

SENATE No. 2611

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, July 17, 2018

The committee on Ways and Means to whom was referred the Senate Bill establishing the Massachusetts Code of Military Justice (Senate, No. 2236),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2611).

For the committee,
Karen E. Spilka

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An Act establishing the Massachusetts Code of Military Justice.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 18 of chapter 6, as appearing in the 2016 Official Edition, is hereby
2 amended by striking out, in line 3, the figure “2” and inserting in place thereof the following
3 figure:- 3.

4 SECTION 2. Said section 18 of said chapter 6, as so appearing, is hereby further amended
5 by striking out, in lines 5 and 6, the words “; and the army national guard facilities management
6 officer”.

7 SECTION 3. Said section 18 of said chapter 6, as so appearing, is hereby further amended
8 by striking out the second sentence and inserting in place thereof the following sentence:- Neither
9 the adjutant general nor the state quartermaster shall receive additional compensation on account
10 of their membership in the armory commission.

11 SECTION 4. Section 1 of chapter 33 of the General Laws, as so appearing, is hereby
12 amended by striking out, in lines 15 and 16, the words “or the air equivalents of these ranks” and

13 inserting in place thereof the following words:- in the army national guard or staff sergeant through
14 command chief master sergeant in the air national guard.

15 SECTION 5. Section 2 of said chapter 33, as so appearing, is hereby amended by striking
16 out, in line 4, the figure “45” and inserting in place thereof the following figure:- 65.

17 SECTION 6. Said chapter 33 is hereby further amended by inserting after section 6 the
18 following section:-

19 Section 6A. The commander-in-chief may delegate the commander-in-chief’s authority
20 under this chapter to the adjutant general, unless otherwise prohibited by law.

21 SECTION 7. Section 10 of said chapter 33, as appearing in the 2016 Official Edition, is
22 hereby amended by inserting after the word “active” in line 2, the following word:- drilling.

23 SECTION 8. Section 13A of said chapter 33, as so appearing, is hereby amended by
24 inserting after the word “insurance” in line 25, the following words:- , and except for the limitation
25 of a cumulative 5 years of state military service, which shall instead be extended to 8 years of state
26 military service.

27 SECTION 9. Section 15 of said chapter 33, as so appearing, is hereby amended by
28 inserting after the words “be the” in line 2, the following word:- military.

29 SECTION 10. Said section 15 of said chapter 33 as so appearing, is hereby further
30 amended by striking out, in line 70, the words “armed forces” and inserting in place thereof the
31 following words:- organized militia.

32 SECTION 11. Subsection (i) of said section 15 of said chapter 33, as so appearing, is
33 hereby amended by adding the following sentence:- Unless otherwise ordered by the commander-

34 in-chief, the chief of the state staff shall serve as the acting adjutant general during absence or
35 disability of the adjutant general.

36 SECTION 12. Section 19A of said chapter 33, as so appearing, is hereby amended by
37 striking out, in line 2, the words “and the war records commission”.

38 SECTION 13. Section 21 of said chapter 33, as so appearing, is hereby amended by
39 striking out, in lines 2 and 3, the words “a legal, medical, dental or veterinary commissioned
40 officer” and inserting in place thereof the following words:- the state judge advocate or the state
41 surgeon.

42 SECTION 14. Said section 21 of said chapter 33, as so appearing, is hereby further
43 amended by adding the following sentence:- No person shall be eligible for appointment, or be
44 appointed, as any other legal, medical, dental or veterinary commissioned officer unless duly
45 qualified in accordance with such person's military service component requirements.

46 SECTION 15. Said chapter 33 is hereby amended by striking out section 22 and inserting
47 in place thereof the following section:-

48 Section 22. Subject to Article LIII of the Articles of Amendment of the Constitution, a person
49 certified as eligible for any specific grade in the National Guard, army or air under the laws of the
50 United States and who is a graduate of the Massachusetts Military Academy shall be eligible for
51 appointment without professional examination.

52 SECTION 16. Said chapter 33 is hereby amended by striking out section 23 and inserting
53 in place thereof the following section:-

54 Section 23. All officers shall be appointed by the commander-in-chief upon the
55 recommendation of appropriate commanders, approved by superior commanders.

56 SECTION 17. Section 25 of said chapter 33, as appearing in the 2016 Official Edition, is
57 hereby amended by striking out, in line 5, the word “his” and inserting in place thereof the
58 following words:- the person’s.

59 SECTION 18. Section 26 of said chapter 33 is hereby repealed.

60 SECTION 19. Section 31 of said chapter 33, as appearing in the 2016 Official Edition, is
61 hereby amended by striking out, in line 1, the word “military” and inserting in place thereof the
62 following word:- armed.

63 SECTION 20. Said section 31 of said chapter 33, as so appearing, is hereby further
64 amended by striking out, in line 6, the words “armed forces” and inserting in place thereof the
65 following words:- army or air national guard.

66 SECTION 21. Said section 31 of said chapter 33, as so appearing, is hereby further
67 amended by striking out, in line 8, the words “armed forces of the commonwealth or” and inserting
68 in place thereof the following words:- army or air national guard of the commonwealth or the
69 uniformed services of.

70 SECTION 22. Said section 31 of said chapter 33, as so appearing, is hereby further
71 amended by striking out, in line 10, the words “armed forces of the commonwealth or the state
72 staff, may” and inserting in place thereof the following words:- army or air national guard of the
73 commonwealth or the state staff, shall.

74 SECTION 23. Said section 31 of said chapter 33, as so appearing, is hereby further
75 amended by striking out, in line 17, the words “Service members” and inserting in place thereof
76 the following words:- Members of the armed forces of the commonwealth.

77 SECTION 24. Said section 31 of said chapter 33, as so appearing, is hereby further
78 amended by striking out, in lines 19 and 20, the words “, with their former grade on the retired list,
79 or any lower grade”.

80 SECTION 25. Section 32 of said chapter 33, as so appearing, is hereby amended by
81 striking out, in lines 1 and 2, 3 and 5, each time it appears, the words “service member” and
82 inserting in place thereof, in each instance, the following words:- member of the military forces of
83 the commonwealth.

84 SECTION 26. Section 33 of said chapter 33, as so appearing, is hereby amended by
85 striking out, in line 1, the words “shall be commissioned” and inserting in place thereof the
86 following words:- and non-commissioned officers shall be placed.

87 SECTION 27. Section 37 of said chapter 33 is hereby repealed.

88 SECTION 28. Section 41 of said chapter 33, as appearing in the 2016 Official Edition, is
89 hereby amended by inserting after the words “officers and” in line 19, the following words:- , when
90 ordered to perform law enforcement duties,.

91 SECTION 29. Section 43 of said chapter 33, as so appearing, is hereby amended by
92 striking out, in lines 2 and 3, the words “civil officers or persons issuing the same” and inserting
93 in place thereof the following words:- commander-in-chief or a designated representative.

94 SECTION 30. Section 45 of said chapter 33 is hereby repealed.

95 SECTION 31. Section 46 of said chapter 33, as appearing in the 2016 Official Edition, is
96 hereby amended by striking out, in line 1, the words “The troops” and inserting in place thereof
97 the following words:- Armed forces of the commonwealth.

98 SECTION 32. Section 47 of said chapter 33, as so appearing, is hereby amended by
99 striking out, in line 3, the word “out” and inserting in place thereof the following words:- to duty.

100 SECTION 33. Said section 47 of said chapter 33, as so appearing, is hereby further
101 amended by striking out the second and third sentences.

102 SECTION 34. Section 48 of said chapter 33, as so appearing, is hereby amended by
103 striking out, in line 1, the word “governor” and inserting in place thereof the following words:-
104 commander-in-chief.

105 SECTION 35. Section 49 of said chapter 33, as so appearing, is hereby amended by
106 striking out, in lines 3 and 4, the words “at the request of such sheriff, mayor, city manager or
107 selectmen under section forty-one, the adjutant general” and inserting in place thereof the
108 following words:- , the adjutant general or a designated representative.

109 SECTION 36. Section 50 of said chapter 33, as so appearing, is hereby amended by
110 striking out, in line 11, the word “military” and inserting in place thereof the following word:-
111 armed.

112 SECTION 37. Section 51 of said chapter 33, as so appearing, is hereby amended by
113 striking out, in line 2, the word “armed” and inserting in place thereof the following word:-
114 military.

115 SECTION 38. Section 54 of said chapter 33, as so appearing, is hereby amended by
116 striking out, in line 3, the word “shall” and inserting in place thereof the following word:- may.

117 SECTION 39. Section 56 of said chapter 33, as so appearing, is hereby amended by
118 striking out the last sentence.

119 SECTION 40. Section 57 of said chapter 33 is hereby repealed.

120 SECTION 41. Section 60 of said chapter 33, as appearing in the 2016 Official Edition, is
121 hereby amended by inserting after the word “each” in line 2, the following words:- prescribed
122 training.

123 SECTION 42. Said section 60 of said chapter 33, as so appearing, is hereby further
124 amended by striking out, in line 3, the words “the commander-in-chief” and inserting in place
125 thereof the following words:- duly authorized orders.

126 SECTION 43. Section 61 of said chapter 33, as so appearing, is hereby amended by
127 inserting after the word “force”, in line 3, the following words:- , in active national guard.

128 SECTION 44. Said section 61 of said chapter 33, as so appearing, is hereby further
129 amended by striking out, in line 9, the words “commander-in-chief” and inserting in place thereof
130 the following words:- adjutant general.

131 SECTION 45. Section 64 of said chapter 33, as so appearing, is hereby amended by
132 inserting after the word “from”, in line 1, the following words:- public ways and.

133 SECTION 46. Section 65 of said chapter 33, as so appearing, is hereby amended by
134 striking out, in line 10, the word “arrested” and inserting in place thereof the following word:-
135 detained.

136 SECTION 47. Section 67 of said chapter 33, as so appearing, is hereby amended by
137 striking out, in lines 2 and 3, the words “shall be awarded a” and inserting in place thereof the
138 following words:- except the inactive national guard, shall be awarded a service.

139 SECTION 48. Said section 67 of said chapter 33, as so appearing, is hereby further
140 amended by inserting after the first sentence the following sentence:- All other members of the
141 organized militia may be awarded a service medal for completion of 3 years of honorable service
142 and for each additional 3 years of like service a device to be affixed to the ribbon pendant thereof.

143 SECTION 49. Said section 67 of said chapter 33, as so appearing, is hereby further
144 amended by striking out, in lines 7 and 60, each time it appears, the word “clasp” and inserting in
145 place thereof, in each instance, the following word:- device.

146 SECTION 50. Said section 67 of said chapter 33, as so appearing, is hereby further
147 amended by striking out, in lines 14, 22, 30, 34, 39, 43, 47 and 51 and 52, each time they appear,
148 the words “armed forces” and inserting in place thereof, in each instance, the following words:-
149 organized militia.

150 SECTION 51. Said section 67 of said chapter 33, as so appearing, is hereby further
151 amended by striking out, in lines 18, 26, 37 and 45, each time they appear, the words “The adjutant
152 general” and inserting in place thereof, in each instance, the following words:- A general officer.

153 SECTION 52. Section 67A of said chapter 33 in hereby amended by striking out, in line
154 7, as so appearing, the words “commander-in-chief” and inserting in place thereof the following
155 words:- adjutant general

156 SECTION 53. Said chapter 33 is hereby amended by striking out section 68 and inserting
157 in place thereof the following section:-

158 Section 68. Suitable recognition may be awarded for military, athletic or other competitions
159 or outstanding military service in the armed forces of the commonwealth, under such regulations
160 as the commander-in-chief shall determine.

161 SECTION 54. Sections 69, 71 to 74, inclusive, 76 to 80, inclusive, and section 82 of said
162 chapter 33 are hereby repealed.

163 SECTION 55. Section 83 of said chapter 33, as appearing in the 2016 Official Edition, is
164 hereby amended by striking out, in line 15, the figure "\$100" and inserting in place thereof the
165 following figure:- \$200.

166 SECTION 56. Section 84 of said chapter 33, as so appearing, is hereby amended by
167 striking out, in line 8, the words "rail or commercial airline" and inserting in place thereof the
168 following words:- modes of commercial travel.

169 SECTION 57. Said chapter 33 is hereby further amended by striking out section 88 and
170 inserting in place thereof the following section:-

171 Section 88. An officer or enlisted person of the organized militia who, while performing
172 any duty lawfully ordered under this chapter without willful neglect on the part of the person,
173 receives injury, is disabled or contracts a sickness or disease which incapacitates the person from
174 pursuing the person's usual business or occupation shall, during the period of incapacity, receive
175 compensation to be fixed by a board appointed under section 90 to inquire into the claim and the
176 actual and necessary expenses for medical services and care, medicines and hospitalization or

177 replacement or repair of eyeglasses, dentures or prosthetic devices worn or carried, and amounts
178 related to lost wages. If the death of a member of the Massachusetts organized militia results from
179 injury, sickness or disease received while in the line of duty pursuant to orders under titles 10 and
180 32 of the United States Code or this chapter and the injury, sickness or disease resulting in the
181 death was not the result of the decedent's willful neglect, a single payment of \$100,000 shall be
182 paid to the surviving spouse; provided, however, that if there is no surviving spouse, the amount
183 shall be paid to the children of the decedent in equal shares; provided further, that if there is no
184 surviving spouse and no children, the surviving parents of the decedent, if the parents were
185 dependent on the decedent for support at the time of the decedent's death, shall each receive
186 \$50,000; and provided further, that if there is no surviving spouse and no children, and only 1
187 surviving parent was dependent on the decedent for support at the time of the decedent's death,
188 that parent shall receive \$100,000. For purposes of this section, The standard for dependency shall
189 be determined in accordance with clause (3) of section 1 of chapter 152 and section 32 of said
190 chapter 152. All claims presented under this section shall be made in the manner provided in
191 section 90.

