

The Commonwealth of Massachusetts

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

By striking out all after the enacting clause and inserting in place thereof the following:—

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

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

7 SECTION 3. Said section 18 of said chapter 6, as so appearing, is hereby further
8 amended by striking out the second sentence and inserting in place thereof the following
9 sentence:- Neither the adjutant general nor the state quartermaster shall receive additional
10 compensation on account 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
14 through 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
25 limitation of a cumulative 5 years of state military service, which shall instead be extended to 8
26 years of state military service.

27 SECTION 9. Section 15 of said chapter 33, as so appearing, is hereby amended by
28 inserting after the word “the” in line 2, the second time it appears, 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
34 commander-in-chief, the chief of the state staff shall serve as the acting adjutant general during
35 absence or 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 further amended by striking out section 22, as so
47 appearing, and inserting in place thereof the following section:-

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

52 SECTION 16. Said chapter 33 is hereby further amended by striking out section 23, as so
53 appearing, and inserting 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 so appearing, is hereby amended by
57 striking out, in line 5, the word “his” and inserting in place thereof the following words:- the
58 person’s.

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 Section 26 of said chapter 33 is hereby repealed.

60 SECTION 19. Section 31 of said chapter 33, as so appearing i, is hereby amended by
61 striking out, in line 1, the word “military” and inserting in place thereof the following word:-
62 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
68 inserting in place thereof the following words:- army or air national guard of the commonwealth
69 or the 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
79 list, 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, and in lines 3 and 5, the words “service member” and inserting in
82 place thereof, in each instance, the following words:- member of the military forces of the
83 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 so appearing, is hereby amended by
89 inserting after the word “and” in line 19, the second time it appears, 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 so appearing, is hereby amended by
96 striking out, in line 1, the words “The troops” and inserting in place thereof the following
97 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 so appearing, is hereby amended by
121 inserting after the word “each” in line 2, the following words:- prescribed training.

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

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

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

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

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

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

138 SECTION 48. Said section 67 of said chapter 33, as so appearing, is hereby further
139 amended by inserting after the first sentence the following sentence:- All other members of the

140 organized militia may be awarded a service medal for completion of 3 years of honorable service
141 and for each additional 3 years of like service a device to be affixed to the ribbon pendant
142 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, the words “armed forces” and
148 inserting in place thereof, in each instance, the following words:- organized militia.

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

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

155 SECTION 53. Said chapter 33 is hereby further amended by striking out section 68, as so
156 appearing, and inserting in place thereof the following section:-

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

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

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

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

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

170 Section 88. An officer or enlisted person of the organized militia who, while performing
171 any duty lawfully ordered under this chapter without willful neglect on the part of the person,
172 receives injury, is disabled or contracts a sickness or disease which incapacitates the person from
173 pursuing the person’s usual business or occupation shall, during the period of incapacity, receive
174 compensation to be fixed by a board appointed under section 90 to inquire into the claim and the
175 actual and necessary expenses for medical services and care, medicines and hospitalization or
176 replacement or repair of eyeglasses, dentures or prosthetic devices worn or carried, and amounts
177 related to lost wages. If the death of a member of the Massachusetts organized militia results
178 from injury, sickness or disease received while in the line of duty pursuant to orders under titles
179 10 and 32 of the United States Code or this chapter and the injury, sickness or disease resulting
180 in the death was not the result of the decedent’s willful neglect, a single payment of \$100,000
181 shall be paid to the surviving spouse; provided, however, that if there is no surviving spouse, the

182 amount shall be paid to the children of the decedent in equal shares; provided further, that if
183 there is no surviving spouse and no children, the surviving parents of the decedent, if the parents
184 were dependent on the decedent for support at the time of the decedent's death, shall each
185 receive \$50,000; and provided further, that if there is no surviving spouse and no children, and
186 only 1 surviving parent was dependent on the decedent for support at the time of the decedent's
187 death, that parent shall receive \$100,000. For purposes of this section, the standard for
188 dependency shall be determined in accordance with clause (3) of section 1 of chapter 152 and
189 section 32 of said chapter 152. All claims presented under this section shall be made in the
190 manner provided in section 90.

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

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

202 SECTION 59. Section 90 of said chapter 33, as appearing in the 2016 Official Edition, is
203 hereby amended by striking out, in lines 2 and 3, the words “, including the state judge advocate

204 and a medical or medical service officer” and inserting in place thereof the following words:-
205 with a grade of major or higher, including a judge advocate and a medical or medical service
206 officer in the military forces of the commonwealth.

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

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

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

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

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

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

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

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

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

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

238 SECTION 68. Said chapter 33 is hereby further amended by striking out section 105, as
239 so appearing, and inserting in place thereof the following section:-

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

245 board of survey shall submit with the report all the evidence bearing upon the loss, damage or
246 disposition of the property.

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

248 SECTION 70. Section 108 of said chapter 33, as so appearing, is hereby amended by
249 striking out, in lines 5 and 9, the words “commander-in-chief” and inserting in place thereof, in
250 each instance, the following words:- adjutant general.

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

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

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

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

265 SECTION 75. Said chapter 33 is hereby further amended by striking out section 122, as
266 so appearing, and inserting in place thereof the following section:-

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

272 SECTION 76. Sections 123, 125, 127 to 129, inclusive, of said chapter 33 are hereby
273 repealed.

274 SECTION 77. Section 134 of said chapter 33, as so appearing, is hereby amended by
275 striking out, in lines 5 and 6, the words “by the act of congress known as the National Defense
276 Act” and inserting in place thereof the following words:- in Title 32 of the United States Code.

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

280 SECTION 79. The General Laws are hereby further amended by inserting after chapter
281 33 the following chapter:-

282 CHAPTER 33A.

283 MASSACHUSETTS CODE OF MILITARY JUSTICE

284 PART I. GENERAL PROVISIONS.

285 Article 1. Definitions.

286 (a) As used in this chapter, the following words shall, unless the context requires
287 otherwise, have the following meanings:

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

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

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

294 “Cadet”, “candidate” or “midshipman”, a person who is enrolled in or attending a state
295 military academy, a regional training institute or any other formal education program for the
296 purpose of becoming a commissioned officer in the state military forces.

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

301 “Code”, this chapter.

302 “Commander” or “Commanding officer”, a commissioned officer of the state military
303 forces; provided, however, that the term shall include an officer in charge only when that officer
304 in charge is administering non-judicial punishment under article 15.

305 “Confinement”, the physical restraint of a person.

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

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

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

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

316 “Judge advocate”, a commissioned officer of the organized state military forces who is a
317 member in good standing of the bar of the highest court of a state, and is: (A) certified or
318 designated as a judge advocate in the Judge Advocate General’s Corps of the Army, Air Force,
319 Navy or the Marine Corps or designated as a law specialist as an officer of the Coast Guard, or a
320 reserve component of one of these; or (B) certified as a non-federally recognized judge advocate,
321 by the state judge advocate, as that term is used in section 15 of chapter 33, as competent to
322 perform such military justice duties required by this code; provided, however, that if there is no
323 such judge advocate available, then such certification may be made by such senior judge
324 advocate of the commander of another force in the state military forces, as the convening
325 authority directs.

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

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

329 “Military offenses”, offenses prescribed under articles 77, 78, 80 , 81, 82, 83, 84, 85, 86,
330 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 105, 107, 108, 109, 110,
331 112, 112A, 113, 114, 115, 116, 117, 132, 133, 134 of this code.

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

333 “Officer”, a commissioned or warrant officer.

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

336 “Record”, an official written transcript, written summary or other writing, used in
337 connection with the proceedings of a court-martial and relating to said proceedings; or an official
338 audiotape, videotape, digital image or file, or similar material from which sound, or sound and
339 visual images, depicting the proceedings is reproduced.

340 “Senior force commander”, the commander of the same force of the state military forces
341 as the accused.

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

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

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

349 “State military forces”, the National Guard of Massachusetts, as defined in title 32 of the
350 United States Code or any other military force organized under the constitution and laws of the
351 commonwealth; provided, however, that the term shall not include the unorganized militia when
352 not in a status subjecting them to exclusive jurisdiction under chapter 47 of title 10 of the United
353 States Code; and provided further, that the term shall not include unorganized militia or any
354 other name of any state force that does not meet this definition.

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

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

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

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

367 Article 3. Jurisdiction to try certain personnel.

368 (a) Each person discharged from the state military forces who is later charged with
369 having fraudulently obtained a discharge is, subject to article 43, subject to trial by court-martial
370 on that charge and is, after apprehension, subject to this code while in custody under the
371 direction of the state military forces for that trial. Upon conviction of that charge that person is
372 subject to trial by court-martial for all offenses under this code committed before the fraudulent
373 discharge.

