qualifications for that  
3 enlistment or appointment and receives pay or allowances  
4 thereunder; or

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

9 Section 84. Article 84. Unlawful enlistment, appointment,  
10 or separation. Any person subject to this Code who effects an  
11 enlistment or appointment in or a separation from the State  
12 military forces of any person who is known to him to be  
13 ineligible for that enlistment, appointment, or separation  
14 because it is prohibited by law, regulation, or order shall be  
15 punished as a court-martial may direct.

16 Section 85. Article 85. Desertion.

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

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

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

24 (3) without being regularly separated from one of the

1 State military forces enlists or accepts an appointment in  
2 the same or another one of the State military forces, or in  
3 one of the armed forces of the United States, without fully  
4 disclosing the fact that he has not been regularly  
5 separated, or enters any foreign armed service except when  
6 authorized by the United States;  
7 is guilty of desertion.

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

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

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

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

23 (2) goes from that place; or

24 (3) absents himself or remains absent from his unit,  
25 organization, or place of duty at which he is required to

1           be at the time prescribed;  
2 shall be punished as a court-martial may direct.

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

8           Section 88. Article 88. Contempt toward officials. Any  
9 commissioned officer who uses contemptuous words against the  
10 President, the Vice President, Congress, the Secretary of  
11 Defense, the Secretary of a military department, the Secretary  
12 of Homeland Security, or the Governor or General Assembly shall  
13 be punished as a court-martial may direct.

14           Section 89. Article 89. Disrespect toward superior  
15 commissioned officer. Any person subject to this Code who  
16 behaves with disrespect toward his superior commissioned  
17 officer shall be punished as a court-martial may direct.

18           Section 90. Article 90. Assaulting or willfully disobeying  
19 superior commissioned officer. Any person subject to this Code  
20 who:

21                   (1) strikes his superior commissioned officer or draws  
22                   or lifts up any weapon or offers any violence against him

1 while he is in the execution of his office; or  
2 (2) willfully disobeys a lawful command of his superior  
3 commissioned officer;  
4 shall be punished, if the offense is committed in time of war,  
5 by confinement of not more than 10 years or such other  
6 punishment as a court-martial may direct, and if the offense is  
7 committed at any other time, by such punishment as a  
8 court-martial may direct.

9 Section 91. Article 91. Insubordinate conduct toward  
10 warrant officer, noncommissioned officer, or petty officer.  
11 Any warrant officer or enlisted member who:

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

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

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

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

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

24 (1) violates or fails to obey any lawful general order

1 or regulation;

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

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

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

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

11 Section 94. Article 94. Mutiny or sedition.

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

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

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

21 (3) fails to do his utmost to prevent and suppress a  
22 mutiny or sedition being committed in his presence, or  
23 fails to take all reasonable means to inform his superior  
24 commissioned officer or commanding officer of a mutiny or



1           sedition which he knows or has reason to believe is taking  
2           place, is guilty of a failure to suppress or report a  
3           mutiny or sedition.

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

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

9                   (1) resists apprehension;

10                   (2) flees from apprehension;

11                   (3) breaks arrest; or

12                   (4) escapes from custody or confinement;

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

14           Section 96. Article 96. Releasing prisoner without proper  
15           authority. Any person subject to this Code who, without proper  
16           authority, releases any prisoner committed to his charge, or  
17           who through neglect or design suffers any such prisoner to  
18           escape, shall be punished as a court-martial may direct,  
19           whether or not the prisoner was committed in strict compliance  
20           with law.

21           Section 97. Article 97. Unlawful detention. Any person  
22           subject to this Code who, except as provided by law or  
23           regulation, apprehends, arrests, or confines any person shall

1 be punished as a court-martial may direct.

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

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

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

11 Section 99. Article 99. Misbehavior before the enemy. Any  
12 person subject to this Code who before or in the presence of  
13 the enemy:

14 (1) runs away;

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

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

21 (4) casts away his arms or ammunition;

22 (5) is guilty of cowardly conduct;

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

24 (7) causes false alarms in any command, unit, or place

1 under control of the armed forces of the United States or  
2 the State military forces;

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

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

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

13 Section 100. Article 100. Subordinate compelling  
14 surrender. Any person subject to this Code who compels or  
15 attempts to compel the commander of any of the State military  
16 forces of this State, or of any other state, place, vessel,  
17 aircraft, or other military property, or of any body of members  
18 of the armed forces, to give it up to an enemy or to abandon it,  
19 or who strikes the colors or flag to an enemy without proper  
20 authority, shall be punished as a court-martial may direct.