192 SECTION 58. Said chapter 33 is hereby further amended by inserting after section 88B
193 the following section:-

194 Section 88C. The National Guard Association of Massachusetts shall be the designated
195 provider of state sponsored life insurance products offered through insurers licensed to transact
196 insurance business in the commonwealth for military members of the armed forces of the
197 commonwealth and such members' dependents. The military division, through the adjutant
198 general, is hereby designated as the official departmental sponsor of the Massachusetts National
199 Guard State Sponsored Life Insurance Program, and shall allow, facilitate and coordinate all efforts

200 to make the program available to all members of the armed forces of the commonwealth and such
201 members' dependents, and shall allow, facilitate, and coordinate requested allotments with the
202 appropriate United States Property and Fiscal Office.

203 SECTION 59. Section 90 of said chapter 33, as appearing in the 2016 Official Edition, is
204 hereby amended by striking out, in lines 2 and 3, the words “, including the state judge advocate
205 and a medical or medical service officer” and inserting in place thereof the following words:- with
206 a grade of major or higher, including a judge advocate and a medical or medical service officer in
207 the military forces of the commonwealth.

208 SECTION 60. Said section 90 of said chapter 33, as so appearing, is hereby further
209 amended by striking out the third sentence and inserting in place thereof the following sentence:-
210 The board shall have the same power as the division of industrial accidents to take evidence,
211 administer oaths, issue subpoenas and compel witnesses to attend, testify and produce books and
212 papers.

213 SECTION 61. Section 96 of said chapter 33, as so appearing, is hereby amended by
214 striking out the first sentence and inserting in place thereof the following sentence:- Organization
215 and unit funds, subject to available appropriations, shall be maintained and conducted as the
216 adjutant general may prescribe in regulations.

217 SECTION 62. Said section 96 of said chapter 33, as so appearing, is hereby further
218 amended by inserting after the word “general” in line 14, the following words:- , or a designee.

219 SECTION 63. Said chapter 33, as so appearing, is hereby further amended by striking out
220 section 97 and inserting in place thereof the following section:-

221 Section 97. There may annually, subject to available appropriations, be allowed and paid
222 quarterly from money appropriated for the purpose in substantially equal installments under
223 regulations as may be promulgated by the adjutant general to the organizations and units of the
224 armed forces of the commonwealth, when not in federal service, appropriate sums for
225 administration and maintenance.

226 SECTION 64. Said chapter 33 is hereby further amended by striking out section 98 and
227 inserting in place thereof the following section:-

228 Section 98. The uniform of the military forces of the commonwealth shall be prescribed by
229 the adjutant general or applicable regulations. No uniforms shall be provided by the
230 commonwealth without a special appropriation.

231 SECTION 65. Section 101 of said chapter 33, as appearing in the 2016 Official Edition,
232 is hereby amended by striking out, in lines 2 and 3, the words “and the cadets of the Massachusetts
233 military academy”.

234 SECTION 66. Said section 101 of said chapter 33, as so appearing, is hereby further
235 amended by striking out, in line 7, the words “commander-in-chief” and inserting in place thereof
236 the following words:- adjutant general.

237 SECTION 67. Section 102 of said chapter 33, as so appearing, is hereby amended by
238 striking out, in line 5, the words “ordered by the commander-in-chief” and inserting in place
239 thereof the following words:- directed by the adjutant general.

240 SECTION 68. Said chapter 33 is hereby further amended by striking out section 105 and
241 inserting in place thereof the following section:-

242 Section 105. An officer or enlisted person of the military forces of the commonwealth who
243 damages, loses through carelessness or neglect, carries away or unlawfully disposes of military
244 property of the United States or of the commonwealth, shall be charged with the money value
245 thereof, as determined by an investigating officer or board of survey detailed or appointed by the
246 adjutant general to investigate and report upon the case. Such investigating officer or board of
247 survey shall submit with the report all the evidence bearing upon the loss, damage or disposition
248 of the property.

249 SECTION 69. Section 106 of said chapter 33 is hereby repealed.

250 SECTION 70. Section 108 of said chapter 33, as appearing in the 2016 Official Edition,
251 is hereby amended by striking out, in lines 5 and 9, each time they appear, the words “commander-
252 in-chief” and inserting in place thereof, in each instance, the following words:- adjutant general.

253 SECTION 71. Section 109 of said chapter 33, as so appearing, is hereby amended by
254 striking out, in line 6, the words “commander-in-chief” and inserting in place thereof the following
255 words:- the adjutant general.

256 SECTION 72. Section 111 of said chapter 33, as so appearing, is hereby amended by
257 striking out the first sentence and inserting in place thereof the following sentence:- A service
258 member shall be responsible for military property of the United States and the commonwealth that
259 the service member receives and the service member shall not sell, loan or transfer the military
260 property or any part of the property without the authority of the adjutant general.

261 SECTION 73. Section 113 of said chapter 33, as so appearing, is hereby amended by
262 striking out, in lines 9 and 11, each time it appears, the word “survey” and inserting in place
263 thereof, in each instance, the following word:- investigation.

264 SECTION 74. Said section 113 of said chapter 33, as so appearing, is hereby further
265 amended by inserting after the word “the”, in line 13, the second time it appears, the following
266 words:- military division of the.

267 SECTION 75. Said chapter 33 is hereby further amended by striking out section 122 and
268 inserting in place thereof the following section:-

269 Section 122. The adjutant general may lease, rent or permit the use of an armory or part
270 thereof for nonmilitary purposes, by any federal or state governmental entity, or any other user,
271 under such restrictions and for such compensation, if any, as the adjutant general may by regulation
272 prescribe. The adjutant general shall apply any compensation received to the cost of maintaining
273 the armory.

274 SECTION 76. Sections 123 and 125 to 129, inclusive, of said chapter 33 are hereby
275 repealed.

276 SECTION 77. Section 134 of said chapter 33, as appearing in the 2016 Official Edition,
277 is hereby amended by striking out, in line 6, the words “by the act of congress known as the
278 National Defense Act” and inserting in place thereof the following words:- in Title 32 of the United
279 States Code.

280 SECTION 78. Section 135 of said chapter 33, as so appearing, is hereby amended by
281 striking out, in lines 1 and 5, each time they appear, the words “commander-in-chief” and inserting
282 in place thereof, in each instance, the following words:- adjutant general.

283 SECTION 79. The General Laws are hereby further amended by inserting after chapter 33
284 the following chapter:-

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CHAPTER 33A.

MASSACHUSETTS CODE OF MILITARY JUSTICE

PART I. GENERAL PROVISIONS.

Article 1. Definitions.

(a) For purposes of this chapter, the following words shall have the following meanings, unless the context requires otherwise:

“Accuser”, a person who signs and swears to charges, a person who directs that charges nominally be signed and sworn to by another or any other person who has an interest other than an official interest in the prosecution of the accused.

“Apprehension”, the taking of a person into custody.

“Arrest”, the restraint of a person by an order that is not imposed as a punishment for an offense that directs the person to remain within certain specified limits

“Cadet”, “candidate” or “midshipman”, 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.

“Classified information”, information or material that has been determined by an official of the United States or a state pursuant to law, executive order or regulation to require protection against unauthorized disclosure for reasons of national or state security, or any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954, 42 U.S.C. § 2014(y).

“Code”, this chapter.

305 “Commander”, a commanding officer.

306 “Commanding officer”, a commissioned officer of the state military forces; provided,
307 however, that the term shall include an officer in charge only when that officer in charge is
308 administering nonjudicial punishment under article 15.

309 “Confinement”, the physical restraint of a person

310 “Convening authority”, the person who convened the court, a commissioned officer
311 commanding for the time being or a successor in command to the convening authority.

312 “Day”, a calendar day; provided, however, that the term “day” shall not be synonymous
313 with the term “unit training assembly”; and provided further, that a punishment authorized by this
314 article that is measured in terms of days shall, when served in a status other than annual field
315 training, be construed to mean succeeding duty days.

316 “Duty status other than state active duty”, a type of duty that is not in federal service and
317 that is not full-time duty in the active service of the state that is under an order issued by authority
318 of law and includes travel to and from such duty.

319 “Enlisted member”, a person in an enlisted grade.

320 “Judge advocate”, a commissioned officer of the organized state military forces who is a
321 member in good standing of the bar of the highest court of a State, and is: (A) certified or
322 designated as a judge advocate in the Judge Advocate General’s Corps of the Army, Air Force,
323 Navy or the Marine Corps or designated as a law specialist as an officer of the Coast Guard, or a
324 reserve component of one of these; or (B) certified as a non-federally recognized judge advocate,
325 by the state judge advocate, as that term is defined in chapter 33, as competent to perform such

326 military justice duties required by this code; provided, however, that if there is no such judge
327 advocate available, then such certification may be made by such senior judge advocate of the
328 commander of another force in the state military forces, as the convening authority directs.

329 “Military court”, a court-martial or a court of inquiry.

330 “Military judge”, an official of a general or special court-martial detailed in accordance
331 with article 26.

332 “Military offenses”, offenses prescribed under articles 77 (Principals), 78 (Accessory after
333 the fact), 80 (Attempts), 81 (Conspiracy), 82 (Solicitation), 83 (Fraudulent enlistment,
334 appointment, or separation), 84 (Unlawful enlistment, appointment, or separation), 85 (Desertion),
335 86 (Absence without leave), 87 (Missing movement), 88 (Contempt toward officials), 89
336 (Disrespect towards superior commissioned officer), 90 (Assaulting or willfully disobeying
337 superior commissioned officer), 91 (Insubordinate conduct toward warrant officer,
338 noncommissioned officer, or petty officer), 92 (Failure to obey order or regulation), 93 (Cruelty
339 and maltreatment), 94 (Mutiny or sedition), 95 (Resistance, flight, breach of arrest, and escape),
340 96 (Releasing prisoner without proper authority), 97 (Unlawful detention), 98 (Noncompliance
341 with procedural rules), 99 (Misbehavior before the enemy), 100 (Subordinate compelling
342 surrender), 101 (Improper use of countersign), 102 (Forcing a safeguard), 103 (Captured or
343 abandoned property), 104 (Aiding the enemy), 105 (Misconduct as prisoner), 107 (False official
344 statements), 108 (Military property — Loss, damage, destruction, or wrongful disposition), 109
345 (Property other than military property — Waste, spoilage, or destruction), 110 (Improper
346 hazarding of vessel), 112 (Drunk on duty), 112a. (Wrongful use, possession, etc., of controlled
347 substances), 113 (Misbehavior of sentinel), 114 (Dueling), 115 (Malingering), 116 (Riot or breach

348 of peace), 117 (Provoking speeches or gestures), 132 (Frauds against the government), 133
349 (Conduct unbecoming an officer and a gentleman), and 134 (General article) of this code.

350 “National security”, the national defense and foreign relations of the United States.

351 “Officer”, a commissioned or warrant officer.

352 “Officer in charge”, a member of the naval militia, the Navy, the Marine Corps or the Coast
353 Guard designated as such by appropriate authority.

354 “Record”, when used in connection with the proceedings of a court-martial, shall mean: an
355 official written transcript, written summary or other writing relating to the proceedings; or an
356 official audiotape, videotape, digital image or file, or similar material from which sound, or sound
357 and visual images, depicting the proceedings may be reproduced.

358 “State”, one of the several states, the District of Columbia, the Commonwealth of Puerto
359 Rico, Guam or the U.S. Virgin Islands.

360 “State active duty”, full-time duty in the state military forces under an order of the
361 commander-in-chief or otherwise issued by authority of law, and paid by state funds, including
362 travel to and from such duty.

363 “Senior force judge advocate”, the senior judge advocate of the commander of the same
364 force of the state military forces as the accused and who is that commander’s chief legal advisor.

365 “State military forces”, the National Guard of Massachusetts, as defined in title 32 of the
366 United States Code or any other military force organized under the constitution and laws of the
367 commonwealth; provided, however, that the term shall not include the unorganized militia when
368 not in a status subjecting them to exclusive jurisdiction under chapter 47 of title 10 of the United

369 States Code; and provided further, that the term shall not include unorganized militia or any other
370 name of any state force that does not meet this definition.

371 “Superior commissioned officer”, a commissioned officer superior in rank or command.

372 “Senior force commander”, the commander of the same force of the state military forces
373 as the accused.

374 Article 2. Persons subject to this code; jurisdiction.

375 (a) This code shall apply to all members of the state military forces. This code shall
376 not apply to members serving in a title 10 status.

377 (b) Subject matter jurisdiction shall be established if a nexus exists between an offense,
378 either military or non-military, and the state military force. Courts-martial have primary
379 jurisdiction of military offenses as defined in article 1. A civilian court has primary jurisdiction of
380 a non-military offense when an act or omission violates both this code and local criminal law,
381 foreign or domestic. In such a case, a court-martial may be initiated only after the civilian authority
382 has declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction
383 over attempted crimes, conspiracy crimes, solicitation and accessory crimes must be determined
384 by the underlying offense.

385 Article 3. Jurisdiction to try certain personnel.

386 (a) Each person discharged from the state military forces who is later charged with
387 having fraudulently obtained a discharge is, subject to article 43, subject to trial by court-martial
388 on that charge and is, after apprehension, subject to this code while in custody under the direction

389 of the state military forces for that trial. Upon conviction of that charge that person is subject to
390 trial by court-martial for all offenses under this code committed before the fraudulent discharge.

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

393 Article 4. [Reserved].

394 Article 5. Territorial applicability of the code.

395 (a) This code shall apply at all times and in all places subject to jurisdiction as provided
396 in Article 2 or, if not in a duty status, when there is a nexus between the act or omission constituting
397 the offense and the efficient functioning of the state military forces; provided, however, that this
398 grant of military jurisdiction shall not preclude or limit civilian jurisdiction over an offense, which
399 is limited only by the prohibition of double jeopardy.