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

377 Article 5. Territorial applicability of the code.

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

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

388 Article 6. Judge Advocates.

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

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

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

399 PART II. APPREHENSION AND RESTRAINT.

400 Article 7. Apprehension.

401 (a) A person authorized by this code or by 10 U.S.C. section 801, et seq., or by
402 regulations promulgated thereto, to apprehend persons subject to this code, any marshal of a
403 court-martial appointed pursuant to the provisions of this code and any peace officer or civil
404 officer having authority to apprehend offenders under the laws of the United States or of a state,
405 may do so upon probable cause that an offense has been committed and that the person
406 apprehended committed it.

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

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

412 (d) No person authorized by this article to apprehend persons subject to this code, or
413 any place where such offender is confined, restrained, held or otherwise housed, may require
414 payment of a fee or charge for so receiving, apprehending, confining, restraining, holding or
415 otherwise housing a person except as provided by law.

416 Article 9. Imposition of restraint.

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

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

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

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

430 Article 10. Restraint of persons charged with offenses.

431 A person subject to this code charged with an offense under this code may be ordered
432 into arrest or confinement, as circumstances may require. When a person subject to this code is
433 placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person
434 of the specific wrong of which the person is accused and diligent steps shall be taken to try the
435 person or to dismiss the charges and release the person.

436 Article 11. Place of confinement; Reports and receiving of prisoners.

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

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

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

448 Article 12. Confinement with enemy prisoners prohibited.

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

451 Article 13. Punishment prohibited before trial.

452 No person, while being held for trial or awaiting a verdict, may be subjected to
453 punishment or penalty other than arrest or confinement upon the charges pending against the
454 person, nor shall the arrest or confinement imposed upon such person be any more rigorous than
455 the circumstances required to insure the person's presence, but the person may be subjected to
456 minor punishment during that period for infractions of discipline.

457 Article 14. Delivery of offenders to civil authorities.

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

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

466 PART III. NON-JUDICIAL PUNISHMENT.

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

468 (a) Under such regulations as prescribed, a commanding officer or, for purposes of
469 this article, officer-in-charge, may impose disciplinary punishments for minor offenses without

470 the intervention of a court-martial pursuant to this article. The commander-in-chief, the adjutant
471 general or an officer of a general or flag rank in command may delegate the powers under this
472 article to a principal assistant who is a member of the state military forces.

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

475 (1) an admonition;

476 (2) a reprimand;

477 (3) the withholding of privileges for not more than 6 months;

478 (4) the forfeiture of not more than 7 days' pay;

479 (5) a fine of not more than 7 days' pay;

480 (6) a reduction to the next inferior pay grade, if the grade from which the
481 enlisted member is demoted is within the promotion authority of the officer imposing the
482 reduction or any officer subordinate to the one who imposes the reduction;

483 (7) extra duties, including fatigue or other duties, for not more than 14 days,
484 which need not be consecutive; and

485 (8) restriction to certain specified limits, with or without suspension from
486 duty, for not more than 14 days, which need not be consecutive.

487 (c) A commanding officer of the grade of major, lieutenant commander or above may
488 impose upon enlisted members of the officer's command:

- 489 (1) any punishment authorized in paragraphs (1) to (3), inclusive, of
490 subsection (b);
- 491 (2) the forfeiture of not more than 1/2 of 1 month's pay for 2 months;
- 492 (3) a fine of not more than 1 month's pay;
- 493 (4) a reduction to the lowest or any intermediate pay grade, if the grade from
494 which the enlisted member is demoted is within the promotion authority of the officer imposing
495 the reduction or an officer subordinate to the one who imposes the reduction, provided however,
496 an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades;
- 497 (5) extra duties, including fatigue or other duties, for not more than 45 days,
498 which need not be consecutive; and
- 499 (6) restriction to certain specified limits, with or without suspension from
500 duty, for not more than 60 days, which need not be consecutive.

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

- 503 (1) upon officers of the officer's command:
- 504 (A) any punishment authorized in paragraphs (1), (2), (3) and (6) of
505 subsection (c); and
- 506 (B) arrest in quarters for not more than 30 days, which need not
507 be consecutive; and

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

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

514 (f) Prior to the offer of non-judicial punishment, the commanding officer shall
515 determine whether arrest in quarters or restriction shall be considered as punishments. Should the
516 commanding officer determine that the punishment options may include arrest in quarters or
517 restriction, the accused shall be notified of the right to demand trial by court-martial. Should the
518 commanding officer determine that the punishment options will not include arrest in quarters or
519 restriction, the accused shall be notified that there is no right to trial by court-martial in lieu of
520 non-judicial punishment.

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

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

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

526 (3) mitigate extra duties to restriction.

527 The mitigated punishment shall not be for a greater period of time than the punishment
528 mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture

529 shall not be greater than the amount that could have been imposed initially under this article by
530 the officer who imposed the punishment mitigated.

531 (h) A person punished under this article who considers the punishment unjust or
532 disproportionate to the offense may, through the proper channel, appeal to the next superior
533 authority within 15 days after the punishment is either announced or sent to the accused, as the
534 commander may determine. The appeal shall be promptly forwarded and decided within 15 days,
535 but the person punished may, in the meantime, be required to undergo the punishment adjudged.
536 The superior authority may exercise the same powers with respect to the punishment imposed as
537 may be exercised under subsection (g) by the officer who imposed the punishment. Before acting
538 on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a
539 judge advocate for consideration and advice.

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

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

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

550 PART IV. COURT-MARTIAL JURISDICTION.

551 Article 16. Courts-martial classified.

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

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

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

555 (B) only a military judge if, before the court is assembled, the accused,

556 knowing the identity of the military judge and after consultation with defense counsel, requests

557 orally on the record or in writing a court composed only of a military judge and the military

558 judge approves;

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

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

561 (B) only a military judge, if one has been detailed to the court, and the accused

562 under the same conditions as those prescribed in paragraph (B) of subsection (1) so requests; and

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

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

565 Each component of the state military forces shall have court-martial jurisdiction over all

566 members of the particular component who are subject to this code. The army and air national

567 guard of the commonwealth shall have court-martial jurisdiction over all members subject to this

568 code.

569 Article 18. Jurisdiction of general courts-martial.

570 General courts-martial shall have jurisdiction to try persons subject to this code for an
571 offense made punishable by this code, and may, under such limitations as the commander-in-
572 chief may prescribe, adjudge any punishment not forbidden by this code.

573 Article 19. Jurisdiction of special courts-martial.

574 Special courts-martial shall have jurisdiction to try persons subject to this code for an
575 offense made punishable by this code, and may, under such limitations as the commander-in-
576 chief may prescribe, adjudge any punishment not forbidden by this code except dishonorable
577 discharge, dismissal, confinement for more than 1 year, forfeiture of pay exceeding 2/3 pay per
578 month or forfeiture of pay for more than 1 year.

579 Article 20. Jurisdiction of summary courts-martial.

580 (a) Summary courts-martial shall have jurisdiction to try persons subject to this code,
581 except officers, cadets, candidates and midshipmen, for any offense made punishable by this
582 code under such limitations as the commander-in-chief may prescribe.

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

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

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

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

594 (1) commander-in-chief;

595 (2) adjutant general;

596 (3) commanding officer of a force of the state military forces, including the
597 air component commander or land component commander;

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

599 (5) commanding officer of a separate wing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

636 (c) An enlisted member of the state military forces who is not a member of the same
637 unit as the accused shall be eligible to serve on general and special courts-martial for the trial of
638 an enlisted member subject to this code, but that member shall serve as a member of a court only
639 if, before the conclusion of a session called by the military judge under subsection (a) of article
640 39 prior to trial or, in the absence of such a session, before the court is assembled for the trial of
641 the accused, the accused personally has requested orally on the record or in writing that enlisted
642 members serve on it. After such a request, the accused may not be tried by a general or special
643 court-martial the membership of which does not include enlisted members in a number
644 comprising at least 1/3 of the total membership of the court, unless eligible enlisted members
645 cannot be obtained on account of physical conditions or military exigencies. If such members
646 cannot be obtained, the court may be assembled and the trial held without them, but the
647 convening authority shall make a detailed written statement, to be appended to the record, stating
648 why the enlisted members could not be obtained. For purposes of this article, "unit" shall mean a
649 regularly organized body of the state military forces not larger than a company, a squadron, a
650 division of the naval militia or a body corresponding to 1 of them.

651 (d) No person subject to this code may be tried by a court-martial if a member of that
652 court-martial is junior to the accused in rank or grade, unless non-junior members cannot be
653 obtained on account of physical conditions or military exigencies.

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

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

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

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

668 (b) A military judge shall be:

669 (1) an active or retired commissioned officer of an organized state military
670 force;

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

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

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

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

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

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

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

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

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

694 (2) A person who has acted as investigating officer, military judge, witness or
695 court member in a case may not act later as trial counsel, assistant trial counsel or, unless
696 expressly requested by the accused, defense counsel or assistant or associate defense counsel in
697 the same case. A person who has acted for the prosecution may not act later in the same case for
698 the defense. A person who has acted for the defense may not act later in the same case for the
699 prosecution.