21 Section 101. Article 101. Improper use of countersign. Any  
22 person subject to this Code who in time of war discloses the  
23 parole or countersign to any person not entitled to receive it  
24 or who gives to another, who is entitled to receive and use the

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

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

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

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

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

14 (1) fails to carry out the duties prescribed in  
15 subsection (a);

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

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

23 Section 104. Article 104. Aiding the enemy. Any person

1 subject to this Code who:

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

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

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

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

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

17 (2) while in a position of authority over such persons  
18 maltreats them without justifiable cause;

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

20 Section 106. Article 106. (Reserved).

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

22 Section 107. Article 107. False official statements. Any

1 person subject to this Code who, with intent to deceive, signs  
2 any false record, return, regulation, order, or other official  
3 document made in the line of duty, knowing it to be false, or  
4 makes any other false official statement made in the line of  
5 duty, knowing it to be false, shall be punished as a  
6 court-martial may direct.

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

10 (1) sells or otherwise disposes of;

11 (2) willfully or through neglect damages, destroys, or  
12 loses; or

13 (3) willfully or through neglect suffers to be lost,  
14 damaged, destroyed, sold, or wrongfully disposed of;

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

17 Section 109. Article 109. Property other than military  
18 property: waste, spoilage, or destruction. Any person subject  
19 to this Code who willfully or recklessly wastes, spoils, or  
20 otherwise willfully and wrongfully destroys or damages any  
21 property other than military property of the United States or  
22 of any state shall be punished as a court-martial may direct.

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

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

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

9           Section 111. Article 111. (Reserved).

10           Section 112. Article 112. Drunk on duty. Any person subject  
11 to this Code other than a sentinel or look-out, who is found  
12 drunk on duty, shall be punished as a court-martial may direct.

13           Section 112a. Article 112a. Wrongful use, possession,  
14 etc., of controlled substances.

15           (a) Any person subject to this Code who wrongfully uses,  
16 possesses, manufactures, distributes, imports into the customs  
17 territory of the United States, exports from the United States,  
18 or introduces into an installation, vessel, vehicle, or  
19 aircraft used by or under the control of the armed forces of  
20 the United States or of any state military forces a substance  
21 described in subsection (b) shall be punished as a  
22 court-martial may direct.

23           (b) The substances referred to in subsection (a) are the

1 following:

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

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

11 (3) Any other substance not specified in paragraph (1)  
12 or contained on a list prescribed by the President under  
13 paragraph (2) that is listed in schedules I through V of  
14 Article 202 of the Controlled Substances Act (21 U.S.C.  
15 812).

16 Section 113. Article 113. Misbehavior of sentinel. Any  
17 sentinel or look-out who is found drunk or sleeping upon his  
18 post or leaves it before being regularly relieved shall be  
19 punished, if the offense is committed in time of war, by  
20 confinement of not more than 10 years or other punishment as a  
21 court-martial may direct, but if the offense is committed at  
22 any other time, by such punishment as a court-martial may  
23 direct.

24 Section 114. Article 114. Dueling. Any person subject to



1 this Code who fights or promotes, or is concerned in or  
2 connives at fighting a duel, or who, having knowledge of a  
3 challenge sent or about to be sent, fails to report the fact  
4 promptly to the proper authority, shall be punished as a  
5 court-martial may direct.

6 Section 115. Article 115. Malingering. Any person subject  
7 to this Code who for the purpose of avoiding work, duty, or  
8 service:

9 (1) feigns illness, physical disablement, mental  
10 lapse, or derangement; or

11 (2) intentionally inflicts self-injury;  
12 shall be punished as a court-martial may direct.

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

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

21 Section 118. Article 118. (Reserved).

1 Section 119. Article 119. (Reserved).

2 Section 120. Article 120. (Reserved).

3 Section 121. Article 121. (Reserved).

4 Section 122. Article 122. (Reserved).

5 Section 123. Article 123. (Reserved).

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

7 Section 124. Article 124. (Reserved).

8 Section 125. Article 125. (Reserved).

9 Section 126. Article 126. (Reserved).

10 Section 127. Article 127. (Reserved).

11 Section 128. Article 128. (Reserved).

12 Section 129. Article 129. (Reserved).

13 Section 130. Article 130. (Reserved).

1 Section 131. Article 131. (Reserved).

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

3 Any person subject to this Code:

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

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

7 (B) presents to any person in the civil or military  
8 service thereof, for approval or payment, any claim  
9 against the United States, this State, or any officer  
10 thereof;

11 (2) who, for the purpose of obtaining the approval,  
12 allowance, or payment of any claim against the United  
13 States, this State, or any officer thereof:

14 (A) makes or uses any writing or other paper  
15 knowing it to contain any false or fraudulent  
16 statements;