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

405 Article 6. Judge Advocates.

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

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

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

416 PART II. APPREHENSION AND RESTRAINT.

417 Article 7. Apprehension.

418 (a) A person authorized by this code or by 47 U.S.C. 801 et seq., or by regulations
419 promulgated under either, to apprehend persons subject to this code, any marshal of a court- martial
420 appointed pursuant to the provisions of this code and any peace officer or civil officer having
421 authority to apprehend offenders under the laws of the United States or of a state, may do so upon
422 probable cause that an offense has been committed and that the person apprehended committed it.

423 (b) Commissioned officers, warrant officers, petty officers and noncommissioned
424 officers shall have authority to quell quarrels, frays and disorders among persons subject to this
425 code and to apprehend persons subject to this code who take part therein.

426 (c) If an offender is apprehended outside the commonwealth, the offender's return to
427 the area shall be in accordance with normal extradition procedures or by reciprocal agreement.

428 (d) No person authorized by this article to apprehend persons subject to this code, or
429 any place where such offender is confined, restrained, held or otherwise housed, may require

430 payment of a fee or charge for so receiving, apprehending, confining, restraining, holding or
431 otherwise housing a person except as provided by law.

432 Article 8. [Reserved].

433 Article 9. Imposition of restraint.

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

439 (b) A commissioned officer, a warrant officer or a civilian subject to this code or to
440 trial under this code may be ordered into arrest or confinement only by a commanding officer to
441 whose authority the person is subject, by an order, oral or written, delivered in person or by another
442 commissioned officer. The authority to order such persons into arrest or confinement may not be
443 delegated.

444 (c) No person may be ordered into arrest or confinement except for probable cause.

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

447 Article 10. Restraint of persons charged with offenses.

448 A person subject to this code charged with an offense under this code may be ordered into
449 arrest or confinement, as circumstances may require. When a person subject to this code is placed
450 in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the

451 specific wrong of which the person is accused and diligent steps shall be taken to try the person or
452 to dismiss the charges and release the person.

453 Article 11. Place of Confinement; Reports and receiving of prisoners.

454 (a) If a person subject to this code is confined before, during or after trial, confinement
455 shall be in a state, county or local civilian or military confinement facility.

456 (b) No person authorized to receive prisoners pursuant to subsection (a) may refuse to
457 receive or keep a prisoner committed to the person's charge by a commissioned officer of the state
458 military forces, when the committing officer furnishes a statement, signed by that officer, of the
459 offense charged against the prisoner, unless otherwise authorized by law.

460 (c) Every person authorized to receive prisoners pursuant to subsection (a) to whose
461 charge a prisoner is committed shall, not later than 24 hours after that commitment or as soon as
462 the person is relieved from guard, report to the commanding officer of the prisoner the name of
463 the prisoner, the offense charged against the prisoner and the name of the person who ordered or
464 authorized the commitment.

465 Article 12. Confinement with enemy prisoners prohibited.

466 No member of the state military forces may be placed in confinement in immediate
467 association with enemy prisoners.

468 Article 13. Punishment prohibited before trial.

469 No person, while being held for trial or awaiting a verdict, may be subjected to punishment
470 or penalty other than arrest or confinement upon the charges pending against the person, nor shall
471 the arrest or confinement imposed upon such person be any more rigorous than the circumstances

472 required to insure the person's presence, but the person may be subjected to minor punishment
473 during that period for infractions of discipline.

474 Article 14. Delivery of offenders to civil authorities.

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

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

482 PART III. NON-JUDICIAL PUNISHMENT.

483 Article 15. Commanding officer's non-judicial punishment.

484 (a) Under such regulations as prescribed, a commanding officer or, for purposes of this
485 article, officer-in-charge, may impose disciplinary punishments for minor offenses without the
486 intervention of a court-martial pursuant to this article. The commander-in-chief, the adjutant
487 general or an officer of a general or flag rank in command may delegate the powers under this
488 article to a principal assistant who is a member of the state military forces.

489 (b) A commanding officer may impose upon enlisted members of the officer's
490 command:

491 (1) an admonition;

- 492 (2) a reprimand;
- 493 (3) the withholding of privileges for not more than 6 months;
- 494 (4) the forfeiture of pay of not more than 7 days' pay;
- 495 (5) a fine of not more than 7 days' pay;
- 496 (6) a reduction to the next inferior pay grade, if the grade from which the
497 enlisted member is demoted is within the promotion authority of the officer imposing the reduction
498 or any officer subordinate to the one who imposes the reduction;
- 499 (7) extra duties, including fatigue or other duties, for not more than 14 days,
500 which need not be consecutive; and
- 501 (8) restriction to certain specified limits, with or without suspension from duty,
502 for not more than 14 days, which need not be consecutive.
- 503 (c) A commanding officer of the grade of major, lieutenant commander or above may
504 impose upon enlisted members of the officer's command:
- 505 (1) any punishment authorized in paragraphs (1) to (3), inclusive, of subsection
506 (b);
- 507 (2) the forfeiture of not more than 1/2 of 1 month's pay per month for 2 months;
- 508 (3) a fine of not more than 1 month's pay;
- 509 (4) a reduction to the lowest or any intermediate pay grade, if the grade from
510 which the enlisted member is demoted is within the promotion authority of the officer imposing

511 the reduction or an officer subordinate to the one who imposes the reduction, but an enlisted
512 member in a pay grade above E-4 may not be reduced more than 2 pay grades;

513 (5) extra duties, including fatigue or other duties, for not more than 45 days,
514 which need not be consecutive; and

515 (6) restriction to certain specified limits, with or without suspension from duty,
516 for not more than 60 days which need not be consecutive.

517 (d) The commander-in-chief, the adjutant general, an officer exercising general court-
518 martial convening authority or an officer of a general or flag rank in command may impose:

519 (1) upon officers of the officer's command:

520 (A) any punishment authorized in paragraphs (1), (2), (3) and (6) of
521 subsection (c); and

522 (B) arrest in quarters for not more than 30 days, which need not
523 be consecutive; and

524 (2) upon enlisted members of the officer's command, any punishment
525 authorized in subsection (c).

526 (e) Whenever punishments are combined to run consecutively, the total length of the
527 combined punishment shall not exceed the authorized duration of the longest punishment in the
528 combination, and there shall be an apportionment of punishments so that no single punishment in
529 the combination exceeds its authorized length under this article.

530 (f) Prior to the offer of non-judicial punishment, the commanding officer shall
531 determine whether arrest in quarters or restriction shall be considered as punishments. Should the
532 commanding officer determine that the punishment options may include arrest in quarters or
533 restriction, the accused shall be notified of the right to demand trial by court-martial. Should the
534 commanding officer determine that the punishment options will not include arrest in quarters or
535 restriction, the accused shall be notified that there is no right to trial by court-martial in lieu of
536 non-judicial punishment.

537 (g) The officer who imposes the punishment, or the successor in command, may, at
538 any time, suspend, set aside, mitigate or remit any part or amount of the punishment and restore
539 all rights, privileges and property affected. The officer also may:

540 (1) mitigate reduction in grade to forfeiture of pay;

541 (2) mitigate arrest in quarters to restriction; or

542 (3) mitigate extra duties to restriction.

543 The mitigated punishment shall not be for a greater period of time than the punishment
544 mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture
545 shall not be greater than the amount that could have been imposed initially under this article by
546 the officer who imposed the punishment mitigated.

547 (h) A person punished under this article who considers the punishment unjust or
548 disproportionate to the offense may, through the proper channel, appeal to the next superior
549 authority within 15 days after the punishment is either announced or sent to the accused, as the
550 commander may determine. The appeal shall be promptly forwarded and decided within 15 days,

551 but the person punished may, in the meantime, be required to undergo the punishment adjudged.
552 The superior authority may exercise the same powers with respect to the punishment imposed as
553 may be exercised under subsection (g) by the officer who imposed the punishment. Before acting
554 on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a
555 judge advocate for consideration and advice.

556 (i) The imposition and enforcement of disciplinary punishment under this article for
557 an act or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction
558 for a serious crime or offense growing out of the same act or omission and not properly punishable
559 under this article. The fact that a disciplinary punishment has been enforced may be shown by the
560 accused upon trial and, when so shown, shall be considered in determining the measure of
561 punishment to be adjudged in the event of a finding of guilty.

562 (j) Whenever a punishment of forfeiture of pay is imposed under this article, the
563 forfeiture may apply to pay accruing before, on or after the date that punishment is imposed.

564 (k) Regulations may prescribe the form of records to be kept of proceedings under this
565 article and may prescribe that certain categories of those proceedings shall be in writing.

566 PART IV. COURT-MARTIAL JURISDICTION.

567 Article 16. Courts-martial classified.

568 The 3 kinds of courts-martial in the state military forces shall be:

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

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

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

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

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

576 (B) only a military judge, if one has been detailed to the court, and the accused
577 under the same conditions as those prescribed in subsection (1) (B) so requests; and

578 (3) summary courts-martial, consisting of 1 commissioned officer.

579 Article 17. Jurisdiction of courts-martial in general.

580 Each component of the state military forces shall have court-martial jurisdiction over all
581 members of the particular component who are subject to this code. The Massachusetts army and
582 air national guard shall have court-martial jurisdiction over all members subject to this code.

583 Article 18. Jurisdiction of general courts-martial.

584 Subject to article 17, general courts-martial shall have jurisdiction to try persons subject to
585 this code for an offense made punishable by this code, and may, under such limitations as the
586 commander-in-chief may prescribe, adjudge any punishment not forbidden by this code.

587 Article 19. Jurisdiction of special courts-martial.

588 Subject to article 17, special courts-martial shall have jurisdiction to try persons subject to
589 this code for an offense made punishable by this code, and may, under such limitations as the
590 commander-in-chief may prescribe, adjudge any punishment not forbidden by this code except

591 dishonorable discharge, dismissal, confinement for more than 1 year, forfeiture of pay exceeding
592 2/3 pay per month or forfeiture of pay for more than 1 year.

593 Article 20. Jurisdiction of summary courts-martial.

594 (a) Subject to article 17, summary courts-martial shall have jurisdiction to try persons
595 subject to this code, except officers, cadets, candidates and midshipmen, for any offense made
596 punishable by this code under such limitations as the commander-in-chief may prescribe.

597 (b) No person with respect to whom summary courts-martial have jurisdiction shall be
598 brought to trial before a summary court-martial if that person objects thereto. If objection to trial
599 by summary court-martial is made by an accused, trial by special or general court-martial may be
600 ordered, as may be appropriate. Summary courts-martial may, under such limitations as the
601 commander-in-chief may prescribe, adjudge any punishment not forbidden by this code except
602 dismissal, dishonorable or bad-conduct discharge, confinement for more than 1 month, restriction
603 to specified limits for more than 2 months, or forfeiture of more than 2/3 of 1 month's pay.

604 Article 21. [Reserved].

605 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

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

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

608 (1) commander-in-chief;

609 (2) adjutant general;

610 (3) commanding officer of a force of the state military forces (air component
611 commander or land component commander);

612 (4) commanding officer of a division or a separate brigade; or the

613 (5) commanding officer of a separate wing.

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

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

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

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

620 (2) the commanding officer of a garrison, fort, post, camp, station, air national
621 guard base or naval base or station;

622 (3) the commanding officer of a brigade, regiment, detached battalion or
623 corresponding unit of the army;

624 (4) the commanding officer of a wing, group, separate squadron or
625 corresponding unit of the air force; or

626 (5) the commanding officer or officer in charge of any other command
627 when empowered by the adjutant general.

628 (b) If an officer authorized under subsection (a) to convene special courts-martial is an
629 accuser, the court shall be convened by superior competent authority and may, in any case, be
630 convened by such superior authority if considered desirable by that authority.

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

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

633 (1) a person who may convene a general or special court-martial;

634 (2) the commanding officer of a detached company or other detachment, or
635 corresponding unit of the army;

636 (3) the commanding officer of a detached squadron or other detachment, or
637 corresponding unit of the air force; or

638 (4) the commanding officer or officer in charge of any other command when
639 empowered by the adjutant general.

640 (b) When only 1 commissioned officer is present with a command or detachment that
641 officer shall be the summary court-martial of that command or detachment and shall hear and
642 determine all summary court-martial cases. Summary courts-martial may, however, be convened
643 in any case by superior competent authority if considered desirable by that authority.

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

645 (a) A commissioned officer of the state military forces shall be eligible to serve on all
646 courts- martial for the trial of a person subject to this code.

647 (b) A warrant officer of the state military forces shall be eligible to serve on general
648 and special courts-martial for the trial of a person subject to this code other than a commissioned
649 officer.

650 (c) An enlisted member of the state military forces who is not a member of the same
651 unit as the accused shall be eligible to serve on general and special courts-martial for the trial of
652 an enlisted member subject to this code, but that member shall serve as a member of a court only
653 if, before the conclusion of a session called by the military judge under subsection (a) of article 39
654 prior to trial or, in the absence of such a session, before the court is assembled for the trial of the
655 accused, the accused personally has requested orally on the record or in writing that enlisted
656 members serve on it. After such a request, the accused may not be tried by a general or special
657 court-martial the membership of which does not include enlisted members in a number comprising
658 at least 1/3 of the total membership of the court, unless eligible enlisted members cannot be
659 obtained on account of physical conditions or military exigencies. If such members cannot be
660 obtained, the court may be assembled and the trial held without them, but the convening authority
661 shall make a detailed written statement, to be appended to the record, stating why the enlisted
662 members could not be obtained. For purposes of this article, "unit" shall mean a regularly
663 organized body of the state military forces not larger than a company, a squadron, a division of the
664 naval militia or a body corresponding to 1 of them.

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

667 (e) When convening a court-martial, the convening authority shall detail as members
668 thereof such members of the state military forces as, in the convening authority's opinion, are best

669 qualified for the duty by reason of age, education, training, experience, length of service and
670 judicial temperament. No member of the state military forces is eligible to serve as a member of
671 a general or special court-martial if that member is the accuser, a witness or has acted as
672 investigating officer or as counsel in the same case.