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

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

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

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

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

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

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

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

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

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

719 Article 29. Absent and additional members.

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

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

730 (c) Whenever a special court-martial, other than a special court-martial composed of
731 a military judge only, is reduced below 3 members, the trial may not proceed unless the
732 convening authority details new members sufficient in number to provide not less than 3
733 members. The trial shall proceed with the new members present as if no evidence had been

734 introduced previously at the trial, unless a verbatim record of the evidence previously introduced
735 before the members of the court or a stipulation thereof is read to the court in the presence of the
736 military judge, the accused and counsel for both sides.

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

744 PART VI. PRE-TRIAL PROCEDURE.

745 Article 30. Charges and specifications.

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

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

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

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

755 Article 31. Compulsory self-incrimination prohibited.

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

758 (b) A person subject to this code shall not interrogate or request a statement from an
759 accused or a person suspected of an offense without first informing that person of the nature of
760 the accusation and advising that person that the person does not have to make any statement
761 regarding the offense of which the person is accused or suspected and that any statement made
762 by the person may be used as evidence against the person in a trial by court-martial.

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

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

769 Article 32. Investigation.

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

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

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

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

777 (C) considering the form of charges; and

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

779 (b) (1) A preliminary hearing held under subsection (a) shall be conducted by an
780 impartial judge advocate certified under subsection (b) of article 27, whenever practicable, or, in
781 exceptional circumstances warranted by the interests of justice, by an impartial hearing officer
782 who is not a judge advocate. If the hearing officer is not a judge advocate, a judge advocate
783 certified under subsection (b) of article 27 shall be available to provide legal advice to the
784 hearing officer.

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

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

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

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

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

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

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

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

809 (1) is present at the preliminary hearing;

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

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

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

- 815 (h) For purposes of this article, the term “victim” shall mean a person who:
- 816 (1) is alleged to have suffered a direct physical, emotional or pecuniary harm
- 817 as a result of the matters set forth in a charge or specification being considered; and
- 818 (2) is named in 1 of the specifications.

819 Article 33. Forwarding of charges.

820 When a person is held for trial by general court-martial, the commanding officer shall,

821 not later than 8 calendar days after the accused is ordered into arrest or confinement, if

822 practicable, forward the charges, together with the investigation and allied papers, to the person

823 exercising general court-martial jurisdiction. If that is not practicable, the commanding officer

824 shall report in writing to that person the reasons for delay.

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

826 (a) Before directing the trial of a charge by general court-martial, the convening

827 authority shall refer it to a judge advocate for consideration and advice. The convening authority

828 may not refer a specification under a charge to a general court-martial for trial unless the

829 convening authority has been advised in writing by a judge advocate that:

- 830 (1) the specification alleges an offense under this code;
- 831 (2) the specification is warranted by the evidence indicated in the report
- 832 of investigation under article 32 of this code, if there is such a report; and
- 833 (3) a court-martial would have jurisdiction over the accused and the offense.

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

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

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

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

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

846 Article 35. Service of charges.

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

851 PART VII. TRIAL PROCEDURE.

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

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

858 Article 37. Unlawfully influencing action of court.

859 (a) No authority convening a general, special, or summary court-martial, nor any
860 other commanding officer, or officer serving on the staff thereof, shall censure, reprimand or
861 admonish the court or a member, the military judge or counsel thereof, with respect to the
862 findings or sentence adjudged by the court or with respect to any other exercise of its or their
863 functions in the conduct of the proceedings. No person subject to this code shall attempt to
864 coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry
865 or a member thereof, in reaching the findings or sentence in a case, or the action of any
866 convening, approving, or reviewing authority with respect to their judicial acts. This subsection
867 shall not apply with respect to:

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

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

873 (b) In the preparation of an effectiveness, fitness or efficiency report, or any other
874 report or document used in whole or in part to determine whether a member of the state military

875 forces is qualified to be advanced in grade, or in determining the assignment or transfer of a
876 member of the state military forces, or in determining whether a member of the state military
877 forces should be retained on active status, no person subject to this code shall, in preparing any
878 such report:

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

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

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

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

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

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

891 (3) The accused may be represented:

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

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

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

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

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

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

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

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

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

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

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

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

919 Article 39. Sessions.

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

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

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

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

929 (4) performing any other procedural function that does not require the
930 presence of the members of the court under this code. These proceedings shall be conducted in
931 the presence of the accused, the defense counsel and the trial counsel and shall be made a part of
932 the record..

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

937 Article 40. Continuances.

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

940 Article 41. Challenges.

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

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

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

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

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

961 Article 42. Oaths or Affirmations.

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

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

974 Article 43. Statute of limitations.

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

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

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

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

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

988 (e) When the United States is at war or when the commander-in-chief declares a state
989 of emergency in accordance with state law, the running of a statute of limitations applicable to
990 any offense under this chapter is suspended until 3 years after the termination of hostilities as
991 proclaimed by the president of the United States, by a joint resolution of congress or by the
992 commander-in-chief for offenses:

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

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

997 (3) committed in connection with the negotiation, procurement, award,
998 performance, payment, interim financing, cancellation or other termination or settlement, of any
999 contract, subcontract or purchase order that is connected with or related to the prosecution of the
1000 war or with any disposition of termination inventory by any war contractor or government
1001 agency.

1002 (f) If charges or specifications are dismissed as defective or insufficient for any cause
1003 and the period prescribed by the applicable statute of limitations has expired or will expire within
1004 180 days after the date of dismissal of the charges and specifications, trial and punishment under
1005 new charges and specifications are not barred by the statute of limitations if the new charges and
1006 specifications:

1007 (1) are received by an officer exercising summary court-martial jurisdiction
1008 over the command within 180 days after the dismissal of the charges or specifications; and

1009 (2) allege the same acts or omissions that were alleged in the dismissed
1010 charges or specifications, or allege acts or omissions that were included in the dismissed charges
1011 or specifications.

1012 Article 44. Former jeopardy.

1013 (a) No person shall, without the person's consent, be tried a second time for the same
1014 offense.

1015 (b) No proceeding in which an accused has been found guilty by a court-martial upon
1016 any charge or specification is a trial for the purposes of this article until the finding of guilty has
1017 become final after review of the case has been fully completed.

1018 (c) A proceeding that, after the introduction of evidence but before a finding, is
1019 dismissed or terminated by the convening authority or on motion of the prosecution for failure of
1020 available evidence or witnesses without any fault of the accused shall be considered to be a trial
1021 in the sense of this article.

1022 Article 45. Pleas of the accused.

1023 (a) If an accused after arraignment makes an irregular pleading, or after a plea of
1024 guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the
1025 plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the
1026 accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court
1027 shall proceed as though the accused had pleaded not guilty.

1028 (b) With respect to any charge or specification to which a plea of guilty has been
1029 made by the accused and accepted by the military judge or by a court-martial without a military
1030 judge, a finding of guilty of the charge or specification may be entered immediately without
1031 vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn
1032 prior to announcement of the sentence, in which event, the proceedings shall continue as though
1033 the accused had pleaded not guilty.

1034 Article 46. Opportunity to obtain witnesses and other evidence.

1035 The trial counsel, the defense counsel and the court-martial shall have equal opportunity
1036 to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process
1037 issued in court-martial cases to compel witnesses to appear and testify and to compel the
1038 production of other evidence shall apply the principles of law and the rules of courts-martial
1039 generally recognized in military criminal cases in the courts of the armed forces of the United

1040 States, but which may not be contrary to or inconsistent with this code. Process shall run to any
1041 part of the United States, or the territories, commonwealths and possessions, and may be
1042 executed by civil officers as prescribed by the laws of the place where the witness or evidence is
1043 located or of the United States.

1044 Article 47. Refusal to appear or testify.

1045 (a) Any person not subject to this code may be punished by the military court in the
1046 same manner as a criminal court of the state if the person:

1047 (1) has been duly subpoenaed to appear as a witness or to produce books and
1048 records before a court-martial or court of inquiry, or before any military or civil officer
1049 designated to take a deposition to be read in evidence before such a court;

1050 (2) has been duly paid or tendered the fees and mileage of a witness at the
1051 rates allowed to witnesses attending a criminal court of the state; and

1052 (3) willfully neglects or refuses to appear, or refuses to qualify as a witness or
1053 to testify or to produce any evidence which that person may have been legally subpoenaed to
1054 produce.

1055 (b) The fees and mileage of witnesses shall be advanced or paid out of the
1056 appropriations for the compensation of witnesses.

1057 Article 48. Contempt.

1058 (a) A military judge or summary court-martial officer may punish for contempt any
1059 person who uses any menacing word, sign or gesture in its presence or who disturbs its
1060 proceedings by any riot or disorder.