17 (B) makes any oath, affirmation, or certification  
18 to any fact or to any writing or other paper knowing  
19 the oath, affirmation, or certification to be false; or

20 (C) forges or counterfeits any signature upon any  
21 writing or other paper, or uses any such signature  
22 knowing it to be forged or counterfeited;

23 (3) who, having charge, possession, custody, or  
24 control of any money, or other property of the United  
25 States or this State, furnished or intended for the armed

1 forces of the United States or the State military forces,  
2 knowingly delivers to any person having authority to  
3 receive it, any amount thereof less than that for which he  
4 receives a certificate or receipt; or

5 (4) who, being authorized to make or deliver any paper  
6 certifying the receipt of any property of the United States  
7 or this State, furnished or intended for the armed forces  
8 of the United States or the State military forces, makes or  
9 delivers to any person such writing without having full  
10 knowledge of the truth of the statements therein contained  
11 and with intent to defraud the United States or this State;  
12 shall, upon conviction, be punished as a court-martial may  
13 direct.

14 Section 133. Article 133. Conduct unbecoming an officer and  
15 a gentleman. Any commissioned officer, cadet, candidate, or  
16 midshipman who is convicted of conduct unbecoming an officer  
17 and a gentleman shall be punished as a court-martial may  
18 direct.

19 Section 134. Article 134. General Article. Though not  
20 specifically mentioned in this Code, all disorders and neglects  
21 to the prejudice of good order and discipline in the State  
22 military forces and all conduct of a nature to bring discredit  
23 upon the State military forces shall be taken cognizance of by  
24 a court-martial and punished at the discretion of a military

1 court. However, where a crime constitutes an offense that  
2 violates both this Code and the criminal laws of the state  
3 where the offense occurs or criminal laws of the United States,  
4 jurisdiction of the military court must be determined in  
5 accordance with subsection (b) of Article 2 of this Code.

6 PART XI. MISCELLANEOUS

7 Section 135. Article 135. Courts of inquiry.

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

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

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

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

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

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

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

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

18 Section 136. Article 136. Authority to administer oaths and  
19 to act as notary.

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

23 (1) All judge advocates.

24 (2) All summary courts-martial.

25 (3) All adjutants, assistant adjutants, acting

1           adjutants, and personnel adjutants.

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

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

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

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

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

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

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

13          (5) All recruiting officers.

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

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

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

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

24          (2) Such Articles shall be explained again:

25          (A) after the member has completed basic or recruit

1 training; and

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

3 (3) This subsection applies with respect to Articles 2, 3,  
4 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137  
5 through 139 of this Code.

6 (b) The text of this Code and of the regulations or orders  
7 prescribed under this Code shall be made available to a member  
8 of the State military forces, upon request by the member, for  
9 the member's personal examination, but this Code is effective  
10 and binding upon the State military forces upon the effective  
11 date noted in Article 999, and said regulations or orders are  
12 effective upon proper publishing of same, pursuant to other law  
13 or regulation.

14 Section 138. Article 138. Complaints of wrongs. Any member  
15 of the State military forces who believes himself wronged by a  
16 commanding officer, and who, upon due application to that  
17 commanding officer, is refused redress, may complain to any  
18 superior commissioned officer, who shall forward the complaint  
19 to the officer exercising general court-martial jurisdiction  
20 over the officer against whom it is made. The officer  
21 exercising general court-martial jurisdiction shall examine  
22 into the complaint and take proper measures for redressing the  
23 wrong complained of; and shall, as soon as possible, send to  
24 the Adjutant General a true statement of that complaint, with  
25 the proceedings had thereon.



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

2 (a) Whenever complaint is made to any commanding officer  
3 that willful damage has been done to the property of any person  
4 or that the person's property has been wrongfully taken by  
5 members of the State military forces, that person may, under  
6 such regulations prescribed, convene a board to investigate the  
7 complaint. The board shall consist of from one to 3  
8 commissioned officers and, for the purpose of that  
9 investigation, it has power to summon witnesses and examine  
10 them upon oath, to receive depositions or other documentary  
11 evidence, and to assess the damages sustained against the  
12 responsible parties. The assessment of damages made by the  
13 board is subject to the approval of the commanding officer, and  
14 in the amount approved by that officer shall be charged against  
15 the pay of the offenders. The order of the commanding officer  
16 directing charges herein authorized is conclusive on any  
17 disbursing officer for payment to the injured parties of the  
18 damages so assessed and approved.

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

1           Section 140. Article 140. Delegation by the Governor. The  
2 Governor may delegate any authority vested in the Governor  
3 under this Code, and provide for the subdelegation of any such  
4 authority, except the power given the Governor by Article 22 of  
5 this Code.