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

676 Article 25A. [Reserved].

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

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

681 (b) A military judge shall be:

682 (1) an active or retired commissioned officer of an organized state military
683 force;

684 (2) a member in good standing of the bar of the highest court of a state or a
685 member of the bar of a federal court for not less than 5 years; and

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

688 (c) If a military judge is not a member of the bar of the highest court of the
689 commonwealth, the military judge shall be considered admitted pro hac vice, subject to filing a
690 certificate with the senior force judge advocate of the same force as the accused, setting forth the
691 qualifications provided in subsection (b).

692 (d) The military judge of a general or special court-martial shall be designated by the
693 senior force judge advocate of the same force as the accused, or a designee, for detail by the
694 convening authority. Neither the convening authority nor a staff member of the convening
695 authority shall prepare or review a report concerning the effectiveness, fitness or efficiency of the
696 military judge so detailed, which relates to performance of duty as a military judge.

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

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

702 (g) A military judge need not be a member of the same military force or the same branch
703 of the convening authority or accused.

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

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

707 (2) A person who has acted as investigating officer, military judge, witness or
708 court member in a case may not act later as trial counsel, assistant trial counsel or, unless expressly

709 requested by the accused, defense counsel or assistant or associate defense counsel in the same
710 case. A person who has acted for the prosecution may not act later in the same case for the defense.
711 A person who has acted for the defense may not act later in the same case for the prosecution.

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

714 (1) a judge advocate, as defined in article 1; and

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

717 (c) If defense counsel is not a member of the bar of the highest court of the
718 commonwealth, the defense counsel shall be deemed admitted pro hac vice, subject to filing a
719 certificate with the military judge setting forth the qualifications that counsel is:

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

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

723 (3) certified as a judge advocate in the judge advocate general's corps of the
724 army, air force, navy or the marine corps; or

725 (4) a judge advocate, as defined in article 1.

726 Article 28. Detail or employment of reporters and interpreters.

727 Under such regulations as may be prescribed, the convening authority of a general or
728 special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall

729 record the proceedings and testimony taken before that court and may detail or employ interpreters
730 who shall interpret for the court.

731 Article 29. Absent and additional members.

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

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

742 (c) Whenever a special court-martial, other than a special court-martial composed of a
743 military judge only, is reduced below 3 members, the trial may not proceed unless the convening
744 authority details new members sufficient in number to provide not less than 3 members. The trial
745 shall proceed with the new members present as if no evidence had been introduced previously at
746 the trial, unless a verbatim record of the evidence previously introduced before the members of the
747 court or a stipulation thereof is read to the court in the presence of the military judge, the accused
748 and counsel for both sides.

749 (d) If the military judge of a court-martial composed of a military judge only is unable
750 to proceed with the trial because of physical disability, as a result of a challenge or for other good

751 cause, the trial shall proceed, subject to any applicable conditions of article 16(1)(B) or (2)(B),
752 after the detail of a new military judge as if no evidence had previously been introduced, unless a
753 verbatim record of the evidence previously introduced or a stipulation thereof is read in court in
754 the presence of the new military judge, the accused and counsel for both sides.

755 PART VI. PRE-TRIAL PROCEDURE.

756 Article 30. Charges and specifications.

757 (a) Charges and specifications shall be signed by a person subject to this code under
758 oath before a commissioned officer authorized by subsection (a) of article 136 to administer oaths
759 and shall state:

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

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

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

766 Article 31. Compulsory self-incrimination prohibited.

767 (a) A person subject to this code shall not compel a person to incriminate himself or
768 herself or to answer a question the answer to which may tend to incriminate that person.

769 (b) A person subject to this code shall not interrogate or request a statement from an
770 accused or a person suspected of an offense without first informing that person of the nature of the

771 accusation and advising that person that the person does not have to make any statement regarding
772 the offense of which the person is accused or suspected and that any statement made by the person
773 may be used as evidence against the person in a trial by court-martial.

774 (c) A person subject to this code shall not compel a person to make a statement or
775 produce evidence before a military court if the statement or evidence is not material to the issue
776 and may tend to degrade the person.

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

780 Article 32. Investigation.

781 (a) (1) No charge or specification may be referred to a general court-martial for trial
782 until completion of a preliminary hearing, unless such hearing is waived by the accused.

783 (2) The purpose of the preliminary hearing shall be limited to the following:

784 (A) determining whether there is probable cause to believe an offense has
785 been committed and the accused committed the offense;

786 (B) determining whether the convening authority has court-martial
787 jurisdiction over the offense and the accused;

788 (C) considering the form of charges; and

789 (D) recommending the disposition that should be made of the case.

790 (b) (1) A preliminary hearing held under subsection (a) shall be conducted by an
791 impartial judge advocate certified under subsection (b) of article 27, whenever practicable, or, in
792 exceptional circumstances warranted by the interests of justice, by an impartial hearing officer
793 who is not a judge advocate. If the hearing officer is not a judge advocate, a judge advocate
794 certified under subsection (b) of article 27 shall be available to provide legal advice to the hearing
795 officer.

796 (2) Whenever practicable, when the judge advocate or other hearing officer is
797 detailed to conduct the preliminary hearing, the officer shall be equal to or senior in grade to
798 military counsel detailed to represent the accused or the government at the preliminary hearing.

799 (c) After conducting a preliminary hearing under subsection (a), the judge advocate or
800 other officer conducting the preliminary hearing shall prepare a report that addresses the matters
801 specified in subsection (a) and (f).

802 (d) (1) The accused shall be advised of the charges against the accused and of the
803 accused's right to be represented by counsel at the preliminary hearing under subsection (a). The
804 accused has the right to be represented at the preliminary hearing as provided in article 38 and in
805 regulations prescribed under that section.

806 (2) The accused may cross-examine witnesses who testify at the preliminary
807 hearing and present additional evidence in defense and mitigation, relevant to the limited purposes
808 of the hearing, as provided for in paragraph (4) and in paragraph (2) of subsection (a).

809 (3) A victim may not be required to testify at a preliminary hearing. A victim
810 who declines to testify shall be considered unavailable for purposes of the preliminary hearing.

811 (4) The presentation of evidence and examination, including cross-
812 examination, of witnesses at a preliminary hearing shall be limited to matters relevant to the
813 purposes of the hearing, as provided in paragraph (2) of subsection (a).

814 (e) A preliminary hearing under subsection (a) shall be recorded by a suitable recording
815 device. The victim may request the recording and shall have access to the recording.

816 (f) If evidence adduced in a preliminary hearing under subsection (a) indicates that the
817 accused committed an uncharged offense, the hearing officer may consider the subject matter of
818 that offense without the accused having first been charged with the offense if the accused:

819 (1) is present at the preliminary hearing;

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

821 (3) is afforded opportunities for representation, cross-examination and presentation
822 consistent with subsection (d).

823 (g) This article shall be binding on all persons administering this chapter, but failure to
824 follow the requirements shall not constitute jurisdictional error.

825 (h) For purposes of this article, the term “victim” shall mean a person who:

826 (1) is alleged to have suffered a direct physical, emotional or pecuniary harm as a
827 result of the matters set forth in a charge or specification being considered; and

828 (2) is named in 1 of the specifications.

829 Article 33. Forwarding of charges.

830 When a person is held for trial by general court-martial, the commanding officer shall, not
831 later than 8 calendar days after the accused is ordered into arrest or confinement, if practicable,
832 forward the charges, together with the investigation and allied papers, to the person exercising
833 general court- martial jurisdiction. If that is not practicable, the commanding officer shall report
834 in writing to that person the reasons for delay.

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

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

840 (1) the specification alleges an offense under this code;

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

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

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

846 (1) expressing conclusions with respect to each matter set forth in subsection

847 (a); and

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

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

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

856 Article 35. Service of charges.

857 The trial counsel shall serve or caused to be served upon the accused a copy of the charges.
858 A person shall not, against that person's objection, be brought to trial before a general court-martial
859 case before 10 days after the service of charges upon the accused, or in a special court-martial,
860 before 6 days after the service of charges upon the accused.

861 PART VII. TRIAL PROCEDURE.

862 Article 36. Commander-in-chief or the adjutant general may prescribe rules.

863 Pretrial, trial and post-trial procedures, including modes of proof, for courts-martial cases
864 arising under this code, and for courts of inquiry, may be prescribed by the commander-in-chief
865 or the adjutant general by regulations, or as otherwise provided by law, which shall apply the
866 principles of law and the rules of evidence generally recognized in military criminal cases in the
867 courts of the armed forces but which may not be contrary to or inconsistent with this code.

868 Article 37. Unlawfully influencing action of court.

869 (a) No authority convening a general, special, or summary court-martial, nor any other
870 commanding officer, or officer serving on the staff thereof, shall censure, reprimand or admonish

871 the court or a member, the military judge or counsel thereof, with respect to the findings or
872 sentence adjudged by the court or with respect to any other exercise of its or their functions in the
873 conduct of the proceedings. No person subject to this code shall attempt to coerce or, by any
874 unauthorized means, influence the action of a court-martial or court of inquiry or a member thereof,
875 in reaching the findings or sentence in a case, or the action of any convening, approving, or
876 reviewing authority with respect to their judicial acts. This subsection shall not apply with respect
877 to:

878 (1) general instructional or informational courses in military justice, if such courses
879 are designed solely for the purpose of instructing members of a command in the substantive and
880 procedural aspects of courts-martial; or

881 (2) statements and instructions given in open court by the military judge, summary
882 court- martial officer or counsel.

883 (b) In the preparation of an effectiveness, fitness or efficiency report, or any other
884 report or document used in whole or in part to determine whether a member of the state military
885 forces is qualified to be advanced in grade, or in determining the assignment or transfer of a
886 member of the state military forces, or in determining whether a member of the state military forces
887 should be retained on active status, no person subject to this code shall, in preparing any such
888 report:

889 (1) consider or evaluate the performance of duty of any such member as a member
890 of a court-martial or witness therein; or

891 (2) give a less favorable rating or evaluation of any counsel for the accused because
892 of zealous representation before a court-martial.

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

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

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

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

901 (3) The accused may be represented:

902 (A) by military counsel detailed under article 27; or

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

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

908 (5) Except as provided under paragraph (6), if the accused is represented by
909 military counsel of the accused's own selection under clause (B) of paragraph (3), any military
910 counsel detailed under clause (A) of paragraph (3) shall be excused.

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

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

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

919 (7) The senior force judge advocate of the same force of which the accused is
920 a member, shall determine whether the military counsel selected by an accused is reasonably
921 available.

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

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

926 (2) may assist the accused in the submission of any matter under article 60 of
927 this code; and

928 (3) may take other action authorized by this code.

929 Article 39. Sessions.

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

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

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

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

939 (4) performing any other procedural function that does not require the presence of
940 the members of the court under this code. These proceedings shall be conducted in the presence of
941 the accused, the defense counsel and the trial counsel and shall be made a part of the record. These
942 proceedings may be conducted notwithstanding the number of court members and without regard
943 to article 29.

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

948 Article 40. Continuances.

949 The military judge of a court-martial or a summary court-martial may, for reasonable cause,
950 grant a continuance to any party for such time, and as often, as may appear to be just.

951 Article 41. Challenges.

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

957 (2) If exercise of a challenge for cause reduces the court below the minimum
958 number of members required by article 16, all parties shall, notwithstanding article 29, either
959 exercise or waive any challenge for cause then apparent against the remaining members of the
960 court before additional members are detailed to the court. However, peremptory challenges shall
961 not be exercised at that time.

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

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

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

972 Article 42. Oaths or Affirmations.

973 (a) Before performing their respective duties, military judges, general and special courts-
974 martial members, trial counsel, defense counsel, reporters and interpreters shall take an oath or
975 affirmation in the presence of the accused to perform their duties faithfully. The form of the oath
976 or affirmation, the time and place of the taking thereof, the manner of recording the same and
977 whether the oath or affirmation shall be taken for all cases in which these duties are to be performed
978 or for a particular case shall be as prescribed in regulation or as provided by law. These regulations
979 may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial
980 counsel or defense counsel may be taken at any time by any judge advocate or other person
981 certified or designated to be qualified or competent for the duty, and if such an oath or affirmation
982 is taken, it need not again be taken at the time the judge advocate or other person is detailed to that
983 duty.

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

985 Article 43. Statute of limitations.

986 (a) A person charged with absent without leave or missing movement may be tried and
987 punished at any time without limitation.

988 (b) (1) Except as otherwise provided in this article, a person charged with an offense
989 shall not be liable to be tried by court-martial if the offense was committed more than 6 years
990 before the receipt of sworn charges and specifications by an officer exercising summary court-
991 martial jurisdiction over the command.

992 (2) A person charged with an offense shall not be liable to be punished under article
993 15 if the offense was committed more than 2 years before the imposition of punishment.

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

996 (d) Periods in which the accused was absent from territory in which the United States has
997 the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the
998 enemy, shall be excluded in computing the period of limitation prescribed in this article.

999 (e) When the United States is at war or when the commander-in-chief declares a state of
1000 emergency in accordance with state law, the running of a statute of limitations applicable to any
1001 offense under this chapter:

1002 (1) involving fraud or attempted fraud against the United States, any state or any
1003 agency of either in any manner, whether by conspiracy or not;

1004 (2) committed in connection with the acquisition, care, handling, custody, control
1005 or disposition of any real or personal property of the United States or any state; or

1006 (3) committed in connection with the negotiation, procurement, award,
1007 performance, payment, interim financing, cancellation or other termination or settlement, of any
1008 contract, subcontract or purchase order that is connected with or related to the prosecution of the
1009 war or with any disposition of termination inventory by any war contractor or government agency;
1010 is suspended until 3 years after the termination of hostilities as proclaimed by the president of the
1011 United States, by a joint resolution of congress or by the commander-in-chief.