1061 (b) A person subject to this code may be punished for contempt by confinement not
1062 to exceed 30 days or a fine of \$100 or both.

1063 (c) A person not subject to this code may be punished for contempt by a military
1064 court in the same manner as a criminal court of the state.

1065 Article 49. Depositions.

1066 (a) At any time after charges have been signed as provided in article 30, any party
1067 may take oral or written depositions unless the military judge or summary court-martial officer
1068 hearing the case or, if the case is not being heard, an authority competent to convene a court-
1069 martial for the trial of those charges forbids it for good cause.

1070 (b) The party at whose insistence a deposition is to be taken shall give to every other
1071 party reasonable written notice of the time and place for taking the deposition.

1072 (c) Depositions may be taken before and authenticated by any military or civil officer
1073 authorized by the laws of the state or by the laws of the place where the deposition is taken to
1074 administer oaths.

1075 (d) A duly authenticated deposition taken upon reasonable notice to the other parties,
1076 so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the
1077 case of audiotape, videotape, digital image or file or similar material, may be played in evidence
1078 before any military court, if it appears:

1079 (1) that the witness resides or is beyond the state in which the court is ordered
1080 to sit, or beyond 100 miles from the place of trial or hearing;

1081 (2) that the witness by reason of death, age, sickness, bodily infirmity,
1082 imprisonment, military necessity, non amenability to process or other reasonable cause is unable
1083 or refuses to appear and testify in person at the place of trial or hearing; or

1084 (3) that the present whereabouts of the witness is unknown.

1085 Article 50. Admissibility of records of courts of inquiry.

1086 (a) In any case not extending to the dismissal of a commissioned officer, the sworn
1087 testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a
1088 person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of
1089 evidence, be read in evidence by any party before a court-martial if the accused was a party
1090 before the court of inquiry and if the same issue was involved or if the accused consents to the
1091 introduction of such evidence.

1092 (b) Such testimony may be read in evidence only by the defense in cases extending to
1093 the dismissal of a commissioned officer.

1094 (c) Such testimony may also be read in evidence before a court of inquiry.

1095 Article 50A. Defense of lack of mental responsibility.

1096 (a) It is an affirmative defense in a trial by court-martial that, at the time of the
1097 commission of the acts constituting the offense, the accused, as a result of a severe mental
1098 disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts.
1099 Mental disease or defect does not otherwise constitute a defense.

1100 (b) The accused has the burden of proving the defense of lack of mental
1101 responsibility by clear and convincing evidence.

1102 (c) Whenever lack of mental responsibility of the accused with respect to an offense
1103 is properly at issue, the military judge shall instruct the members of the court as to the defense of
1104 lack of mental responsibility under this article and charge them to find the accused:

1105 (1) guilty;

1106 (2) not guilty; or

1107 (3) not guilty only by reason of lack of mental responsibility.

1108 (d) In the case of a court-martial composed of a military judge only or a summary
1109 court-martial officer, whenever lack of mental responsibility of the accused with respect to an
1110 offense is properly at issue, the military judge or summary court-martial officer shall find the
1111 accused:

1112 (1) guilty;

1113 (2) not guilty; or

1114 (3) not guilty only by reason of lack of mental responsibility.

1115 (e) Notwithstanding the provisions of article 52, the accused shall be found not guilty
1116 only by reason of lack of mental responsibility if:

1117 (1) a majority of the members of the court-martial present at the time the vote
1118 is taken determines that the defense of lack of mental responsibility has been established; or

1119 (2) in the case of a court-martial composed of a military judge only or a
1120 summary court-martial officer, the military judge or summary court-martial officer determines
1121 that the defense of lack of mental responsibility has been established.

1122 Article 51. Voting and rulings.

1123 (a) Voting by members of a general or special court-martial on the findings and on
1124 the sentence shall be by secret written ballot. The junior member of the court shall count the
1125 votes. The count shall be checked by the president, who shall forthwith announce the result of
1126 the ballot to the members of the court.

1127 (b) The military judge shall rule upon all questions of law and all interlocutory
1128 questions arising during the proceedings. Any such ruling made by the military judge upon any
1129 question of law or any interlocutory question other than the factual issue of mental responsibility
1130 of the accused is final and constitutes the ruling of the court. However, the military judge may
1131 change the ruling at any time during the trial. Unless the ruling is final, if any member objects
1132 thereto, the court shall be cleared and closed and the question decided by a voice vote as
1133 provided in article 52, beginning with the junior in rank.

1134 (c) Before a vote is taken on the findings, the military judge shall, in the presence of
1135 the accused and counsel, instruct the members of the court as to the elements of the offense and
1136 charge them:

1137 (1) that the accused must be presumed to be innocent until the accused's guilt
1138 is established by legal and competent evidence beyond reasonable doubt;

1139 (2) that in the case being considered, if there is a reasonable doubt as to the
1140 guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be
1141 acquitted;

1142 (3) that, if there is a reasonable doubt as to the degree of guilt, the finding
1143 must be in a lower degree as to which there is no reasonable doubt; and

1144 (4) that the burden of proof to establish the guilt of the accused beyond reasonable
1145 doubt is upon the state.

1146 (d) Subsections (a), (b) and (c) shall not apply to a court-martial composed of a
1147 military judge only. The military judge of such a court-martial shall determine all questions of
1148 law and fact arising during the proceedings and, if the accused is convicted, adjudge an
1149 appropriate sentence. The military judge of such a court-martial shall make a general finding and
1150 shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is
1151 filed, it will be sufficient if the findings of fact appear therein.

1152 Article 52. Number of votes required.

1153 (a) No person may be convicted of an offense except as provided in subsection (b) of
1154 article 45 or by the concurrence of all of the members present at the time the vote is taken.

1155 (b) All other questions to be decided by the members of a general or special court-
1156 martial shall be determined by a majority vote, but a determination to reconsider a finding of
1157 guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser
1158 vote that indicates that the reconsideration is not opposed by the number of votes required for
1159 that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote
1160 on a motion relating to the question of the accused's sanity is a determination in favor of the
1161 accused. A tie vote on any other question is a determination in favor of the accused.

1162 Article 53. Court to announce action.

1163 A court-martial shall announce its findings and sentence to the parties as soon as
1164 determined.

1165 Article 54. Record of trial.

1166 (a) Each general and special court-martial shall keep a separate record of the
1167 proceedings in each case brought before it, and the record shall be authenticated by the signature
1168 of the military judge. If the record cannot be authenticated by the military judge by reason of the
1169 military judge's death, disability or absence, it shall be authenticated by the signature of the trial
1170 counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of the
1171 trial counsel's death, disability or absence. In a court-martial consisting of only a military judge,
1172 the record shall be authenticated by the court reporter under the same conditions that would
1173 impose such a duty on a member under this subsection.

1174 (b) (1) A complete verbatim record of the proceedings and testimony shall be
1175 prepared in each general and special court-martial case resulting in a conviction; and

1176 (2) in all other court-martial cases, the record shall contain such matters as
1177 may be prescribed by regulations.

1178 (c) Each summary court-martial shall keep a separate record of the proceedings in
1179 each case and the record shall be authenticated in the manner as may be prescribed by
1180 regulations.

1181 (d) A copy of the record of the proceedings of each general and special court-martial
1182 shall be given to the accused as soon as it is authenticated.

1183 PART VIII. SENTENCES.

1184 Article 55. Cruel and unusual punishments prohibited.

1185 Punishment by flogging or by branding, marking or tattooing on the body or any other
1186 cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person
1187 subject to this code. The use of irons, single or double, except for the purpose of safe custody, is
1188 prohibited.

1189 Article 56. Maximum limits.

1190 The punishment that a court-martial may direct for an offense may not exceed such limits
1191 as prescribed by this code, but in no instance may a sentence exceed more than 10 years for a
1192 military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial
1193 of any military offense for which an accused may receive a sentence of confinement for more
1194 than 1 year is a felony offense. Except for convictions by a summary court-martial, all other
1195 military offenses are misdemeanors. Any conviction by a summary court-martial is not a
1196 criminal conviction. The limits of punishment for violations of the punitive articles prescribed
1197 herein shall be as prescribed by the manual for courts-martial of the commonwealth in effect at
1198 the time of the offense, but in no instance shall any punishment exceed 10 years confinement.

1199 Article 57. Effective date of sentences.

1200 (a) Whenever a sentence of a court-martial as lawfully adjudged and approved
1201 includes a forfeiture of pay or allowances in addition to confinement not suspended, the
1202 forfeiture may apply to pay or allowances becoming due on or after the date the sentence is
1203 approved by the convening authority. No forfeiture may extend to any pay or allowances accrued
1204 before that date.

1205 (b) Any period of confinement included in a sentence of a court-martial begins to run
1206 from the date the sentence is adjudged by the court-martial, but periods during which the
1207 sentence to confinement is suspended or deferred shall be excluded in computing the service of
1208 the term of confinement.