6           Section 141. Article 141. Payment of fees, costs, and  
7 expenses.

8           (a) The fees and authorized travel expenses of all  
9 witnesses, experts, victims, court reporters, and  
10 interpreters, fees for the service of process, the costs of  
11 collection, apprehension, detention and confinement, and all  
12 other necessary expenses of prosecution and the administration  
13 of military justice, not otherwise payable by any other source,  
14 shall be paid out of the State Military Justice Fund.

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

22           Section 142. Article 142. Payment of fines and disposition  
23 thereof.

1 (a) Fines imposed by a military court or through imposition  
2 of non-judicial punishment may be paid to this State and  
3 delivered to the court or imposing officer, or to a person  
4 executing their process. Fines may be collected in the  
5 following manner:

6 (1) by cash or money order;

7 (2) by retention of any pay or allowances due or to  
8 become due the person fined from any state or the United  
9 States; or

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

13 (b) Any sum so received or retained shall be deposited into  
14 the State Military Justice Fund or to whomever the court so  
15 directs.

16 Section 143. Article 143. Uniformity of interpretation.  
17 This Code shall be so construed as to effectuate its general  
18 purpose to make it in conformity, so far as practical, with the  
19 Uniform Code of Military Justice, Chapter 47 of Title 10,  
20 United States Code.

21 Section 144. Article 144. Immunity for action of military  
22 courts. All persons acting under the provisions of this Code,  
23 whether as a member of the military or as a civilian, shall be  
24 immune from any personal liability for any of the acts or

1 omissions which they did or failed to do as part of their  
2 duties under this Code.

3 Section 145. Article 145. Severability. The provisions of  
4 this Code are hereby declared to be severable and if any  
5 provision of this Code or the application of such provision to  
6 any person or circumstance is declared invalid for any reason,  
7 such declaration shall not affect the validity of the remaining  
8 portions of this Code.

9 Section 146. Article 146. (Reserved).

10 Section 147. Article 147. Time of taking effect. (See  
11 Section 999 for effective date.)

12 Section 148. Article 148. Supersedes existing State  
13 military justice codes. On the effective date of this Code,  
14 this law supersedes all existing statutes, ordinances,  
15 directives, rules, regulations, orders and other laws in this  
16 State covered by the subject matter of this Code.

17 Section 149. Article 149. Civilian crimes assimilated. Any  
18 person subject to this Code who commits an offense not  
19 enumerated in this Code, but which is an offense under the laws  
20 of the United States, the laws of this State, or the laws of  
21 another state, U.S. Commonwealth, Territory, Possession, or

1 District, while said person is subject to the jurisdiction of  
2 this Code under Article 2, is guilty of any act or omission  
3 which, although not made punishable by any enactment of this  
4 State, is punishable if committed or omitted within the  
5 jurisdiction of the laws of the United States, the laws of this  
6 State, or the laws of another state, Territory, Possession, or  
7 District, and said offense may be charged as an offense under  
8 Article 134 of this Code pursuant to the substantive law of the  
9 jurisdiction where the offense was committed, in force at the  
10 time of said offense, and shall be punished pursuant to said  
11 other law, subject only to the maximum punishment prescribed by  
12 this Code.

13 Section 150. The Illinois Administrative Procedure Act is  
14 amended by changing Section 5-45 as follows:

15 (5 ILCS 100/5-45) (from Ch. 127, par. 1005-45)

16 Sec. 5-45. Emergency rulemaking.

17 (a) "Emergency" means the existence of any situation that  
18 any agency finds reasonably constitutes a threat to the public  
19 interest, safety, or welfare.

20 (b) If any agency finds that an emergency exists that  
21 requires adoption of a rule upon fewer days than is required by  
22 Section 5-40 and states in writing its reasons for that  
23 finding, the agency may adopt an emergency rule without prior  
24 notice or hearing upon filing a notice of emergency rulemaking

1 with the Secretary of State under Section 5-70. The notice  
2 shall include the text of the emergency rule and shall be  
3 published in the Illinois Register. Consent orders or other  
4 court orders adopting settlements negotiated by an agency may  
5 be adopted under this Section. Subject to applicable  
6 constitutional or statutory provisions, an emergency rule  
7 becomes effective immediately upon filing under Section 5-65 or  
8 at a stated date less than 10 days thereafter. The agency's  
9 finding and a statement of the specific reasons for the finding  
10 shall be filed with the rule. The agency shall take reasonable  
11 and appropriate measures to make emergency rules known to the  
12 persons who may be affected by them.