1012 (f) (1) If charges or specifications are dismissed as defective or insufficient for any
1013 cause and the period prescribed by the applicable statute of limitations:

1014 (A) has expired; or

1015 (B) will expire within 180 days after the date of dismissal of the charges
1016 and specifications, trial and punishment under new charges and specifications are not barred by
1017 the statute of limitations if the conditions specified in paragraph (2) are met.

1018 (2) The conditions referred to in paragraph (1) are that the new charges and
1019 specifications must:

1020 (A) be received by an officer exercising summary court-martial jurisdiction
1021 over the command within 180 days after the dismissal of the charges or specifications; and

1022 (B) allege the same acts or omissions that were alleged in the dismissed
1023 charges or specifications, or allege acts or omissions that were included in the dismissed charges
1024 or specifications.

1025 Article 44. Former jeopardy.

1026 (a) No person shall, without the person's consent, be tried a second time for the same
1027 offense.

1028 (b) No proceeding in which an accused has been found guilty by a court-martial upon any
1029 charge or specification is a trial in the sense of this article until the finding of guilty has become
1030 final after review of the case has been fully completed.

1031 (c) A proceeding that, after the introduction of evidence but before a finding, is dismissed
1032 or terminated by the convening authority or on motion of the prosecution for failure of available
1033 evidence or witnesses without any fault of the accused shall be considered to be a trial in the sense
1034 of this article.

1035 Article 45. Pleas of the accused.

1036 (a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty
1037 sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of
1038 guilty improvidently or through lack of understanding of its meaning and effect, or if the accused
1039 fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall
1040 proceed as though the accused had pleaded not guilty.

1041 (b) With respect to any charge or specification to which a plea of guilty has been made by
1042 the accused and accepted by the military judge or by a court-martial without a military judge, a
1043 finding of guilty of the charge or specification may be entered immediately without vote. This
1044 finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to
1045 announcement of the sentence, in which event, the proceedings shall continue as though the
1046 accused had pleaded not guilty.

1047 Article 46. Opportunity to obtain witnesses and other evidence.

1048 The trial counsel, the defense counsel and the court-martial shall have equal opportunity to
1049 obtain witnesses and other evidence as prescribed by regulations and provided by law. Process
1050 issued in court-martial cases to compel witnesses to appear and testify and to compel the
1051 production of other evidence shall apply the principles of law and the rules of courts-martial
1052 generally recognized in military criminal cases in the courts of the armed forces of the United

1053 States, but which may not be contrary to or inconsistent with this code. Process shall run to any
1054 part of the United States, or the territories, commonwealths and possessions, and may be executed
1055 by civil officers as prescribed by the laws of the place where the witness or evidence is located or
1056 of the United States.

1057 Article 47. Refusal to appear or testify.

1058 (a) Any person not subject to this code who:

1059 (1) has been duly subpoenaed to appear as a witness or to produce books and
1060 records before a court-martial or court of inquiry, or before any military or civil officer designated
1061 to take a deposition to be read in evidence before such a court;

1062 (2) has been duly paid or tendered the fees and mileage of a witness at the rates
1063 allowed to witnesses attending a criminal court of the state; and

1064 (3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to
1065 testify or to produce any evidence which that person may have been legally subpoenaed to produce,
1066 may be punished by the military court in the same manner as a criminal court of the state.

1067 (b) The fees and mileage of witnesses shall be advanced or paid out of the appropriations
1068 for the compensation of witnesses.

1069 Article 48. Contempts.

1070 A military judge or summary court-martial officer may punish for contempt any person
1071 who uses any menacing word, sign or gesture in its presence or who disturbs its proceedings by
1072 any riot or disorder.

1073 (a) A person subject to this code may be punished for contempt by confinement not to
1074 exceed 30 days or a fine of \$100 or both.

1075 A person not subject to this code may be punished for contempt by a military court in the
1076 same manner as a criminal court of the state.

1077 Article 49. Depositions.

1078 (a) At any time after charges have been signed as provided in article 30, any party may take
1079 oral or written depositions unless the military judge or summary court-martial officer hearing the
1080 case or, if the case is not being heard, an authority competent to convene a court-martial for the
1081 trial of those charges forbids it for good cause.

1082 (b) The party at whose instance a deposition is to be taken shall give to every other party
1083 reasonable written notice of the time and place for taking the deposition.

1084 (c) Depositions may be taken before and authenticated by any military or civil officer
1085 authorized by the laws of the state or by the laws of the place where the deposition is taken to
1086 administer oaths.

1087 (d) A duly authenticated deposition taken upon reasonable notice to the other parties, so
1088 far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of
1089 audiotape, videotape, digital image or file or similar material, may be played in evidence before
1090 any military court, if it appears:

1091 (1) that the witness resides or is beyond the state in which the court is ordered to
1092 sit, or beyond 100 miles from the place of trial or hearing;

1093 (2) that the witness by reason of death, age, sickness, bodily infirmity,
1094 imprisonment, military necessity, non amenability to process or other reasonable cause is unable
1095 or refuses to appear and testify in person at the place of trial or hearing; or

1096 (3) that the present whereabouts of the witness is unknown.

1097 Article 50. Admissibility of records of courts of inquiry.

1098 (a) In any case not extending to the dismissal of a commissioned officer, the sworn
1099 testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a
1100 person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of
1101 evidence, be read in evidence by any party before a court-martial if the accused was a party before
1102 the court of inquiry and if the same issue was involved or if the accused consents to the introduction
1103 of such evidence.

1104 (b) Such testimony may be read in evidence only by the defense in cases extending to the
1105 dismissal of a commissioned officer.

1106 (c) Such testimony may also be read in evidence before a court of inquiry.

1107 Article 50A. Defense of lack of mental responsibility.

1108 (a) It is an affirmative defense in a trial by court-martial that, at the time of the commission
1109 of the acts constituting the offense, the accused, as a result of a severe mental disease or defect,
1110 was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or
1111 defect does not otherwise constitute a defense.

1112 (b) The accused has the burden of proving the defense of lack of mental responsibility by
1113 clear and convincing evidence.

1114 (c) Whenever lack of mental responsibility of the accused with respect to an offense is
1115 properly at issue, the military judge shall instruct the members of the court as to the defense of
1116 lack of mental responsibility under this article and charge them to find the accused:

1117 (1) guilty;

1118 (2) not guilty; or

1119 (3) not guilty only by reason of lack of mental responsibility.

1120 (d) Subsection (c) shall not apply to a court-martial composed of a military judge only. In
1121 the case of a court-martial composed of a military judge only or a summary court-martial officer,
1122 whenever lack of mental responsibility of the accused with respect to an offense is properly at
1123 issue, the military judge or summary court-martial officer shall find the accused:

1124 (1) guilty;

1125 (2) not guilty; or

1126 (3) not guilty only by reason of lack of mental responsibility.

1127 (e) Notwithstanding the provisions of article 52, the accused shall be found not guilty only
1128 by reason of lack of mental responsibility if:

1129 (1) a majority of the members of the court-martial present at the time the vote is
1130 taken determines that the defense of lack of mental responsibility has been established; or

1131 (2) in the case of a court-martial composed of a military judge only or a summary
1132 court-martial officer, the military judge or summary court-martial officer determines that the
1133 defense of lack of mental responsibility has been established.

1134 Article 51. Voting and rulings.

1135 (a) Voting by members of a general or special court-martial on the findings and on the
1136 sentence shall be by secret written ballot. The junior member of the court shall count the votes.
1137 The count shall be checked by the president, who shall forthwith announce the result of the ballot
1138 to the members of the court.

1139 (b) The military judge shall rule upon all questions of law and all interlocutory questions
1140 arising during the proceedings. Any such ruling made by the military judge upon any question of
1141 law or any interlocutory question other than the factual issue of mental responsibility of the
1142 accused is final and constitutes the ruling of the court. However, the military judge may change
1143 the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the
1144 court shall be cleared and closed and the question decided by a voice vote as provided in article
1145 52, beginning with the junior in rank.

1146 (c) Before a vote is taken on the findings, the military judge shall, in the presence of the
1147 accused and counsel, instruct the members of the court as to the elements of the offense and charge
1148 them:

1149 (1) that the accused must be presumed to be innocent until the accused's guilt is
1150 established by legal and competent evidence beyond reasonable doubt;

1151 (2) that in the case being considered, if there is a reasonable doubt as to the guilt of
1152 the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

1153 (3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be
1154 in a lower degree as to which there is no reasonable doubt; and

1155 (4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt
1156 is upon the state.

1157 (d) Subsections (a), (b) and (c) shall not apply to a court-martial composed of a military
1158 judge only. The military judge of such a court-martial shall determine all questions of law and fact
1159 arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence.
1160 The military judge of such a court-martial shall make a general finding and shall in addition, on
1161 request, find the facts specially. If an opinion or memorandum of decision is filed, it will be
1162 sufficient if the findings of fact appear therein.

1163 Article 52. Number of votes required.

1164 (a) No person may be convicted of an offense except as provided in subsection (b) of article
1165 45 or by the concurrence of all of the members present at the time the vote is taken.

1166 (b) All other questions to be decided by the members of a general or special court-martial
1167 shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to
1168 reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote that
1169 indicates that the reconsideration is not opposed by the number of votes required for that finding
1170 or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion
1171 relating to the question of the accused's sanity is a determination in favor of the accused. A tie
1172 vote on any other question is a determination in favor of the accused.

1173 Article 53. Court to announce action.

1174 A court-martial shall announce its findings and sentence to the parties as soon as
1175 determined.

1176 Article 54. Record of trial.

1177 (a) Each general and special court-martial shall keep a separate record of the proceedings
1178 in each case brought before it, and the record shall be authenticated by the signature of the military
1179 judge. If the record cannot be authenticated by the military judge by reason of the military judge's
1180 death, disability or absence, it shall be authenticated by the signature of the trial counsel or by that
1181 of a member, if the trial counsel is unable to authenticate it by reason of the trial counsel's death,
1182 disability or absence. In a court-martial consisting of only a military judge, the record shall be
1183 authenticated by the court reporter under the same conditions that would impose such a duty on a
1184 member under this subsection.

1185 (b) (1) A complete verbatim record of the proceedings and testimony shall be prepared
1186 in each general and special court-martial case resulting in a conviction; and

1187 (2) in all other court-martial cases, the record shall contain such matters as may be
1188 prescribed by regulations.

1189 (c) Each summary court-martial shall keep a separate record of the proceedings in each
1190 case and the record shall be authenticated in the manner as may be prescribed by regulations.

1191 (d) A copy of the record of the proceedings of each general and special court-martial shall
1192 be given to the accused as soon as it is authenticated.

1193 PART VIII. SENTENCES.

1194 Article 55. Cruel and unusual punishments prohibited.

1195 Punishment by flogging or by branding, marking or tattooing on the body or any other cruel
1196 or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject
1197 to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

1198 Article 56. Maximum limits.

1199 (a) The punishment that a court-martial may direct for an offense may not exceed such
1200 limits as prescribed by this code, but in no instance may a sentence exceed more than 10 years for
1201 a military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial
1202 of any military offense for which an accused may receive a sentence of confinement for more than
1203 1 year is a felony offense. Except for convictions by a summary court-martial, all other military
1204 offenses are misdemeanors. Any conviction by a summary court-martial is not a criminal
1205 conviction. The limits of punishment for violations of the punitive articles prescribed herein shall
1206 be as prescribed by the manual for courts-martial of the commonwealth in effect at the time of the
1207 offense, but in no instance shall any punishment exceed 10 years confinement.

1208 Article 56A. [Reserved].

1209 Article 57. Effective date of sentences.

1210 (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a
1211 forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply
1212 to pay or allowances becoming due on or after the date the sentence is approved by the convening
1213 authority. No forfeiture may extend to any pay or allowances accrued before that date.

1214 (b) Any period of confinement included in a sentence of a court-martial begins to run from
1215 the date the sentence is adjudged by the court-martial, but periods during which the sentence to

1216 confinement is suspended or deferred shall be excluded in computing the service of the term of
1217 confinement.

1218 (c) All other sentences of courts-martial are effective on the date ordered executed.

1219 Article 57A. Deferment of sentences.

1220 (a) On application by an accused who is under sentence to confinement that has not been
1221 ordered executed, the convening authority or, if the accused is no longer under that person's
1222 jurisdiction, the person exercising general court-martial jurisdiction over the command to which
1223 the accused is currently assigned, may in that person's sole discretion defer service of the sentence
1224 to confinement. The deferment shall terminate when the sentence is ordered executed. The
1225 deferment may be rescinded at any time by the person who granted it or, if the accused is no longer
1226 under that person's jurisdiction, by the person exercising general court-martial jurisdiction over
1227 the command to which the accused is currently assigned.

1228 (b) (1) In any case in which a court-martial sentences an accused referred to in
1229 paragraph (2) to confinement, the convening authority may defer the service of the sentence to
1230 confinement, without the consent of the accused, until after the accused has been permanently
1231 released to the state military forces by a state, the United States or a foreign country referred to in
1232 that paragraph.

1233 (2) Paragraph (1) shall apply to a person subject to this code who:

1234 (A) while in the custody of a state, the United States or a foreign country is
1235 temporarily returned by that state, the United States or a foreign country to the state military forces
1236 for trial by court-martial; and

1237 (B) after the court-martial, is returned to that state, the United States or a
1238 foreign country under the authority of a mutual agreement or treaty, as the case may be.

1239 (3) For purposes of this subsection, the term “state” includes the District of
1240 Columbia and any commonwealth, territory or possession of the United States.

1241 (c) In any case in which a court-martial sentences an accused to confinement and the
1242 sentence to confinement has been ordered executed, but in which review of the case under
1243 subsection (a) of article 67 is pending, the adjutant general may defer further service of the
1244 sentence to confinement while that review is pending.