1209 (c) All other sentences of courts-martial are effective on the date ordered executed.

1210 Article 57A. Deferment of sentences.

1211 (a) On application by an accused who is under sentence to confinement that has not
1212 been ordered executed, the convening authority or, if the accused is no longer under that person's
1213 jurisdiction, the person exercising general court-martial jurisdiction over the command to which
1214 the accused is currently assigned, may in that person's sole discretion defer service of the
1215 sentence to confinement. The deferment shall terminate when the sentence is ordered executed.
1216 The deferment may be rescinded at any time by the person who granted it or, if the accused is no
1217 longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction
1218 over the command to which the accused is currently assigned.

1219 (b) (1) In any case in which a court-martial sentences an accused referred to in
1220 paragraph (2) to confinement, the convening authority may defer the service of the sentence to
1221 confinement, without the consent of the accused, until after the accused has been permanently
1222 released to the state military forces by a state, the United States or a foreign country referred to
1223 in that paragraph.

1224 (2) Paragraph (1) shall apply to a person subject to this code who:

1225 (A) while in the custody of a state, the United States or a foreign
1226 country is temporarily returned by that state, the United States or a foreign country to the state
1227 military forces for trial by court-martial; and

1228 (B) after the court-martial, is returned to that state, the United States or
1229 a foreign country under the authority of a mutual agreement or treaty.

1230 (c) In any case in which a court-martial sentences an accused to
1231 confinement and the sentence to confinement has been ordered executed, but in which review of
1232 the case under subsection (a) of article 67 is pending, the adjutant general may defer further
1233 service of the sentence to confinement while that review is pending.

1234 Article 58. Execution of confinement.

1235 (a) A sentence of confinement adjudged by a court-martial, whether or not the
1236 sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been
1237 executed, may be carried into execution by confinement in any place authorized by this code.
1238 Persons so confined are subject to the same discipline and treatment as persons regularly
1239 confined or committed to that place of confinement.

1240 (b) No place of confinement may require payment of any fee or charge for so
1241 receiving or confining a person except as otherwise provided by law.

1242 Article 58A. Sentences: reduction in enlisted grade upon approval.

1243 (a) A court-martial sentence of an enlisted member in a pay grade above E-1, as
1244 approved by the convening authority, that includes a dishonorable or bad-conduct discharge or
1245 confinement shall reduce that member to pay grade E-1, effective on the date of that approval.

1246 (b) If the sentence of a member who is reduced in pay grade under subsection (a) is
1247 set aside or disapproved or, as finally approved, does not include any punishment named in
1248 subsection (a), the rights and privileges of which the person was deprived because of that
1249 reduction shall be restored, including pay and allowances.

1250 Article 58B. Sentences: forfeiture of pay and allowances during confinement.

1251 (a) (1) A court-martial sentence described in paragraph (2) shall result in the
1252 forfeiture of pay, or of pay and allowances, due that member during any period of confinement
1253 or parole. The forfeiture pursuant to this article shall take effect on the date determined under
1254 subsection (a) of article 57 and may be deferred as provided by that article. The pay and
1255 allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due
1256 that member during such period and, in the case of a special court-martial, shall be $\frac{2}{3}$ of all pay
1257 due that member during such period.

1258 (2) A sentence shall be covered by this article if it includes: (A)
1259 confinement for more than 6 months; or (B) confinement for not more than 6 months and a
1260 dishonorable or bad-conduct discharge or dismissal.

1261 (b) In a case involving an accused who has dependents, the convening authority or
1262 other person acting under article 60 may waive any or all of the forfeitures of pay and allowances
1263 required by subsection (a) for a period not to exceed 6 months. Any amount of pay or allowances
1264 that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening
1265 authority or other person taking action directs, to the dependents of the accused.

1266 (c) If the sentence of a member who forfeits pay and allowances under subsection (a)
1267 is set aside or disapproved or, as finally approved, does not provide for a punishment referred to

1268 in paragraph (2) of subsection (a), the member shall be paid the pay and allowances that the
1269 member would have been paid, except for the forfeiture, for the period during which the
1270 forfeiture was in effect.

1271 PART IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL.

1272 Article 59. Error of law; lesser included offense.

1273 (a) A finding or sentence of a court-martial may not be held incorrect on the ground
1274 of an error of law unless the error materially prejudices the substantive rights of the accused.

1275 (b) Any reviewing authority with the power to approve or affirm a finding of guilty
1276 may approve or affirm, instead, so much of the finding as includes a lesser included offense.

1277 Article 60. Action by the convening authority.

1278 (a) The findings and sentence of a court-martial shall be reported promptly to the
1279 convening authority after the announcement of the sentence.

1280 (b) (1) The accused may submit to the convening authority matters for
1281 consideration by the convening authority with respect to the findings and the sentence. Any such
1282 submission shall be in writing. Except in a summary court-martial case, such a submission shall
1283 be made within 10 days after the accused has been given an authenticated record of trial and, if
1284 applicable, the recommendation of a judge advocate under subsection (d). In a summary court-
1285 martial case, such a submission shall be made within 7 days after the sentence is announced.

1286 (2) If the accused shows that additional time is required for the accused to
1287 submit such matters, the convening authority or other person taking action under this article, for

1288 good cause, may extend the applicable period under paragraph (1) for not more than an
1289 additional 20 days.

1290 (3) In a summary court-martial case, the accused shall be promptly provided a
1291 copy of the record of trial for use in preparing a submission authorized by paragraph (1).

1292 (4) The accused may waive the right to make a submission to the convening
1293 authority under paragraph (1). Such a waiver must be made in writing and may not be revoked.
1294 For the purposes of paragraph (2) of subsection (c), the time within which the accused may make
1295 a submission under this subsection shall be deemed to have expired upon the submission of such
1296 a waiver to the convening authority.

1297 (c) (1) The authority under this article to modify the findings and sentence of a
1298 court-martial is a matter of command prerogative involving the sole discretion of the convening
1299 authority. If it is impractical for the convening authority to act, the convening authority shall
1300 forward the case to a person exercising general court-martial jurisdiction who make take action
1301 under this article.

1302 (2) Action on the sentence of a court-martial shall be taken by the convening
1303 authority or by another person authorized to act under this article. Such action may be taken only
1304 after consideration of any matters submitted by the accused under subsection (b) or after the time
1305 for submitting such matters expires, whichever is earlier. The convening authority or other
1306 person taking such action, in that person's sole discretion may approve, disapprove, commute, or
1307 suspend the sentence in whole or in part.

1308 (3) Action on the findings of a court-martial by the convening authority or other
1309 person acting on the sentence is not required. However, such person, in the person's sole
1310 discretion may:

1311 (A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

1312 (B) change a finding of guilty to a charge or specification to a finding of guilty to an
1313 offense that is a lesser included offense of the offense stated in the charge or specification.

1314 (d) Before acting under this article on any general or special court-martial case in
1315 which there is a finding of guilt, the convening authority or other person taking action under this
1316 article shall obtain and consider the written recommendation of a judge advocate. The convening
1317 authority or other person taking action under this article shall refer the record of trial to the judge
1318 advocate, and the judge advocate shall use such record in the preparation of the recommendation.
1319 The recommendation of the judge advocate shall include such matters as may be prescribed by
1320 regulation and shall be served on the accused, who may submit any matter in response under
1321 subsection (b). Failure to object in the response to the recommendation or to any matter attached
1322 to the recommendation waives the right to object thereto.

1323 (e) (1) The convening authority or other person taking action under this article, in
1324 the person's sole discretion, may order a proceeding in revision or a rehearing.

1325 (2) A proceeding in revision may be ordered if there is an apparent error or omission
1326 in the record or if the record shows improper or inconsistent action by a court-martial with
1327 respect to the findings or sentence that can be rectified without material prejudice to the
1328 substantial rights of the accused. In no case, however, may a proceeding in revision

1329 (A) reconsider a finding of not guilty of any specification or a ruling which amounts
1330 to a finding of not guilty;

1331 (B) reconsider a finding of not guilty of any charge, unless there has been a finding of
1332 guilty under a specification laid under that charge, which sufficiently alleges a violation of some
1333 article of this code; or

1334 (C) increase the severity of the sentence unless the sentence prescribed for the offense
1335 is mandatory.

1336 (3) A rehearing may be ordered by the convening authority or other person taking
1337 action under this article if that person disapproves the findings and sentence and states the
1338 reasons for disapproval of the findings. If such person disapproves the findings and sentence and
1339 does not order a rehearing, that person shall dismiss the charges. A rehearing as to the findings
1340 may not be ordered where there is a lack of sufficient evidence in the record to support the
1341 findings. A rehearing as to the sentence may be ordered if the convening authority or other
1342 person taking action under this subsection disapproves the sentence.