13 (c) An emergency rule may be effective for a period of not  
14 longer than 150 days, but the agency's authority to adopt an  
15 identical rule under Section 5-40 is not precluded. No  
16 emergency rule may be adopted more than once in any 24 month  
17 period, except that this limitation on the number of emergency  
18 rules that may be adopted in a 24 month period does not apply  
19 to (i) emergency rules that make additions to and deletions  
20 from the Drug Manual under Section 5-5.16 of the Illinois  
21 Public Aid Code or the generic drug formulary under Section  
22 3.14 of the Illinois Food, Drug and Cosmetic Act, (ii)  
23 emergency rules adopted by the Pollution Control Board before  
24 July 1, 1997 to implement portions of the Livestock Management  
25 Facilities Act, (iii) emergency rules adopted by the Illinois  
26 Department of Public Health under subsections (a) through (i)

1 of Section 2 of the Department of Public Health Act when  
2 necessary to protect the public's health, (iv) emergency rules  
3 adopted pursuant to subsection (n) of this Section, (v)  
4 emergency rules adopted pursuant to subsection (o) of this  
5 Section, or (vi) emergency rules adopted pursuant to subsection  
6 (c-5) of this Section. Two or more emergency rules having  
7 substantially the same purpose and effect shall be deemed to be  
8 a single rule for purposes of this Section.

9 (c-5) To facilitate the maintenance of the program of group  
10 health benefits provided to annuitants, survivors, and retired  
11 employees under the State Employees Group Insurance Act of  
12 1971, rules to alter the contributions to be paid by the State,  
13 annuitants, survivors, retired employees, or any combination  
14 of those entities, for that program of group health benefits,  
15 shall be adopted as emergency rules. The adoption of those  
16 rules shall be considered an emergency and necessary for the  
17 public interest, safety, and welfare.

18 (d) In order to provide for the expeditious and timely  
19 implementation of the State's fiscal year 1999 budget,  
20 emergency rules to implement any provision of Public Act 90-587  
21 or 90-588 or any other budget initiative for fiscal year 1999  
22 may be adopted in accordance with this Section by the agency  
23 charged with administering that provision or initiative,  
24 except that the 24-month limitation on the adoption of  
25 emergency rules and the provisions of Sections 5-115 and 5-125  
26 do not apply to rules adopted under this subsection (d). The

1 adoption of emergency rules authorized by this subsection (d)  
2 shall be deemed to be necessary for the public interest,  
3 safety, and welfare.

4 (e) In order to provide for the expeditious and timely  
5 implementation of the State's fiscal year 2000 budget,  
6 emergency rules to implement any provision of Public Act 91-24  
7 ~~this amendatory Act of the 91st General Assembly~~ or any other  
8 budget initiative for fiscal year 2000 may be adopted in  
9 accordance with this Section by the agency charged with  
10 administering that provision or initiative, except that the  
11 24-month limitation on the adoption of emergency rules and the  
12 provisions of Sections 5-115 and 5-125 do not apply to rules  
13 adopted under this subsection (e). The adoption of emergency  
14 rules authorized by this subsection (e) shall be deemed to be  
15 necessary for the public interest, safety, and welfare.

16 (f) In order to provide for the expeditious and timely  
17 implementation of the State's fiscal year 2001 budget,  
18 emergency rules to implement any provision of Public Act 91-712  
19 ~~this amendatory Act of the 91st General Assembly~~ or any other  
20 budget initiative for fiscal year 2001 may be adopted in  
21 accordance with this Section by the agency charged with  
22 administering that provision or initiative, except that the  
23 24-month limitation on the adoption of emergency rules and the  
24 provisions of Sections 5-115 and 5-125 do not apply to rules  
25 adopted under this subsection (f). The adoption of emergency  
26 rules authorized by this subsection (f) shall be deemed to be



1 necessary for the public interest, safety, and welfare.

2 (g) In order to provide for the expeditious and timely  
3 implementation of the State's fiscal year 2002 budget,  
4 emergency rules to implement any provision of Public Act 92-10  
5 ~~this amendatory Act of the 92nd General Assembly~~ or any other  
6 budget initiative for fiscal year 2002 may be adopted in  
7 accordance with this Section by the agency charged with  
8 administering that provision or initiative, except that the  
9 24-month limitation on the adoption of emergency rules and the  
10 provisions of Sections 5-115 and 5-125 do not apply to rules  
11 adopted under this subsection (g). The adoption of emergency  
12 rules authorized by this subsection (g) shall be deemed to be  
13 necessary for the public interest, safety, and welfare.