1245 Article 58. Execution of confinement.

1246 (a) A sentence of confinement adjudged by a court-martial, whether or not the sentence
1247 includes discharge or dismissal, and whether or not the discharge or dismissal has been executed,
1248 may be carried into execution by confinement in any place authorized by this code. Persons so
1249 confined are subject to the same discipline and treatment as persons regularly confined or
1250 committed to that place of confinement.

1251 (b) No place of confinement may require payment of any fee or charge for so receiving or
1252 confining a person except as otherwise provided by law.

1253 Article 58A. Sentences: reduction in enlisted grade upon approval.

1254 (a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved
1255 by the convening authority, that includes a dishonorable or bad-conduct discharge or confinement
1256 shall reduce that member to pay grade E-1, effective on the date of that approval.

1257 (b) If the sentence of a member who is reduced in pay grade under subsection (a) is set
1258 aside or disapproved or, as finally approved, does not include any punishment named in subsection
1259 (a), the rights and privileges of which the person was deprived because of that reduction shall be
1260 restored, including pay and allowances.

1261 Article 58B. Sentences: forfeiture of pay and allowances during confinement.

1262 (a) (1) A court-martial sentence described in paragraph (2) shall result in the forfeiture
1263 of pay, or of pay and allowances, due that member during any period of confinement or parole.
1264 The forfeiture pursuant to this article shall take effect on the date determined under subsection (a)
1265 of article 57 and may be deferred as provided by that article. The pay and allowances forfeited, in
1266 the case of a general court-martial, shall be all pay and allowances due that member during such
1267 period and, in the case of a special court-martial, shall be $\frac{2}{3}$ of all pay due that member during
1268 such period.

1269 (2) A sentence shall be covered by this article if it includes: (A) confinement for
1270 more than 6 months; or (B) confinement for not more than 6 months and a dishonorable or bad-
1271 conduct discharge or dismissal.

1272 (b) In a case involving an accused who has dependents, the convening authority or other
1273 person acting under article 60 may waive any or all of the forfeitures of pay and allowances
1274 required by subsection (a) for a period not to exceed 6 months. Any amount of pay or allowances
1275 that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening
1276 authority or other person taking action directs, to the dependents of the accused.

1277 (c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set
1278 aside or disapproved or, as finally approved, does not provide for a punishment referred to in

1279 paragraph (2) of subsection (a), the member shall be paid the pay and allowances that the member
1280 would have been paid, except for the forfeiture, for the period during which the forfeiture was in
1281 effect.

1282 PART IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL.

1283 Article 59. Error of law; lesser included offense.

1284 (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an
1285 error of law unless the error materially prejudices the substantive rights of the accused.

1286 (b) Any reviewing authority with the power to approve or affirm a finding of guilty may
1287 approve or affirm, instead, so much of the finding as includes a lesser included offense.

1288 Article 60. Reserved.

1289 Article 61. Withdrawal of appeal.

1290 (a) In each case subject to appellate review under this code, the accused may file with the
1291 convening authority a statement expressly withdrawing the right of the accused to such appeal.
1292 Such a withdrawal shall be signed by both the accused and his defense counsel and must be filed
1293 in accordance with appellate procedures as provided by law.

1294 (b) The accused may withdraw an appeal at any time in accordance with appellate
1295 procedures as provided by law.

1296 Article 62. Appeal by the State.

1297 (a) (1) In a trial by court-martial in which a punitive discharge may be adjudged, other
1298 than a finding of not guilty with respect to the charge or specification by the members of the court-

1299 martial or by a judge in a bench trial so long as it is not made in reconsideration, the state may
1300 appeal:

1301 (A) an order or ruling of the military judge that terminates the proceedings
1302 with respect to a charge or specification;

1303 (B) an order or ruling that excludes evidence that is substantial proof of a
1304 fact material in the proceeding;

1305 (C) an order or ruling that directs the disclosure of classified information;

1306 (D) an order or ruling that imposes sanctions for nondisclosure of classified
1307 information;

1308 (E) a refusal of the military judge to issue a protective order sought by the
1309 state to prevent the disclosure of classified information; or

1310 (F) a refusal by the military judge to enforce an order described in clause
1311 (E) that has previously been issued by appropriate authority.

1312 (2) An appeal of an order or ruling may not be taken unless the trial counsel
1313 provides the military judge with written notice of appeal from the order or ruling within 72 hours
1314 of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal
1315 is not taken for the purpose of delay and, if the order or ruling appealed is 1 that excludes evidence,
1316 that the evidence excluded is substantial proof of a fact material in the proceeding.

1317 (3) An appeal under this article shall be diligently prosecuted as provided by law.

1318 (b) An appeal under this article shall be forwarded to the court prescribed in article 67A.
1319 In ruling on an appeal under this article, that court may act only with respect to matters of law.

1320 (c) Any period of delay resulting from an appeal under this article shall be excluded in
1321 deciding any issue regarding denial of a speedy trial unless an appropriate authority determines
1322 that the appeal was filed solely for the purpose of delay with the knowledge that it was totally
1323 frivolous and without merit.

1324 Article 63. Rehearings.

1325 Each rehearing under this code shall take place before a court-martial composed of
1326 members not members of the court-martial which first heard the case. Upon a rehearing the accused
1327 may not be tried for any offense of which the accused was found not guilty by the first court-
1328 martial, and no sentence in excess of or more severe than the original sentence may be approved,
1329 unless the sentence is based upon a finding of guilty of an offense not considered upon the merits
1330 in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the
1331 sentence approved after the first court-martial was in accordance with a pretrial agreement and the
1332 accused at the rehearing changes a plea with respect to the charges or specifications upon which
1333 the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the
1334 approved sentence as to those charges or specifications may include any punishment not in excess
1335 of that lawfully adjudged at the first court-martial.

1336 Article 64. Review by the Senior Force Judge Advocate.

1337 (a) Each general and special court-martial case in which there has been a finding of guilty
1338 shall be reviewed by the senior force judge advocate, or a designee. The senior force judge
1339 advocate, or designee, may not review a case under this subsection if that person has acted in the

1340 same case as an accuser, investigating officer, member of the court, military judge, or counsel or
1341 has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's
1342 review shall be in writing and shall contain the following:

1343 (1) Conclusions as to whether:

1344 (A) the court had jurisdiction over the accused and the offense;

1345 (B) the charge and specification stated an offense; and

1346 (C) the sentence was within the limits prescribed as a matter of law.

1347 (2) A response to each allegation of error made in writing by the accused.

1348 (3) If the case is sent for action under subsection (b), a recommendation as to the
1349 appropriate action to be taken and an opinion as to whether corrective action is required as a matter
1350 of law.

1351 (b) The record of trial and related documents in each case reviewed under subsection (a)
1352 shall be sent for action to the adjutant general, if:

1353 (1) the judge advocate who reviewed the case recommends corrective action;

1354 (2) the sentence approved under subsection (c) of article 60 extends to dismissal, a
1355 bad-conduct or dishonorable discharge or confinement for more than 6 months; or

1356 (3) such action is otherwise required by regulations of The Adjutant General.

1357 (c) (1) The adjutant general may:

1358 (A) disapprove or approve the findings or sentence, in whole or in part;

1359 (B) remit, commute or suspend the sentence in whole or in part;

1360 (C) except where the evidence was insufficient at the trial to support the
1361 findings, order a rehearing on the findings, on the sentence, or on both; or

1362 (D) dismiss the charges.

1363 (2) If a rehearing is ordered but the convening authority finds a
1364 rehearing impracticable, the convening authority shall dismiss the charges.

1365 (3) If the opinion of the senior force judge advocate, or designee, in the senior force
1366 judge advocate's review under subsection (a) is that corrective action is required as a matter of law
1367 and if the adjutant general does not take action that is at least as favorable to the accused as that
1368 recommended by the judge advocate, the record of trial and action thereon shall be sent to the
1369 commander-in-chief for review and action as deemed appropriate.

1370 (d) The senior force judge advocate, or a designee, may review any case in which there has
1371 been a finding of not guilty of all charges and specifications. The senior force judge advocate, or
1372 designee, may not review a case under this subsection if that person has acted in the same case as
1373 an accuser, investigating officer, member of the court, military judge or counsel or has otherwise
1374 acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be
1375 limited to questions of subject matter jurisdiction.

1376 (e) The record of trial and related documents in each case reviewed under subsection (d)
1377 shall be sent for action to the adjutant general.

1378 (1) The adjutant general may:

1379 (A) when subject matter jurisdiction is found to be lacking, void the court-martial
1380 ab initio, with or without prejudice to the government, as the adjutant general deems appropriate;
1381 or

1382 (B) return the record of trial and related documents to the senior force judge
1383 advocate for appeal by the government as provided by law.

1384 Article 65. Disposition of records after review by the convening authority.

1385 Except as otherwise required by this code, all records of trial and related documents shall
1386 be transmitted and disposed of as prescribed by regulation and provided by law.

1387 Article 66. [Reserved].

1388 Article 67. [Reserved].

1389 Article 67A. Review by State Appellate Authority.

1390 Decisions of a court-martial shall be considered to be from a trial court of the
1391 commonwealth and appeals shall be to the appeals court of the commonwealth. The appellate
1392 procedures to be followed shall be those provided by law for the appeal of criminal cases thereto.

1393 Article 68. [Reserved].

1394 Article 69. [Reserved].

1395 Article 70. Appellate counsel.

1396 (a) The senior force judge advocate shall detail a judge advocate as appellate government
1397 counsel to represent the state in the review or appeal of cases specified in article 67a of this code

1398 and before any federal court when requested to do so by the state attorney general. Appellate
1399 government counsel must be a member in good standing of the bar of the highest court of the state
1400 to which the appeal is taken.

1401 (b) Upon an appeal by the state, an accused has the right to be represented by detailed
1402 military counsel before any reviewing authority and before any appellate court.

1403 (c) Upon the appeal by an accused, the accused has the right to be represented by military
1404 counsel before any reviewing authority.

1405 (d) Upon the request of an accused entitled to be so represented, the senior force judge
1406 advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases
1407 specified in subsections (b) and (c) of this article.

1408 (e) An accused may be represented by civilian appellate counsel at no expense to the state.

1409 Article 71. Execution of sentence; suspension of sentence.

1410 (a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-
1411 conduct discharge and if the right of the accused to appellate review is not waived, and an appeal
1412 is not withdrawn under article 61, that part of the sentence extending to dismissal or a dishonorable
1413 or bad-conduct discharge may not be executed until there is a final judgment as to the legality of
1414 the proceedings. A judgment as to the legality of the proceedings is final in such cases when review
1415 is completed by an appellate court prescribed in article 67A, and is deemed final by the law of
1416 state where the judgment was had.

1417 (b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad
1418 conduct discharge and if the right of the accused to appellate review is waived, or an appeal is

1419 withdrawn under article 61, that part of the sentence extending to dismissal or a dishonorable or
1420 bad-conduct discharge may not be executed until review of the case by the senior force judge
1421 advocate and any action on that review under article 64 is completed. Any other part of a court-
1422 martial sentence may be ordered executed by the convening authority or other person acting on the
1423 case under article 60 when so approved under that article.

1424 Article 72. Vacation of suspension.

1425 (a) Before the vacation of the suspension of a special court-martial sentence, which as
1426 approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer
1427 having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged
1428 violation of probation. The probationer shall be represented at the hearing by military counsel if
1429 the probationer so desires.

1430 (b) The record of the hearing and the recommendation of the officer having special court-
1431 martial jurisdiction shall be sent for action to the officer exercising general court-martial
1432 jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the
1433 sentence, except a dismissal, shall be executed, subject to applicable restrictions in this code.

1434 (c) The suspension of any other sentence may be vacated by any authority competent to
1435 convene, for the command in which the accused is serving or assigned, a court of the kind that
1436 imposed the sentence.

1437 Article 73. Petition for a new trial.

1438 At any time within 2 years after approval by the convening authority of a court-martial
1439 sentence, the accused may petition the adjutant general for a new trial on the grounds of newly-
1440 discovered evidence or fraud on the court-martial.

1441 Article 74. Remission and suspension.

1442 (a) An authority competent to convene, for the command in which the accused is serving
1443 or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount
1444 of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence
1445 approved by the commander-in-chief.

1446 (b) The commander-in-chief may, for good cause, substitute an administrative form of
1447 discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

1448 Article 75. Restoration.

1449 (a) Under such regulations as may be prescribed, all rights, privileges and property affected
1450 by an executed part of a court-martial sentence which has been set aside or disapproved, except an
1451 executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and
1452 such executed part is included in a sentence imposed upon the new trial or rehearing.

1453 (b) If a previously executed sentence of dishonorable or bad-conduct discharge is not
1454 imposed on a new trial, the commander-in-chief, if authorized, may substitute therefor a form of
1455 discharge authorized for administrative issuance unless the accused is to serve out the remainder
1456 of the accused's enlistment.

1457 (c) If a previously executed sentence of dismissal is not imposed on a new trial, the
1458 commander-in-chief, if authorized, may substitute therefor a form of discharge authorized for

1459 administrative issue and the commissioned officer dismissed by that sentence may be reappointed
1460 by the commander-in-chief alone to such commissioned grade and with such rank as in the opinion
1461 of the commander-in-chief that former officer would have attained had such former officer not
1462 been dismissed. The reappointment of any such former officer shall be without regard to the
1463 existence of a vacancy and shall affect the promotion status of other officers only insofar as the
1464 commander-in-chief may direct. All time between the dismissal and their reappointment shall be
1465 considered as actual service for all purposes, including the right to pay and allowances.

1466 Article 76. Finality of proceedings, findings and sentences.

1467 The appellate review of records of trial provided by this code, the proceedings, findings,
1468 and sentences of courts-martial as approved, reviewed or affirmed as required by this code and all
1469 dismissals and discharges carried into execution under sentences by courts-martial following
1470 approval, review or affirmation as required by this code shall be final and conclusive. Orders
1471 publishing the proceedings of courts-martial and all action taken pursuant to those proceedings
1472 shall be binding upon all departments, courts, agencies and officers of the commonwealth, subject
1473 only to action upon a petition for a new trial as provided in article 73 and to action under article
1474 74.