1343 Article 61. Withdrawal of appeal.

1344 (a) In each case subject to appellate review under this code, the accused may file with
1345 the convening authority a statement expressly withdrawing the right of the accused to such
1346 appeal. Such a withdrawal shall be signed by both the accused and the defense counsel of the
1347 accused and must be filed in accordance with appellate procedures as provided by law.

1348 (b) The accused may withdraw an appeal at any time in accordance with appellate
1349 procedures as provided by law.

1350 Article 62. Appeal by the State.

1351 (a) (1) In a trial by court-martial in which a punitive discharge may be adjudged,
1352 other than a finding of not guilty with respect to the charge or specification by the members of
1353 the court-martial or by a judge in a bench trial so long as it is not made in reconsideration, the
1354 state may appeal:

1355 (A) an order or ruling of the military judge that terminates the
1356 proceedings with respect to a charge or specification;

1357 (B) an order or ruling that excludes evidence that is substantial proof
1358 of a fact material in the proceeding;

1359 (C) an order or ruling that directs the disclosure of classified
1360 information;

1361 (D) an order or ruling that imposes sanctions for nondisclosure of
1362 classified information;

1363 (E) a refusal of the military judge to issue a protective order sought by
1364 the state to prevent the disclosure of classified information; or

1365 (F) a refusal by the military judge to enforce an order described in
1366 clause (E) that has previously been issued by appropriate authority.

1367 (2) An appeal of an order or ruling may not be taken unless the trial counsel
1368 provides the military judge with written notice of appeal from the order or ruling within 72 hours
1369 of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal

1370 is not taken for the purpose of delay and, if the order or ruling appealed is 1 that excludes
1371 evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

1372 (3) An appeal under this article shall be diligently prosecuted as provided by
1373 law.

1374 (b) An appeal under this article shall be forwarded to the court prescribed in article
1375 67A. In ruling on an appeal under this article, that court may act only with respect to matters of
1376 law.

1377 (c) Any period of delay resulting from an appeal under this article shall be excluded
1378 in deciding any issue regarding denial of a speedy trial unless an appropriate authority
1379 determines that the appeal was filed solely for the purpose of delay with the knowledge that it
1380 was frivolous and without merit.

1381 Article 63. Rehearings.

1382 Each rehearing under this code shall take place before a court-martial composed of
1383 members who were not members of the court-martial which first heard the case. Upon a
1384 rehearing the accused may not be tried for any offense of which the accused was found not guilty
1385 by the first court-martial, and no sentence in excess of or more severe than the original sentence
1386 may be approved, unless the sentence is based upon a finding of guilty of an offense not
1387 considered upon the merits in the original proceedings, or unless the sentence prescribed for the
1388 offense is mandatory. If the sentence approved after the first court-martial was in accordance
1389 with a pretrial agreement and the accused at the rehearing changes a plea with respect to the
1390 charges or specifications upon which the pretrial agreement was based, or otherwise does not

1391 comply with the pretrial agreement, the approved sentence as to those charges or specifications
1392 may include any punishment not in excess of that lawfully adjudged at the first court-martial.

1393 Article 64. Review by the Senior Force Judge Advocate.

1394 (a) Each general and special court-martial case in which there has been a finding of
1395 guilty shall be reviewed by the senior force judge advocate, or a designee. The senior force judge
1396 advocate, or designee, may not review a case under this subsection if that person has acted in the
1397 same case as an accuser, investigating officer, member of the court, military judge, or counsel or
1398 has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's
1399 review shall be in writing and shall contain the following:

1400 (1) Conclusions as to whether:

1401 (A) the court had jurisdiction over the accused and the offense;

1402 (B) the charge and specification stated an offense; and

1403 (C) the sentence was within the limits prescribed as a matter of law.

1404 (2) A response to each allegation of error made in writing by the accused.

1405 (3) If the case is sent for action under subsection (b), a recommendation as to
1406 the appropriate action to be taken and an opinion as to whether corrective action is required as a
1407 matter of law.

1408 (b) The record of trial and related documents in each case reviewed under subsection
1409 (a) shall be sent for action to the adjutant general, if:

1410 (1) the judge advocate who reviewed the case recommends corrective action;

1411 (2) the sentence approved under subsection (c) of article 60 extends to
1412 dismissal, a bad-conduct or dishonorable discharge or confinement for more than 6 months; or

1413 (3) such action is otherwise required by regulations of the adjutant general.

1414 (c) (1) The adjutant general may:

1415 (A) disapprove or approve the findings or sentence, in whole or in part;

1416 (B) remit, commute or suspend the sentence in whole or in part;

1417 (C) except where the evidence was insufficient at the trial to support
1418 the findings, order a rehearing on the findings, on the sentence, or on both; or

1419 (D) dismiss the charges.

1420 (2) If a rehearing is ordered but the convening authority finds a
1421 rehearing impracticable, the convening authority shall dismiss the charges.

1422 (3) If the opinion of the senior force judge advocate, or designee, in the senior
1423 force judge advocate's review under subsection (a) is that corrective action is required as a
1424 matter of law and if the adjutant general does not take action that is at least as favorable to the
1425 accused as that recommended by the judge advocate, the record of trial and action thereon shall
1426 be sent to the commander-in-chief for review and action as deemed appropriate.

1427 (d) The senior force judge advocate, or a designee, may review any case in which
1428 there has been a finding of not guilty of all charges and specifications. The senior force judge
1429 advocate, or designee, may not review a case under this subsection if that person has acted in the
1430 same case as an accuser, investigating officer, member of the court, military judge or counsel or

1431 has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's
1432 review shall be limited to questions of subject matter jurisdiction.

1433 (e) The record of trial and related documents in each case reviewed under subsection
1434 (d) shall be sent for action to the adjutant general.

1435 (1) The adjutant general may:

1436 (A) when subject matter jurisdiction is found to be lacking, void the court-
1437 martial ab initio, with or without prejudice to the government, as the adjutant general deems
1438 appropriate; or

1439 (B) return the record of trial and related documents to the senior force
1440 judge advocate for appeal by the government as provided by law.

1441 Article 65. Disposition of records after review by the convening authority.

1442 Except as otherwise required by this code, all records of trial and related documents shall
1443 be transmitted and disposed of as prescribed by regulation and provided by law.

1444

1445 Article 67A. Review by state appellate authority.

1446 Decisions of a court-martial shall be considered to be from a trial court of the
1447 commonwealth and appeals shall be to the appeals court of the commonwealth. The appellate
1448 procedures to be followed shall be those provided by law for the appeal of criminal cases thereto.

1449 Article 70. Appellate counsel.

1450 (a) The senior force judge advocate shall detail a judge advocate as appellate
1451 government counsel to represent the state in the review or appeal of cases specified in article
1452 67A of this code and before any federal court when requested to do so by the state attorney
1453 general. Appellate government counsel must be a member in good standing of the bar of the
1454 highest court of the state to which the appeal is taken.

1455 (b) Upon an appeal by the state, an accused has the right to be represented by detailed
1456 military counsel before any reviewing authority and before any appellate court.

1457 (c) Upon the appeal by an accused, the accused has the right to be represented by
1458 military counsel before any reviewing authority.

1459 (d) Upon the request of an accused entitled to be so represented, the senior force
1460 judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of
1461 cases specified in subsections (b) and (c) of this article.

1462 (e) An accused may be represented by civilian appellate counsel at no expense to the
1463 state.

1464 Article 71. Execution of sentence; suspension of sentence.

1465 (a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-
1466 conduct discharge and if the right of the accused to appellate review is not waived, and an appeal
1467 is not withdrawn under article 61, that part of the sentence extending to dismissal or a
1468 dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to
1469 the legality of the proceedings. A judgment as to the legality of the proceedings is final in such

1470 cases when review is completed by an appellate court prescribed in article 67A, and is deemed
1471 final by the law of state where the judgment was had.

1472 (b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad
1473 conduct discharge and if the right of the accused to appellate review is waived, or an appeal is
1474 withdrawn under article 61, that part of the sentence extending to dismissal or a dishonorable or
1475 bad-conduct discharge may not be executed until review of the case by the senior force judge
1476 advocate and any action on that review under article 64 is completed. Any other part of a court-
1477 martial sentence may be ordered executed by the convening authority or other person acting on
1478 the case under article 60 when so approved under that article.

1479 Article 72. Vacation of suspension.

1480 (a) Before the vacation of the suspension of a special court-martial sentence, which
1481 as approved includes a bad-conduct discharge, or of any general court-martial sentence, the
1482 officer having special court-martial jurisdiction over the probationer shall hold a hearing on an
1483 alleged violation of probation. The probationer shall be represented at the hearing by military
1484 counsel if the probationer so desires.