14 (h) In order to provide for the expeditious and timely  
15 implementation of the State's fiscal year 2003 budget,  
16 emergency rules to implement any provision of Public Act 92-597  
17 ~~this amendatory Act of the 92nd General Assembly~~ or any other  
18 budget initiative for fiscal year 2003 may be adopted in  
19 accordance with this Section by the agency charged with  
20 administering that provision or initiative, except that the  
21 24-month limitation on the adoption of emergency rules and the  
22 provisions of Sections 5-115 and 5-125 do not apply to rules  
23 adopted under this subsection (h). The adoption of emergency  
24 rules authorized by this subsection (h) shall be deemed to be  
25 necessary for the public interest, safety, and welfare.

26 (i) In order to provide for the expeditious and timely

1 implementation of the State's fiscal year 2004 budget,  
2 emergency rules to implement any provision of Public Act 93-20  
3 ~~this amendatory Act of the 93rd General Assembly~~ or any other  
4 budget initiative for fiscal year 2004 may be adopted in  
5 accordance with this Section by the agency charged with  
6 administering that provision or initiative, except that the  
7 24-month limitation on the adoption of emergency rules and the  
8 provisions of Sections 5-115 and 5-125 do not apply to rules  
9 adopted under this subsection (i). The adoption of emergency  
10 rules authorized by this subsection (i) shall be deemed to be  
11 necessary for the public interest, safety, and welfare.

12 (j) In order to provide for the expeditious and timely  
13 implementation of the provisions of the State's fiscal year  
14 2005 budget as provided under the Fiscal Year 2005 Budget  
15 Implementation (Human Services) Act, emergency rules to  
16 implement any provision of the Fiscal Year 2005 Budget  
17 Implementation (Human Services) Act may be adopted in  
18 accordance with this Section by the agency charged with  
19 administering that provision, except that the 24-month  
20 limitation on the adoption of emergency rules and the  
21 provisions of Sections 5-115 and 5-125 do not apply to rules  
22 adopted under this subsection (j). The Department of Public Aid  
23 may also adopt rules under this subsection (j) necessary to  
24 administer the Illinois Public Aid Code and the Children's  
25 Health Insurance Program Act. The adoption of emergency rules  
26 authorized by this subsection (j) shall be deemed to be

1 necessary for the public interest, safety, and welfare.

2 (k) In order to provide for the expeditious and timely  
3 implementation of the provisions of the State's fiscal year  
4 2006 budget, emergency rules to implement any provision of  
5 Public Act 94-48 ~~this amendatory Act of the 94th General~~  
6 ~~Assembly~~ or any other budget initiative for fiscal year 2006  
7 may be adopted in accordance with this Section by the agency  
8 charged with administering that provision or initiative,  
9 except that the 24-month limitation on the adoption of  
10 emergency rules and the provisions of Sections 5-115 and 5-125  
11 do not apply to rules adopted under this subsection (k). The  
12 Department of Healthcare and Family Services may also adopt  
13 rules under this subsection (k) necessary to administer the  
14 Illinois Public Aid Code, the Senior Citizens and Persons with  
15 Disabilities Property Tax Relief Act, the Senior Citizens and  
16 Disabled Persons Prescription Drug Discount Program Act (now  
17 the Illinois Prescription Drug Discount Program Act), and the  
18 Children's Health Insurance Program Act. The adoption of  
19 emergency rules authorized by this subsection (k) shall be  
20 deemed to be necessary for the public interest, safety, and  
21 welfare.

22 (l) In order to provide for the expeditious and timely  
23 implementation of the provisions of the State's fiscal year  
24 2007 budget, the Department of Healthcare and Family Services  
25 may adopt emergency rules during fiscal year 2007, including  
26 rules effective July 1, 2007, in accordance with this

1 subsection to the extent necessary to administer the  
2 Department's responsibilities with respect to amendments to  
3 the State plans and Illinois waivers approved by the federal  
4 Centers for Medicare and Medicaid Services necessitated by the  
5 requirements of Title XIX and Title XXI of the federal Social  
6 Security Act. The adoption of emergency rules authorized by  
7 this subsection (l) shall be deemed to be necessary for the  
8 public interest, safety, and welfare.

9 (m) In order to provide for the expeditious and timely  
10 implementation of the provisions of the State's fiscal year  
11 2008 budget, the Department of Healthcare and Family Services  
12 may adopt emergency rules during fiscal year 2008, including  
13 rules effective July 1, 2008, in accordance with this  
14 subsection to the extent necessary to administer the  
15 Department's responsibilities with respect to amendments to  
16 the State plans and Illinois waivers approved by the federal  
17 Centers for Medicare and Medicaid Services necessitated by the  
18 requirements of Title XIX and Title XXI of the federal Social  
19 Security Act. The adoption of emergency rules authorized by  
20 this subsection (m) shall be deemed to be necessary for the  
21 public interest, safety, and welfare.