1475 Article 76A. Leave required to be taken pending review of certain court-martial
1476 convictions

1477 Under regulations prescribed, an accused who has been sentenced by a court-martial may
1478 be required to take leave pending completion of action under this article if the sentence, as
1479 approved under article 60, includes an unsuspended dismissal or an unsuspended dishonorable or
1480 bad-conduct discharge. The accused may be required to begin such leave on the date on which the

1481 sentence is approved under said article 60 or at any time after such date and such leave may be
1482 continued until the date on which action under this article is completed or may be terminated at
1483 any earlier time.

1484 Article 76B. Lack of mental capacity or mental responsibility: commitment of accused for
1485 examination and treatment

1486 (a) Persons incompetent to stand trial.

1487 In the case of a person determined under this code to be presently suffering from a mental
1488 disease or defect rendering the person mentally incompetent to the extent that the person is unable
1489 to understand the nature of the proceedings against that person or to conduct or cooperate
1490 intelligently in the defense of the case, the general court-martial convening authority shall proceed
1491 in accordance with the General Laws applicable to the person's lack of capacity.

1492 (b) Persons found not guilty by reason of lack of mental responsibility.

1493 If a person is found by a court-martial not guilty only by reason of lack of mental
1494 responsibility, the court-martial convening authority shall proceed in accordance with the General
1495 Laws applicable to the finding of not guilty by reason of lack of mental responsibility.

1496 PART X. PUNITIVE ARTICLES.

1497 Article 77. Principals.

1498 A person subject to this code who: (1) commits an offense punishable by this code or aids,
1499 abets, counsels, commands, or procures its commission; or (2) causes an act to be done which, if
1500 directly performed by such person would be punishable by this code shall be a principal.

1501 Article 78. Accessory after the fact.

1502 A person subject to this code who, knowing that an offense punishable by this code has
1503 been committed, receives, comforts or assists the offender in order to hinder or prevent the
1504 offender's apprehension, trial or punishment shall be punished as a court-martial may direct.

1505 Article 79. Conviction of lesser included offense.

1506 An accused may be found guilty of an offense necessarily included in the offense charged
1507 or of an attempt to commit either the offense charged or an offense necessarily included therein.

1508 Article 80. Attempts.

1509 (a) An act done with specific intent to commit an offense under this code that amounts to
1510 more than mere preparation and tending, even though failing to effect its commission, shall be an
1511 attempt to commit that offense.

1512 (b) A person subject to this code who attempts to commit an offense punishable by this
1513 code shall be punished as a court-martial may direct unless otherwise specifically prescribed.

1514 (c) A person subject to this code may be convicted of an attempt to commit an offense
1515 although it appears on the trial that the offense was consummated.

1516 Article 81. Conspiracy.

1517 A person subject to this code who conspires with another person to commit an offense
1518 under this code shall, if any of the conspirators does an act to effect the object of the conspiracy,
1519 be punished as a court-martial may direct.

1520 Article 82. Solicitation.

1521 (a) A person subject to this code who solicits or advises another person to desert in violation
1522 of article 85 or mutiny in violation of article 94 shall, if the offense solicited or advised is attempted
1523 or committed, be punished as provided for the commission of the offense; provided, however, that
1524 if the offense solicited or advised is not committed or attempted, the person shall be punished as a
1525 court-martial may direct.

1526 (b) A person subject to this code who solicits or advises another to commit an act of
1527 misbehavior before the enemy in violation of article 99 or sedition in violation of article 94 shall,
1528 if the offense solicited or advised is committed, be punished as provided for the commission of the
1529 offense; provided, however, that if the offense solicited or advised is not committed, the person
1530 shall be punished as a court-martial may direct.

1531 Article 83. Fraudulent enlistment, appointment or separation.

1532 A person who: (1)procures for oneself an enlistment or appointment in the state military
1533 forces by knowingly false representation or deliberate concealment as to such person's
1534 qualifications for that enlistment or appointment and receives pay or allowances thereunder; or (2)
1535 procures for oneself a separation from the state military forces by knowingly false representation
1536 or deliberate concealment as to such person's eligibility for that separation shall be
1537 punished as a court-martial may direct.

1538 Article 84. Unlawful enlistment, appointment or separation.

1539 A person subject to this code who effects an enlistment or appointment in or a separation
1540 from the state military forces of a person who is known to such person to be ineligible for that
1541 enlistment, appointment or separation because it is prohibited by law, regulation or order shall be
1542 punished as a court-martial may direct.

1543 Article 85. Desertion.

1544 (a) A member of the state military forces who: (1) without authority, goes or remains absent
1545 from such member's unit, organization or place of duty with intent to remain away therefrom
1546 permanently;

1547 (2) quits such member's unit, organization or place of duty with intent to avoid hazardous duty or
1548 to shirk important service; or (3) without being regularly separated from 1 of the state military
1549 forces, enlists or accepts an appointment in the same or another state military force or in 1 of the
1550 armed forces of the United States without fully disclosing the fact that such member has not been
1551 regularly separated or enters a foreign armed service, except when authorized by the United States,
1552 shall be guilty of desertion.

1553 (b) A commissioned officer of the state military forces who, after tender of such officer's
1554 resignation and before notice of its acceptance, quits the officer's post or proper duties without
1555 leave and with intent to remain away therefrom permanently shall be guilty of desertion.

1556 (c) A person found guilty of desertion or attempt to desert shall be punished, if the offense
1557 is committed in time of war, by confinement for not more than 10 years or such other punishment
1558 as a court-martial may direct; provided, however, that if the desertion or attempt to desert occurs
1559 at any other time, such person shall be punished as a court-martial may direct.

1560 Article 86. Absence without leave.

1561 A person subject to this code who, without authority: (1) fails to go to an appointed place
1562 of duty at the time prescribed; (2) goes from that place; or (3) absents such person or remains

1563 absent from an appointed unit, organization or place of duty at which such person is required to be
1564 at the time prescribed shall be punished as a court-martial may direct.

1565 Article 87. Missing movement.

1566 A person subject to this code who through neglect or design misses the movement of a
1567 ship, aircraft or unit with which such person is required in the course of duty to move shall be
1568 punished as a court-martial may direct.

1569 Article 88. Contempt toward officials.

1570 A commissioned officer who uses contemptuous words against the President, the Vice
1571 President, Congress of the United States, the United States Secretary of Defense, the United States
1572 Secretary of a military department, the United States Secretary of Homeland Security or the
1573 commander-in-chief or the general court shall be punished as a court-martial may direct.

1574 Article 89. Disrespect toward superior commissioned officer.

1575 A person subject to this code who behaves with disrespect toward such person's superior
1576 commissioned officer shall be punished as a court-martial may direct.

1577 Article 90. Assaulting or willfully disobeying superior commissioned officer.

1578 A person subject to this code who: (1) strikes a superior commissioned officer or draws or
1579 lifts up any weapon or offers violence against a superior commissioned officer while such superior
1580 commissioned officer is in the execution of the duties of office; or (2) willfully disobeys a lawful
1581 command of such person's superior commissioned officer shall be punished, if the offense is
1582 committed in time of war, by confinement for not more than 10 years or by such other punishment

1583 as a court-martial may direct and, if the offense is committed at any other time, by such punishment
1584 as a court-martial may direct.

1585 Article 91. Insubordinate conduct toward warrant officer, noncommissioned officer or
1586 petty officer.

1587 A warrant officer or enlisted member who: (1) strikes or assaults a warrant officer,
1588 noncommissioned officer or petty officer while that officer is in the execution of the office; (2)
1589 willfully disobeys the lawful order of a warrant officer, noncommissioned officer or petty officer;
1590 or (3) treats with contempt or is disrespectful in language or deportment toward a warrant officer,
1591 noncommissioned officer or petty officer while that officer is in the execution of the office shall
1592 be punished as a court-martial may direct.

1593 Article 92. Failure to obey order or regulation.

1594 A person subject to this code who: (1) violates or fails to obey a lawful general order or
1595 regulation; (2) having knowledge of any other lawful order issued by a member of the state military
1596 forces which such person has a duty to obey, fails to obey that order; or (3) is derelict in the
1597 performance of such persons's duties shall be punished as a court-martial may direct.

1598 Article 93. Cruelty and maltreatment.

1599 A person subject to this code who is guilty of cruelty toward, or oppression or maltreatment
1600 of, a person subject to their orders shall be punished as a court-martial may direct.

1601 Article 94. Mutiny or sedition.

1602 (a) A person subject to this code who: (1) with intent to usurp or override lawful military
1603 authority, refuses, in concert with another person, to obey orders or otherwise do their duty or

1604 creates any violence or a disturbance shall be guilty of mutiny; (2) with intent to cause the
1605 overthrow or destruction of lawful civil authority, creates, in concert with another person, revolt,
1606 violence or other disturbance against that authority shall be guilty of sedition; or (3) fails to do
1607 their utmost to prevent and suppress a mutiny or sedition being committed in such person's
1608 presence or fails to take all reasonable means to inform such person's superior commissioned
1609 officer or commanding officer of a mutiny or sedition which such person knows or has reason to
1610 believe is taking place shall be guilty of a failure to suppress or report a mutiny or sedition.

1611 (b) A person who is found guilty of attempted mutiny, mutiny, sedition or failure to
1612 suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

1613 Article 95. Resistance, flight, breach of arrest and escape

1614 A person subject to this code who: (1) resists apprehension; (2) flees from apprehension;
1615 (3) breaks arrest; or (4) escapes from custody or confinement shall be punished as a court-martial
1616 may direct.

1617 Article 96. Releasing prisoner without proper authority.

1618 A person subject to this code who, without proper authority, releases a prisoner committed
1619 to such person's charge or who through neglect or design suffers any such prisoner to escape shall
1620 be punished as a court-martial may direct, whether or not the prisoner was committed in strict
1621 compliance with law.

1622 Article 97. Unlawful detention.

1623 A person subject to this code who, except as provided by law or regulation, apprehends,
1624 arrests or confines another shall be punished as a court-martial may direct.

1625 Article 98. Noncompliance with procedural rules.

1626 A person subject to this code who: (1) is responsible for unnecessary delay in the
1627 disposition of a case of a person accused of an offense under this code; or (2) knowingly and
1628 intentionally fails to enforce or comply with any provision of this code regulating the proceedings
1629 before, during or after trial of an accused shall be punished as a court-martial may direct.

1630 Article 99. Misbehavior before the enemy.

1631 A person subject to this code who, before or in the presence of the enemy: (1) runs away;
1632 (2) shamefully abandons, surrender or delivers up any command, unit, place or military
1633 property which it is such person's duty to defend; (3) through disobedience, neglect or intentional
1634 misconduct, endangers the safety of any such command, unit, place or military property; (4) casts
1635 away such person's arms or ammunition; (5) is guilty of cowardly conduct; (6) quits such person's
1636 place of duty to plunder or pillage; (7) causes false alarms in a command, unit or place under
1637 control of the armed forces of the United States or the state military forces; (9) willfully fails
1638 to do such person's utmost to encounter, engage, capture or destroy enemy troops, combatants,
1639 vessels, aircraft or any other thing which is such person's duty to encounter, engage, capture or
1640 destroy; or (9) does not afford all practicable relief and assistance to any troops, combatants,
1641 vessels or aircraft of the armed forces belonging to the United States or their allies, to the
1642 commonwealth or to any other state when engaged in battle shall be punished as a court-martial
1643 may direct.

1644 Article 100. Subordinate compelling surrender.

1645 A person subject to this code who compels or attempts to compel the commander of any
1646 of the state military forces or of the military forces of any other state, place, vessel, aircraft or other

1647 military property or of any body of members of the armed forces to give it up to an enemy or to
1648 abandon it or who strikes the colors or flag to an enemy without proper authority shall be punished
1649 as a court-martial may direct.

1650 Article 101. Improper use of countersign.

1651 A person subject to this code who in time of war discloses the parole or countersign to any
1652 person not entitled to receive it or who gives to another, who is entitled to receive and use the
1653 parole or countersign, a different parole or countersign from that which, to such person's
1654 knowledge, such person was authorized and required to give shall be punished as a court-martial
1655 may direct.

1656 Article 102. Forcing a safeguard.

1657 A person subject to this code who forces a safeguard shall be punished as a court-martial
1658 may direct.

1659 Article 103. Captured or abandoned property.

1660 (a) Persons subject to this code shall secure all public property taken for the service of the
1661 United States or the commonwealth and shall give notice and turn over to the proper authority
1662 without delay all captured or abandoned property in their possession, custody or control.

1663 (b) A person subject to this code who: (1) fails to carry out the duties prescribed in
1664 subsection (a); (2) buys, sells, trades or in any way deals in or disposes of taken, captured or
1665 abandoned property for which such person receives or expects a profit, benefit or advantage to
1666 such person or another directly or indirectly connected with such person; or (3) engages in looting
1667 or pillaging shall be punished as a court-martial may direct.

1668 Article 104. Aiding the enemy.

1669 A person subject to this code who: (1) aids or attempts to aid the enemy with arms,
1670 ammunition, supplies, money or other things; or (2) without proper authority, knowingly harbors
1671 or protects or gives intelligence to or communicates or corresponds with or holds any intercourse
1672 with the enemy, either directly or indirectly shall be punished as a court-martial may direct.

1673 Article 105. Misconduct as prisoner.

1674 A person subject to this code who, while in the hands of the enemy in time of war: (1) for
1675 the purpose of securing favorable treatment by such person's captors, acts without proper authority
1676 in a manner contrary to law, custom or regulation to the detriment of others of whatever nationality
1677 held by the enemy as civilian or military prisoners; or (2) while in a position of authority over such
1678 persons, maltreats such person's without justifiable cause shall be punished as a court-martial may
1679 direct.