1485 (b) The record of the hearing and the recommendation of the officer having special
1486 court- martial jurisdiction shall be sent for action to the officer exercising general court-martial
1487 jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the
1488 sentence, except a dismissal, shall be executed, subject to applicable restrictions in this code.

1489 (c) The suspension of any other sentence may be vacated by any authority competent
1490 to convene, for the command in which the accused is serving or assigned, a court of the kind that
1491 imposed the sentence.

1492 Article 73. Petition for a new trial.

1493 At any time within 2 years after approval by the convening authority of a court-martial
1494 sentence, the accused may petition the adjutant general for a new trial on the grounds of newly-
1495 discovered evidence or fraud on the court-martial.

1496 Article 74. Remission and suspension.

1497 (a) An authority competent to convene, for the command in which the accused is
1498 serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part
1499 or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than
1500 a sentence approved by the commander-in-chief.

1501 (b) The commander-in-chief may, for good cause, substitute an administrative form
1502 of discharge for a discharge or dismissal executed in accordance with the sentence of a court-
1503 martial.

1504 Article 75. Restoration.

1505 (a) Under such regulations as may be prescribed, all rights, privileges and property
1506 affected by an executed part of a court-martial sentence which has been set aside or disapproved,
1507 except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is
1508 ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

1509 (b) If a previously executed sentence of dishonorable or bad-conduct discharge is not
1510 imposed on a new trial, the commander-in-chief, if authorized, may substitute therefor a form of
1511 discharge authorized for administrative issuance unless the accused is to serve out the remainder
1512 of the accused's enlistment.

1513 (c) If a previously executed sentence of dismissal is not imposed on a new trial, the
1514 commander-in-chief, if authorized, may substitute therefor a form of discharge authorized for
1515 administrative issue and the commissioned officer dismissed by that sentence may be
1516 reappointed by the commander-in-chief alone to such commissioned grade and with such rank as
1517 in the opinion of the commander-in-chief that former officer would have attained had such
1518 former officer not been dismissed. The reappointment of any such former officer shall be without
1519 regard to the existence of a vacancy and shall affect the promotion status of other officers only
1520 insofar as the commander-in-chief may direct. All time between the dismissal and their
1521 reappointment shall be considered as actual service for all purposes, including the right to pay
1522 and allowances.

1523 Article 76. Finality of proceedings, findings and sentences.

1524 The appellate review of records of trial provided by this code, the proceedings, findings,
1525 and sentences of courts-martial as approved, reviewed or affirmed as required by this code and
1526 all dismissals and discharges carried into execution under sentences by courts-martial following
1527 approval, review or affirmation as required by this code shall be final and conclusive. Orders
1528 publishing the proceedings of courts-martial and all action taken pursuant to those proceedings
1529 shall be binding upon all departments, courts, agencies and officers of the commonwealth,
1530 subject only to action upon a petition for a new trial as provided in article 73 and to action under
1531 article 74.

1532 Article 76A. Leave required to be taken pending review of certain court-martial
1533 convictions.

1534 Under regulations prescribed, an accused who has been sentenced by a court-martial may
1535 be required to take leave pending completion of action under this article if the sentence, as
1536 approved under article 60, includes an unsuspended dismissal or an unsuspended dishonorable or
1537 bad-conduct discharge. The accused may be required to begin such leave on the date on which
1538 the sentence is approved under said article 60 or at any time after such date and such leave may
1539 be continued until the date on which action under this article is completed or may be terminated
1540 at any earlier time.

1541 Article 76B. Lack of mental capacity or mental responsibility: commitment of accused
1542 for examination and treatment.

1543 (a) In the case of a person determined under this code to be presently suffering from a
1544 mental disease or defect rendering the person mentally incompetent to the extent that the person
1545 is unable to understand the nature of the proceedings against that person or to conduct or
1546 cooperate intelligently in the defense of the case, the general court-martial convening authority
1547 shall proceed in accordance with the General Laws applicable to the person's lack of capacity.

1548 (b) If a person is found by a court-martial not guilty only by reason of lack of mental
1549 responsibility, the court-martial convening authority shall proceed in accordance with the
1550 General Laws applicable to the finding of not guilty by reason of lack of criminal responsibility
1551 due to mental illness or mental defect.

1552 PART X. PUNITIVE ARTICLES.

1553 Article 77. Principals.

1554 A person subject to this code who: (1) commits an offense punishable by this code or
1555 aids, abets, counsels, commands or procures its commission; or (2) causes an act to be done
1556 which, if directly performed by such person would be punishable by this code shall be a
1557 principal.

1558 Article 78. Accessory after the fact.

1559 A person subject to this code who, knowing that an offense punishable by this code has
1560 been committed, receives, comforts or assists the offender in order to hinder or prevent the
1561 offender's apprehension, trial or punishment shall be punished as a court-martial may direct.

1562 Article 79. Conviction of lesser included offense.

1563 An accused may be found guilty of an offense necessarily included in the offense charged
1564 or of an attempt to commit either the offense charged or an offense necessarily included therein.

1565 Article 80. Attempt.

1566 (a) An act done with specific intent to commit an offense under this code that
1567 amounts to more than mere preparation and tending, even though failing to effect its
1568 commission, shall be an attempt to commit that offense.

1569 (b) A person subject to this code who attempts to commit an offense punishable by
1570 this code shall be punished as a court-martial may direct unless otherwise specifically prescribed.

1571 (c) A person subject to this code may be convicted of an attempt to commit an
1572 offense although it appears on the trial that the offense was consummated.

1573 Article 81. Conspiracy.

1574 A person subject to this code who conspires with another person to commit an offense
1575 under this code shall, if any of the conspirators does an act to effect the object of the conspiracy,
1576 be punished as a court-martial may direct.

1577 Article 82. Solicitation.

1578 (a) A person subject to this code who solicits or advises another person to desert in
1579 violation of article 85 or mutiny in violation of article 94 shall, if the offense solicited or advised
1580 is attempted or committed, be punished as provided for the commission of the offense; provided,
1581 however, that if the offense solicited or advised is not committed or attempted, the person shall
1582 be punished as a court-martial may direct.

1583 (b) A person subject to this code who solicits or advises another to commit an act of
1584 misbehavior before the enemy in violation of article 99 or sedition in violation of article 94 shall,
1585 if the offense solicited or advised is committed, be punished as provided for the commission of
1586 the offense; provided, however, that if the offense solicited or advised is not committed, the
1587 person shall be punished as a court-martial may direct.

1588 Article 83. Fraudulent enlistment, appointment or separation.

1589 A person who: (1) procures for oneself an enlistment or appointment in the state military
1590 forces by knowingly false representation or deliberate concealment as to such person's
1591 qualifications for that enlistment or appointment and receives pay or allowances thereunder; or
1592 (2) procures for oneself a separation from the state military forces by knowingly false
1593 representation or deliberate concealment as to such person's eligibility for that separation shall
1594 be punished as a court-martial may direct.

1595 Article 84. Unlawful enlistment, appointment or separation.

1596 A person subject to this code who effects an enlistment or appointment in or a separation
1597 from the state military forces of a person who is known to such person to be ineligible for that
1598 enlistment, appointment or separation because it is prohibited by law, regulation or order shall be
1599 punished as a court-martial may direct.

1600 Article 85. Desertion.

1601 (a) A member of the state military forces who: (1) without authority, goes or remains
1602 absent from such member's unit, organization or place of duty with intent to remain away
1603 therefrom permanently; (2) quits such member's unit, organization or place of duty with intent to
1604 avoid hazardous duty or to shirk important service; or (3) without being regularly separated from
1605 1 of the state military forces, enlists or accepts an appointment in the same or another state
1606 military force or in 1 of the armed forces of the United States without fully disclosing the fact
1607 that such member has not been regularly separated or enters a foreign armed service, except
1608 when authorized by the United States, shall be guilty of desertion.

1609 (b) A commissioned officer of the state military forces who, after tender of such
1610 officer's resignation and before notice of its acceptance, quits the officer's post or proper duties
1611 without leave and with intent to remain away therefrom permanently shall be guilty of desertion.

1612 (c) A person found guilty of desertion or attempt to desert shall be punished, if the
1613 offense is committed in time of war, by confinement for not more than 10 years or such other
1614 punishment as a court-martial may direct; provided, however, that if the desertion or attempt to
1615 desert occurs at any other time, such person shall be punished as a court-martial may direct.

1616 Article 86. Absence without leave.

1617 A person subject to this code who, without authority: (1) fails to go to an appointed place
1618 of duty at the time prescribed; (2) goes from that place; or (3) absents such person or remains
1619 absent from an appointed unit, organization or place of duty at which such person is required to
1620 be at the time prescribed shall be punished as a court-martial may direct.

1621 Article 87. Missing movement.

1622 A person subject to this code who through neglect or design misses the movement of a
1623 ship, aircraft or unit with which such person is required in the course of duty to move shall be
1624 punished as a court-martial may direct.

