

AN ACT concerning military justice.

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

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

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

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

PART I. GENERAL PROVISIONS

Section 1. Article 1. Definitions; gender neutrality.

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

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

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

(3) "Classified information" means:

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

(B) any restricted data, as defined in Section

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

(4) "Code" means this Code.

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

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

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

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

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

grade.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Guam, or the U.S. Virgin Islands.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Article 4. (Reserved).

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

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

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

outside this State.

Section 6. Article 6. Judge Advocates.

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

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

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

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

the rank of Major or above.

PART II. APPREHENSION AND RESTRAINT

Section 7. Article 7. Apprehension.

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

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

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

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

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

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

Section 8. Article 8. (Reserved).

Section 9. Article 9. Imposition of restraint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to minor punishment during that period for infractions of discipline.

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

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

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

PART III. NON-JUDICIAL PUNISHMENT

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

PART IV. COURT-MARTIAL JURISDICTION

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

(1) general courts-martial, consisting of:

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

or

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

(2) special courts-martial, consisting of:

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

or

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

(1) so requests; and

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

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

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

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

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

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

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

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

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

Section 21. Article 21. (Reserved).

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

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

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

- (1) the Governor, or;
- (2) the Adjutant General.

(b) (Reserved).

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

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

- (1) any person who may convene a general court-martial;
- (2) the Commander of the Illinois Army National of members of the Illinois Army National Guard when empowered by the Adjutant General; or
- (3) the Commander of the Illinois Air National Guard of members of the Illinois Air National Guard when empowered by the Adjutant General.

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

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

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

- (1) any person who may convene a general or special court-martial;
- (2) the commanding officer or officer in charge of any other command when empowered by the Adjutant General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The military judge of a general or special

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 28. Article 28. Detail or employment of reporters

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

Section 29. Article 29. Absent and additional members.

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

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

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

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

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

PART VI. PRE-TRIAL PROCEDURE

Section 30. Article 30. Charges and specifications.

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

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

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

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

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

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

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

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

may tend to degrade the person.

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

Section 32. Article 32. Investigation.

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

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

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

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

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

(1) is present at the investigation;

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

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

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

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

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

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

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

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

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

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

accused and the offense.

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

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

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

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

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

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

PART VII. TRIAL PROCEDURE

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.

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

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

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

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

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

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

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

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

(3) The accused may be represented:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 39. Article 39. Sessions.

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

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

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

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

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

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

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

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

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

Section 41. Article 41. Challenges.

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

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

peremptory challenges shall not be exercised at that time.

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

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

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

Section 42. Article 42. Oaths or affirmations.

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

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

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

Section 43. Article 43. Statute of limitations.

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

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

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

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

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

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

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

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

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

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

(A) has expired; or

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

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

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

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

Section 44. Article 44. Former jeopardy.

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

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

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

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

Section 45. Article 45. Pleas of the accused.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 49. Article 49. Depositions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) guilty;

(2) not guilty; or

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

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

(1) guilty;

(2) not guilty; or

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

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

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

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

defense of lack of mental responsibility has been established.

Section 51. Article 51. Voting and rulings.

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

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

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

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

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

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

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

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

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

Section 52. Article 52. Number of votes required.

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

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

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

Section 54. Article 54. Record of trial.

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

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

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

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

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

PART VIII. SENTENCES

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

Section 56. Article 56. Maximum limits.

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

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

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

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

Section 57. Article 57. Effective date of sentences.

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

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

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

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

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

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

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

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

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

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

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

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

Section 58. Article 58. Execution of confinement.

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

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

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

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

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

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

- (1) a dishonorable or bad-conduct discharge; or
- (2) confinement;

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

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

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

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

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

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

(A) confinement for more than 6 months; or

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

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

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

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

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

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

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

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

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

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

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

advocate under subsection (d).

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

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

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

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

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

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

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

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

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

the right to object thereto.

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

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

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

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

(C) increase the severity of the sentence.

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

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

Section 61. Article 61. Withdrawal of appeal.

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

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

Section 62. Article 62. Appeal by the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Conclusions as to whether:

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

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

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

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

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

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

(1) the judge advocate who reviewed the case recommends

corrective action;

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

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

(c) (1) The Adjutant General may:

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

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

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

(D) dismiss the charges.

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

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

action as deemed appropriate.

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

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

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

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

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

provided by law.

Section 66. Article 66. (Reserved).

Section 67. Article 67. (Reserved).