1680 Article 106. [Reserved].

1681 Article 106A. [Reserved].

1682 Article 107. False official statements.

1683 A person subject to this code who, with intent to deceive, signs a false record, return,
1684 regulation, order or other official document made in the line of duty, knowing it to be false or who
1685 makes any other false official statement made in the line of duty, knowing it to be false, shall be
1686 punished as a court-martial may direct.

1687 Article 108. Military property — Loss, damage, destruction or wrongful disposition.

1688 A person subject to this code who, without proper authority: (1) sells or otherwise disposes
1689 of; (2) willfully or through neglect damages, destroys, or loses; or (3) willfully or through neglect
1690 suffers to be lost, damaged, destroyed, sold or wrongfully disposed of any military property of
1691 the United States or of any state shall be punished as a court-martial may direct.

1692 Article 109. Property other than military property — Waste, spoilage or destruction.

1693 A person subject to this code who willfully or recklessly wastes, spoils or otherwise
1694 willfully and wrongfully destroys or damages any property other than military property of the
1695 United States or of any state shall be punished as a court-martial may direct.

1696 Article 110. Improper hazarding of vessel.

1697 (a) A person subject to this code who willfully and wrongfully hazards or suffers to be
1698 hazarded any vessel of the armed forces of the United States or of any state military force shall
1699 suffer such punishment as a court-martial may direct.

1700 (b) A person subject to this code who negligently hazards or suffers to be hazarded any
1701 vessel of the armed forces of the United States or of any state military force shall be punished as a
1702 court-martial may direct.

1703 Article 111. [Reserved].

1704 Article 112. Drunk on duty.

1705 A person subject to this code, other than a sentinel or lookout, who is found drunk on duty
1706 shall be punished as a court-martial may direct.

1707 Article 112A. Wrongful use, possession, etc., of controlled substances.

1708 (a) A person subject to this code who wrongfully uses, possesses, manufactures, distributes,
1709 imports into the customs territory of the United States, exports from the United States or introduces
1710 into an installation, vessel, vehicle or aircraft used by or under the control of the armed forces of
1711 the United States or of any state military force a substance described in subsection (b) shall be
1712 punished as a court-martial may direct.

1713 (b) The following substances shall be subject to the punishment referred to in subsection
1714 (a):

1715 (1) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
1716 methamphetamine, phencyclidine, barbituric acid and marijuana and any compound or derivative
1717 of any such substance;

1718 (2) any substance not specified in clause (i) that is listed on a schedule of controlled
1719 substances prescribed by the President of the United States for the purposes of the Uniform Code
1720 of Military Justice of the Armed Forces of the United States in 10 U.S.C. 801, et seq; and

1721 (3) any other substance not specified in clause (i) or contained on a list prescribed
1722 by the President of the United States under clause (ii) that is listed in schedules I to V, inclusive,
1723 in the schedules of controlled substances under Article 202 of the Controlled Substances Act, 21
1724 U.S.C. 812.

1725 Article 113. Misbehavior of sentinel.

1726 A sentinel or lookout who is found drunk or sleeping upon such person's post or leaves it
1727 before being regularly relieved shall be punished, if the offense is committed in time of war, by
1728 confinement for not more than 10 years or by such other punishment as a court-martial may direct;

1729 provided, however, that if the offense is committed at any other time, such person shall be punished
1730 by such other punishment as a court-martial may direct.

1731 Article 114. Dueling.

1732 A person subject to this code who fights or promotes, or is concerned in or connives at
1733 fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report
1734 the fact promptly to the proper authority shall be punished as a court-martial may direct.

1735 Article 115. Malingering.

1736 A person subject to this code who for the purpose of avoiding work, duty, or service: (1)
1737 feigns illness, physical disablement, mental lapse or derangement; or (2) intentionally inflicts self-
1738 injury shall be punished as a court-martial may direct.

1739 Article 116. Riot or breach of peace.

1740 A person subject to this code who causes or participates in a riot or breach of the peace
1741 shall be punished as a court-martial may direct.

1742 Article 117. Provoking speeches or gestures.

1743 A person subject to this code who uses provoking or reproachful words or gestures towards
1744 another person subject to this code shall be punished as a court-martial may direct.

1745 Article 118. [Reserved].

1746 Article 119. [Reserved].

1747 Article 120. [Reserved].

1748 Article 121. [Reserved].

1749 Article 122. [Reserved].

1750 Article 123. [Reserved].

1751 Article 123A. [Reserved].

1752 Article 124. [Reserved].

1753 Article 125. [Reserved].

1754 Article 126. [Reserved].

1755 Article 127. [Reserved].

1756 Article 128. [Reserved].

1757 Article 129. [Reserved].

1758 Article 130. [Reserved].

1759 Article 131. [Reserved].

1760 Article 132. Frauds against the government.

1761 A person subject to this code who: (1) knowing it to be false or fraudulent, (A) makes a
1762 claim against the United States, the commonwealth or an officer thereof or (B) presents to a person
1763 in the civil or military service thereof, for approval or payment, a claim against the United States,
1764 the commonwealth or an officer thereof;

1765 (2) for the purpose of obtaining the approval, allowance or payment of a claim against the
1766 United States, the commonwealth or an officer thereof (A) makes or uses a writing or other paper
1767 knowing it to contain any false or fraudulent statements, (B)makes an oath, affirmation or
1768 certification to a fact or to a writing or other paper knowing the oath, affirmation or certification
1769 to be false or (C) forges or counterfeits a signature upon a writing or other paper or uses any such
1770 signature knowing it to be forged or counterfeited; (3) having charge, possession, custody or
1771 control of any money or other property of the United States or the commonwealth that was
1772 furnished or intended for the armed forces of the United States or the state military forces,
1773 knowingly delivers to a person having authority to receive it, an amount thereof that is less than
1774 that for which such person received a certificate or receipt; or (4) being authorized to make or
1775 deliver a paper certifying the receipt of any property of the United States or the commonwealth
1776 that was furnished or intended for the armed forces of the United States or the state military forces,
1777 makes or delivers to another such writing without having full knowledge of the truth of the
1778 statements contained therein and with intent to defraud the United States or the commonwealth
1779 shall be punished as a court-martial may direct.

1780 Article 133. Conduct unbecoming an officer.

1781 A commissioned officer, cadet, candidate or midshipman who is convicted of conduct
1782 unbecoming an officer shall be punished as a court-martial may direct.

1783 Article 134. General article.

1784 Though not specifically mentioned in this code, all disorders and neglects to the prejudice
1785 of good order and discipline in the state military forces and all conduct of a nature to bring discredit
1786 upon the state military forces shall be taken cognizance of by a court-martial and punished at the

1787 discretion of a military court; provided, however, that where a crime constitutes an offense that
1788 violates both this code and the criminal laws of the state where the offense was committed or the
1789 criminal laws of the United States, jurisdiction of the military court shall be determined in
1790 accordance with subsection (b) of article 2.

1791 PART XI. MISCELLANEOUS PROVISIONS.

1792 Article 135. Courts of inquiry.

1793 (a) Courts of inquiry to investigate any matter of concern to the state military forces may
1794 be convened by a person authorized to convene a general court-martial, whether or not the persons
1795 involved have requested such an inquiry.

1796 (b) A court of inquiry shall consist of at least 3 commissioned officers. For each court of
1797 inquiry, the convening authority shall also appoint counsel for the court.

1798 (c) A person subject to this code whose conduct is subject to inquiry shall be designated as
1799 a party. A person subject to this code who has a direct interest in the subject of inquiry shall have
1800 the right to be designated as a party upon request to the court. A person designated as a party shall
1801 be given due notice and shall have the right to be present, to be represented by counsel, to cross-
1802 examine witnesses and to introduce evidence.

1803 (d) Members of a court of inquiry may be challenged by a party but only for cause stated
1804 to the court.

1805 (e) The members, counsel, the reporter and interpreters of courts of inquiry shall take
1806 an oath to faithfully perform their duties.

1807 (f) Witnesses may be summoned to appear and testify and be examined before courts
1808 of inquiry as provided for courts-martial.

1809 (g) Courts of inquiry shall make findings of fact but shall not express opinions or make
1810 recommendations unless required to do so by the convening authority.

1811 (h) Each court of inquiry shall keep a record of its proceedings which shall be
1812 authenticated by the signatures of the president and counsel for the court and forwarded to the
1813 convening authority. If the record cannot be authenticated by the president, it shall be signed by a
1814 member in lieu of the president. If the record cannot be authenticated by the counsel for the court,
1815 it shall be signed by a member in lieu of the counsel.

1816 Article 136. Authority to administer oaths and to act as notary.

1817 (a) The following persons may administer oaths for the purposes of military
1818 administration, including military justice:

1819 (1) judge advocates;

1820 (2) summary courts-martial;

1821 (3) adjutants, assistant adjutants, acting adjutants and personnel adjutants;

1822 (4) commanding officers of the naval militia; and

1823 (5) all other persons designated by regulations of the armed forces of the United
1824 States or by law.

1825 (b) The following persons may administer oaths necessary in the performance of their
1826 duties:

- 1827 (1) the president, military judges and trial counsel for all general and special
1828 courts- martial;
- 1829 (2) the president and the counsel for the court of any court of inquiry;
- 1830 (3) officers designated to take a deposition;
- 1831 (4) persons detailed to conduct an investigation;
- 1832 (5) recruiting officers; and
- 1833 (6) all other persons designated by regulations of the Armed Forces of the
1834 United States or by law.

1835 (c) The signature without seal of the person, together with the title of the person's
1836 office, shall be prima facie evidence of the person's authority.

1837 Article 137. Articles to be made available.

1838 The text of the code and of the regulations prescribed under the code shall be made
1839 available to a member of the state military forces, upon request by the member, for the member's
1840 personal examination.

1841 Article 138. Complaints of wrongs.

1842 A member of the state military forces who believes they have been wronged by a
1843 commanding officer and who, upon due application to that commanding officer, is refused redress
1844 may complain to a superior commissioned officer who shall forward the complaint to the officer
1845 exercising general court-martial jurisdiction over the officer against whom it is made. The officer
1846 exercising general court-martial jurisdiction shall investigate the complaint and take proper

1847 measures for redressing the wrong complained of and shall, as soon as possible, send to the adjutant
1848 general a true statement of that complaint, with the proceedings had thereon.

1849 Article 139. Redress of injuries to property.

1850 (a) Whenever complaint is made to a commanding officer that willful damage has been
1851 done to the property of a person or that the person's property has been wrongfully taken by
1852 members of the state military forces, that person may, under such regulations prescribed, convene
1853 a board to investigate the complaint. The board shall consist of from 1 to 3 commissioned officers
1854 and, for the purposes of that investigation, may summon witnesses and examine them upon oath,
1855 receive depositions or other documentary evidence and assess the damages sustained against the
1856 responsible parties. The assessment of damages made by the board shall be subject to the approval
1857 of the commanding officer and the amount approved by that officer shall be charged against the
1858 pay of the offenders. The order of the commanding officer directing charges herein authorized
1859 shall be conclusive on any disbursing officer for payment to the injured parties of the damages so
1860 assessed and approved.

1861 (b) If the offenders cannot be ascertained but the organization or detachment to which they
1862 belong is known, charges totaling the amount of damages assessed and approved may be made in
1863 such proportion as may be considered just upon the individual members thereof who are shown to
1864 have been present at the scene at the time the damages complained of were inflicted, as determined
1865 by the approved findings of the board.

1866 Article 140. Delegation by the Commander-in-chief.

1867 The commander-in-chief may delegate any authority vested in the commander-in-chief
1868 under this code and may provide for the subdelegation of any such authority, except the power
1869 given to the commander-in-chief by article 22.

1870 Article 141. Payment of fees, costs, and expenses.

1871 (a) The fees and authorized travel expenses of all witnesses, experts, victims, court
1872 reporters and interpreters, the fees for the service of process, the costs of collection, apprehension,
1873 detention and confinement and all other necessary expenses of prosecution and the administration
1874 of military justice that is not otherwise payable by any other source shall be paid out of the Military
1875 Justice Fund.

1876 (b) There shall be a Military Justice fund that shall be administered by the adjutant
1877 general, from which expenses of military justice shall be paid in the amounts and manner as
1878 prescribed by law. Funds may be appropriated and deposited into the fund as may be necessary to
1879 carry out the purposes of the code.

1880 Article 142. Payment of fines and disposition thereof.

1881 (a) Fines imposed by a military court or through imposition of nonjudicial punishment
1882 may be paid to the commonwealth and delivered to the court or imposing officer or to a person
1883 executing their process. Fines may be collected by:

1884 (1) cash or money order;

1885 (2) retention of any pay or allowances due or to become due to the person fined
1886 from any state or the United States;

1887 (3) garnishment or levy, together with costs, on the wages, goods and chattels of a
1888 person delinquent in paying a fine, as provided by law.

1889 (b) Any sum so received or retained shall be deposited to whomever the court so directs.

1890 Article 143. Uniformity of interpretation and Military Rules of Evidence.

1891 (a) This code shall be so construed as to effectuate its general purpose to make it uniform,
1892 so far as practical, with the Uniform Code of Military Justice, 10 U.S.C. 801 to 946.

1893 (b) The federal Military Rules of Evidence at the time of the offense shall apply to court-
1894 martial proceedings convened under this chapter.

1895 Article 144. Immunity for action of military courts

1896 A person acting under this code, whether as a member of the military or as a civilian, shall
1897 be immune from personal liability for any acts or omissions which they did or failed to do as part
1898 of their duties under this code.

1899 Article 145. Severability.

1900 The provisions of this code shall be severable and if any provision of this code or the
1901 application of such provision to a person or circumstance is declared invalid for any reason, such
1902 declaration shall not affect the validity of the remaining portions of the code.

1903 Article 146. Short Title.

1904 This chapter may be cited as the Massachusetts Code of Military Justice.