22 (n) In order to provide for the expeditious and timely  
23 implementation of the provisions of the State's fiscal year  
24 2010 budget, emergency rules to implement any provision of  
25 Public Act 96-45 ~~this amendatory Act of the 96th General~~  
26 ~~Assembly~~ or any other budget initiative authorized by the 96th

1 General Assembly for fiscal year 2010 may be adopted in  
2 accordance with this Section by the agency charged with  
3 administering that provision or initiative. The adoption of  
4 emergency rules authorized by this subsection (n) shall be  
5 deemed to be necessary for the public interest, safety, and  
6 welfare. The rulemaking authority granted in this subsection  
7 (n) shall apply only to rules promulgated during Fiscal Year  
8 2010.

9 (o) In order to provide for the expeditious and timely  
10 implementation of the provisions of the State's fiscal year  
11 2011 budget, emergency rules to implement any provision of  
12 Public Act 96-958 ~~this amendatory Act of the 96th General~~  
13 ~~Assembly~~ or any other budget initiative authorized by the 96th  
14 General Assembly for fiscal year 2011 may be adopted in  
15 accordance with this Section by the agency charged with  
16 administering that provision or initiative. The adoption of  
17 emergency rules authorized by this subsection (o) is deemed to  
18 be necessary for the public interest, safety, and welfare. The  
19 rulemaking authority granted in this subsection (o) applies  
20 only to rules promulgated on or after the effective date of  
21 Public Act 96-958 ~~this amendatory Act of the 96th General~~  
22 ~~Assembly~~ through June 30, 2011.

23 (p) In order to provide for the expeditious and timely  
24 implementation of the provisions of Public Act 97-689,  
25 emergency rules to implement any provision of Public Act 97-689  
26 may be adopted in accordance with this subsection (p) by the

1 agency charged with administering that provision or  
2 initiative. The 150-day limitation of the effective period of  
3 emergency rules does not apply to rules adopted under this  
4 subsection (p), and the effective period may continue through  
5 June 30, 2013. The 24-month limitation on the adoption of  
6 emergency rules does not apply to rules adopted under this  
7 subsection (p). The adoption of emergency rules authorized by  
8 this subsection (p) is deemed to be necessary for the public  
9 interest, safety, and welfare.

10 (q) In order to provide for the expeditious and timely  
11 implementation of the provisions of Articles 7, 8, 9, 11, and  
12 12 of Public Act 98-104 ~~this amendatory Act of the 98th General~~  
13 ~~Assembly~~, emergency rules to implement any provision of  
14 Articles 7, 8, 9, 11, and 12 of Public Act 98-104 ~~this~~  
15 ~~amendatory Act of the 98th General Assembly~~ may be adopted in  
16 accordance with this subsection (q) by the agency charged with  
17 administering that provision or initiative. The 24-month  
18 limitation on the adoption of emergency rules does not apply to  
19 rules adopted under this subsection (q). The adoption of  
20 emergency rules authorized by this subsection (q) is deemed to  
21 be necessary for the public interest, safety, and welfare.

22 (r) In order to provide for the expeditious and timely  
23 implementation of the provisions of Public Act 98-651 ~~this~~  
24 ~~amendatory Act of the 98th General Assembly~~, emergency rules to  
25 implement Public Act 98-651 ~~this amendatory Act of the 98th~~  
26 ~~General Assembly~~ may be adopted in accordance with this

1 subsection (r) by the Department of Healthcare and Family  
2 Services. The 24-month limitation on the adoption of emergency  
3 rules does not apply to rules adopted under this subsection  
4 (r). The adoption of emergency rules authorized by this  
5 subsection (r) is deemed to be necessary for the public  
6 interest, safety, and welfare.

7 (s) In order to provide for the expeditious and timely  
8 implementation of the provisions of Sections 5-5b.1 and 5A-2 of  
9 the Illinois Public Aid Code, emergency rules to implement any  
10 provision of Section 5-5b.1 or Section 5A-2 of the Illinois  
11 Public Aid Code may be adopted in accordance with this  
12 subsection (s) by the Department of Healthcare and Family  
13 Services. The rulemaking authority granted in this subsection  
14 (s) shall apply only to those rules adopted prior to July 1,  
15 2015. Notwithstanding any other provision of this Section, any  
16 emergency rule adopted under this subsection (s) shall only  
17 apply to payments made for State fiscal year 2015. The adoption  
18 of emergency rules authorized by this subsection (s) is deemed  
19 to be necessary for the public interest, safety, and welfare.