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

Section 68. Article 68. (Reserved).

Section 69. Article 69. (Reserved).

Section 70. Article 70. Appellate counsel.

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

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

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

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

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

Section 71. Article 71. Execution of sentence; suspension

of sentence.

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

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

Section 72. Article 72. Vacation of suspension.

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

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

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

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

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

Section 74. Article 74. Remission and suspension.

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

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

Section 75. Article 75. Restoration.

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

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

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

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

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

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

PART X. PUNITIVE ARTICLES

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

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

(2) causes an act to be done which if directly performed by him would be punishable by this Code;

is a principal.

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

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

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

Section 80. Article 80. Attempts.

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

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

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

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

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

Section 82. Article 82. Solicitation.

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

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

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

(1) procures his own enlistment or appointment in the

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

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

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

Section 85. Article 85. Desertion.

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

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

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

(3) without being regularly separated from one of the

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

is guilty of desertion.

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

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

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

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

(2) goes from that place; or

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

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

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

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

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

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

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

while he is in the execution of his office; or

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

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

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

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

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

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

shall be punished as a court-martial may direct.

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

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

or regulation;

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

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

shall be punished as a court-martial may direct.

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

Section 94. Article 94. Mutiny or sedition.

(a) Any person subject to this Code who:

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

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

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

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

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

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

- (1) resists apprehension;
- (2) flees from apprehension;
- (3) breaks arrest; or
- (4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

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

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

be punished as a court-martial may direct.

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

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

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

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

(1) runs away;

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

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

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

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

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

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

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

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

shall be punished as a court-martial may direct.

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

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

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

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

Section 103. Article 103. Captured or abandoned property.

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

(b) Any person subject to this Code who:

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

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

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

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

subject to this Code who:

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

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

shall be punished as a court-martial may direct.

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

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

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

shall be punished as a court-martial may direct.

Section 106. Article 106. (Reserved).

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

Section 107. Article 107. False official statements. Any

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

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

(1) sells or otherwise disposes of;

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

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

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

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

Section 110. Article 110. Improper hazarding of vessel.

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

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

Section 111. Article 111. (Reserved).

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

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

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

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

following:

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

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

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

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

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

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

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

- (1) feigns illness, physical disablement, mental lapse, or derangement; or
 - (2) intentionally inflicts self-injury;
- shall be punished as a court-martial may direct.

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

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

Section 118. Article 118. (Reserved).

Section 119. Article 119. (Reserved).

Section 120. Article 120. (Reserved).

Section 121. Article 121. (Reserved).

Section 122. Article 122. (Reserved).

Section 123. Article 123. (Reserved).

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

Section 124. Article 124. (Reserved).

Section 125. Article 125. (Reserved).

Section 126. Article 126. (Reserved).

Section 127. Article 127. (Reserved).

Section 128. Article 128. (Reserved).

Section 129. Article 129. (Reserved).

Section 130. Article 130. (Reserved).

Section 131. Article 131. (Reserved).

Section 132. Article 132. Frauds against the government.

Any person subject to this Code:

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

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

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

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

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

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

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

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

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

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

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

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

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

PART XI. MISCELLANEOUS

Section 135. Article 135. Courts of inquiry.

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

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

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

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

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

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

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

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

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

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

- (1) All judge advocates.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting

adjutants, and personnel adjutants.

(4) All commanding officers of the naval militia.

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

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

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

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

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

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

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

Section 137. Article 137. Articles to be explained.

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

(2) Such Articles shall be explained again:

(A) after the member has completed basic or recruit

training; and

(B) at the time when the member reenlists.

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

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

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

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

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

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

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

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

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

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

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

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

(1) by cash or money order;

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

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

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

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

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

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

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

Section 146. Article 146. (Reserved).

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

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

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

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

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

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

Sec. 5-45. Emergency rulemaking.

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

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

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

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

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

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

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

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

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

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

necessary for the public interest, safety, and welfare.

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

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

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

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

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

necessary for the public interest, safety, and welfare.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20 ILCS 1805/34.1 new)

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

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

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

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

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

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

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

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

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

(20 ILCS 1805/34 rep.)

(20 ILCS 1805/47 rep.)

(20 ILCS 1805/Art. XIV rep.)

(20 ILCS 1805/Art. XV rep.)

(20 ILCS 1805/89 rep.)

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

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

(30 ILCS 105/5.875 new)

Sec. 5.875. The State Military Justice Fund.

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