20 (t) In order to provide for the expeditious and timely  
21 implementation of the provisions of Article II of Public Act  
22 99-6 ~~this amendatory Act of the 99th General Assembly,~~  
23 emergency rules to implement the changes made by Article II of  
24 Public Act 99-6 ~~this amendatory Act of the 99th General~~  
25 ~~Assembly~~ to the Emergency Telephone System Act may be adopted  
26 in accordance with this subsection (t) by the Department of

1 State Police. The rulemaking authority granted in this  
2 subsection (t) shall apply only to those rules adopted prior to  
3 July 1, 2016. The 24-month limitation on the adoption of  
4 emergency rules does not apply to rules adopted under this  
5 subsection (t). The adoption of emergency rules authorized by  
6 this subsection (t) is deemed to be necessary for the public  
7 interest, safety, and welfare.

8 (u) ~~(t)~~ In order to provide for the expeditious and timely  
9 implementation of the provisions of the Burn Victims Relief  
10 Act, emergency rules to implement any provision of the Act may  
11 be adopted in accordance with this subsection (u) ~~(t)~~ by the  
12 Department of Insurance. The rulemaking authority granted in  
13 this subsection (u) ~~(t)~~ shall apply only to those rules adopted  
14 prior to December 31, 2015. The adoption of emergency rules  
15 authorized by this subsection (u) ~~(t)~~ is deemed to be necessary  
16 for the public interest, safety, and welfare.

17 (v) In order to provide for the expeditious and timely  
18 implementation of the provisions of this amendatory Act of the  
19 99th General Assembly, emergency rules to implement the changes  
20 made by this amendatory Act of the 99th General Assembly may be  
21 adopted in accordance with this subsection (v) by the Adjutant  
22 General. The adoption of emergency rules authorized by this  
23 subsection (v) is deemed to be necessary for the public  
24 interest, safety, and welfare.

25 (Source: P.A. 98-104, eff. 7-22-13; 98-463, eff. 8-16-13;  
26 98-651, eff. 6-16-14; 99-2, eff. 3-26-15; 99-6, eff. 1-1-16;



1 99-143, eff. 7-27-15; 99-455, eff. 1-1-16; revised 10-15-15.)

2 Section 153. The Military Code of Illinois is amended by  
3 changing Section 90 and by adding Section 34.1 as follows:

4 (20 ILCS 1805/34.1 new)

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

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

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

19 (20 ILCS 1805/90) (from Ch. 129, par. 220.90)

20 Sec. 90. (a) If any member of the Illinois National Guard  
21 is criminally prosecuted by civil authorities of the United  
22 States or any state, commonwealth, or territory of the United  
23 States, ~~or criminal action~~ for any act or omission determined

1 by the Attorney General to have been within the scope of the  
2 member's military duties, performed or committed by such  
3 member, or for any an act or omission caused, ordered, or  
4 directed by such member to be done or performed within the  
5 scope of military duty, the member shall be entitled to defense  
6 representation by the Attorney General or, if the Attorney  
7 General determines it appropriate, by a qualified private  
8 defense attorney of the member's choice subject to the approval  
9 of the Attorney General at State expense. In that case all  
10 costs in furtherance of and while in the performance of  
11 military duty, all the expense of the defense, of such action  
12 or actions civil or criminal, including attorney's fees,  
13 witnesses' fees for the defense, defendant's court costs and  
14 all costs for transcripts of records and abstracts thereof on  
15 appeal by the defense, shall be paid by the State; provided,  
16 that the Attorney General of the State shall be first consulted  
17 in regard to, and approve of, the selection of the attorney for  
18 the defense: And, provided, further, that the Attorney General  
19 of the State may, if he see fit, assume the responsibility for  
20 the defense of such member and conduct the same personally or  
21 by any one or more of his assistants.

22 (b) Representation and indemnification of Illinois  
23 National Guard members in civil cases arising out of their  
24 military training or duty shall be in accordance with the State  
25 Employee Indemnification Act. The fees and expenses in criminal  
26 cases, as provided for in this Section, shall be paid by the

1 Adjutant General out of appropriated funds, upon vouchers and  
2 bills approved by the Attorney General.

3 (Source: P.A. 85-1241.)

4 (20 ILCS 1805/34 rep.)

5 (20 ILCS 1805/47 rep.)

6 (20 ILCS 1805/Art. XIV rep.)

7 (20 ILCS 1805/Art. XV rep.)

8 (20 ILCS 1805/89 rep.)

9 Section 155. The Military Code of Illinois is amended by  
10 repealing Sections 34, 47, and 89 and Articles XIV and XV.

11 Section 156. The State Finance Act is amended by adding  
12 Section 5.875 as follows:

13 (30 ILCS 105/5.875 new)

14 Sec. 5.875. The State Military Justice Fund.

15 Section 999. Effective date. This Act takes effect January  
16 1, 2017.