1625 Article 88. Contempt toward officials.

1626 A commissioned officer who uses contemptuous words against the President, the Vice
1627 President, Congress of the United States, the United States Secretary of Defense, the United
1628 States Secretary of a military department, the United States Secretary of Homeland Security or
1629 the commander-in-chief or the general court shall be punished as a court-martial may direct.

1630 Article 89. Disrespect toward superior commissioned officer.

1631 A person subject to this code who behaves with disrespect toward such person's superior
1632 commissioned officer shall be punished as a court-martial may direct.

1633 Article 90. Assaulting or willfully disobeying superior commissioned officer.

1634 A person subject to this code who: (1) strikes a superior commissioned officer or draws
1635 or lifts up any weapon or offers violence against a superior commissioned officer while such

1636 superior commissioned officer is in the execution of the duties of office; or (2) willfully disobeys
1637 a lawful command of such person's superior commissioned officer shall be punished, if the
1638 offense is committed in time of war, by confinement for not more than 10 years or by such other
1639 punishment as a court-martial may direct and, if the offense is committed at any other time, by
1640 such punishment as a court-martial may direct.

1641 Article 91. Insubordinate conduct toward warrant officer, noncommissioned officer or
1642 petty officer.

1643 A warrant officer or enlisted member who: (1) strikes or assaults a warrant officer,
1644 noncommissioned officer or petty officer while that officer is in the execution of the office; (2)
1645 willfully disobeys the lawful order of a warrant officer, noncommissioned officer or petty
1646 officer; or (3) treats with contempt or is disrespectful in language or deportment toward a
1647 warrant officer, noncommissioned officer or petty officer while that officer is in the execution of
1648 the office shall be punished as a court-martial may direct.

1649 Article 92. Failure to obey order or regulation.

1650 A person subject to this code who: (1) violates or fails to obey a lawful general order or
1651 regulation; (2) having knowledge of any other lawful order issued by a member of the state
1652 military forces which such person has a duty to obey, fails to obey that order; or (3) is derelict in
1653 the performance of such person's duties shall be punished as a court-martial may direct.

1654 Article 93. Cruelty and maltreatment.

1655 A person subject to this code who is guilty of cruelty toward, or oppression or
1656 maltreatment of, a person subject to their orders shall be punished as a court-martial may direct.

1657 Article 94. Mutiny or sedition.

1658 (a) A person subject to this code who: (1) with intent to usurp or override lawful
1659 military authority, refuses, in concert with another person, to obey orders or otherwise do their
1660 duty or creates any violence or a disturbance shall be guilty of mutiny; (2) with intent to cause
1661 the overthrow or destruction of lawful civil authority, creates, in concert with another person,
1662 revolt, violence or other disturbance against that authority shall be guilty of sedition; or (3) fails
1663 to do their utmost to prevent and suppress a mutiny or sedition being committed in such person's
1664 presence or fails to take all reasonable means to inform such person's superior commissioned
1665 officer or commanding officer of a mutiny or sedition which such person knows or has reason to
1666 believe is taking place shall be guilty of a failure to suppress or report a mutiny or sedition.

1667 (b) A person who is found guilty of attempted mutiny, mutiny, sedition or failure to
1668 suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

1669 Article 95. Resistance, flight, breach of arrest and escape

1670 A person subject to this code who: (1) resists apprehension; (2) flees from apprehension;
1671 (3) breaks arrest; or (4) escapes from custody or confinement shall be punished as a court-martial
1672 may direct.

1673 Article 96. Releasing prisoner without proper authority.

1674 A person subject to this code who, without proper authority, releases a prisoner
1675 committed to such person's charge or who through neglect or design suffers any such prisoner to
1676 escape shall be punished as a court-martial may direct, whether or not the prisoner was
1677 committed in strict compliance with law.

1678 Article 97. Unlawful detention.

1679 A person subject to this code who, except as provided by law or regulation, apprehends,
1680 arrests or confines another shall be punished as a court-martial may direct.

1681 Article 98. Noncompliance with procedural rules.

1682 A person subject to this code who: (1) is responsible for unnecessary delay in the
1683 disposition of a case of a person accused of an offense under this code; or (2) knowingly and
1684 intentionally fails to enforce or comply with any provision of this code regulating the
1685 proceedings before, during or after trial of an accused shall be punished as a court-martial may
1686 direct.

1687 Article 99. Misbehavior before the enemy.

1688 A person subject to this code who, before or in the presence of the enemy: (1) runs away;
1689 (2) shamefully abandons, surrender or delivers up any command, unit, place or military
1690 property which it is such person's duty to defend; (3) through disobedience, neglect or
1691 intentional misconduct, endangers the safety of any such command, unit, place or military
1692 property; (4) casts away such person's arms or ammunition; (5) is guilty of cowardly conduct;
1693 (6) quits such person's place of duty to plunder or pillage; (7) causes false alarms in a command,
1694 unit or place under control of the armed forces of the United States or the state military forces;
1695 (8) willfully fails to do such person's utmost to encounter, engage, capture or destroy enemy
1696 troops, combatants, vessels, aircraft or any other thing which is such person's duty to encounter,
1697 engage, capture or destroy; or (9) does not afford all practicable relief and assistance to any
1698 troops, combatants, vessels or aircraft of the armed forces belonging to the United States or their

1699 allies, to the commonwealth or to any other state when engaged in battle shall be punished as a
1700 court-martial may direct.

1701 Article 100. Subordinate compelling surrender.

1702 A person subject to this code who compels or attempts to compel the commander of any
1703 of the state military forces or of the military forces of any other state, place, vessel, aircraft or
1704 other military property or of any body of members of the armed forces to give it up to an enemy
1705 or to abandon it or who strikes the colors or flag to an enemy without proper authority shall be
1706 punished as a court-martial may direct.

1707 Article 101. Improper use of countersign.

1708 A person subject to this code who in time of war discloses the parole or countersign to
1709 any person not entitled to receive it or who gives to another, who is entitled to receive and use
1710 the parole or countersign, a different parole or countersign from that which, to such person's
1711 knowledge, such person was authorized and required to give shall be punished as a court-martial
1712 may direct.

1713 Article 102. Forcing a safeguard.

1714 A person subject to this code who forces a safeguard shall be punished as a court-martial
1715 may direct.

1716 Article 103. Captured or abandoned property.

1717 (a) Persons subject to this code shall secure all public property taken for the service
1718 of the United States or the commonwealth and shall give notice and turn over to the proper

1719 authority without delay all captured or abandoned property in their possession, custody or
1720 control.

1721 (b) A person subject to this code who: (1) fails to carry out the duties prescribed in
1722 subsection (a); (2) buys, sells, trades or in any way deals in or disposes of taken, captured or
1723 abandoned property for which such person receives or expects a profit, benefit or advantage to
1724 such person or another directly or indirectly connected with such person; or (3) engages in
1725 looting or pillaging shall be punished as a court-martial may direct.

1726 Article 104. Aiding the enemy.

1727 A person subject to this code who: (1) aids or attempts to aid the enemy with arms,
1728 ammunition, supplies, money or other things; or (2) without proper authority, knowingly harbors
1729 or protects or gives intelligence to or communicates or corresponds with or holds any intercourse
1730 with the enemy, either directly or indirectly shall be punished as a court-martial may direct.

1731 Article 105. Misconduct as prisoner.

1732 A person subject to this code who, while in the hands of the enemy in time of war: (1) for
1733 the purpose of securing favorable treatment by such person's captors, acts without proper
1734 authority in a manner contrary to law, custom or regulation to the detriment of others of the
1735 nationality held by the enemy as civilian or military prisoners; or (2) while in a position of
1736 authority over such persons, maltreats such persons without justifiable cause shall be punished as
1737 a court-martial may direct.

1738 Article 107. False official statements.

1739 A person subject to this code who, with intent to deceive, signs a false record, return,
1740 regulation, order or other official document in the line of duty, knowing it to be false or who
1741 makes any other false official statement in the line of duty, knowing it to be false, shall be
1742 punished as a court-martial may direct.

1743 Article 108. Loss, damage, destruction or wrongful disposition of military property.

1744 A person subject to this code who, without proper authority: (1) sells or otherwise
1745 disposes of; (2) willfully or through neglect damages, destroys, or loses; or (3) willfully or
1746 through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of any
1747 military property of the United States or of any state shall be punished as a court-martial may
1748 direct.

1749 Article 109. Waste, spoilage or destruction of non-military property.

1750 A person subject to this code who willfully or recklessly wastes, spoils or otherwise
1751 willfully and wrongfully destroys or damages any property other than military property of the
1752 United States or of any state shall be punished as a court-martial may direct.

1753 Article 110. Improper hazarding of vessel.

1754 (a) A person subject to this code who willfully and wrongfully hazards or suffers to
1755 be hazarded any vessel of the armed forces of the United States or of any state military force
1756 shall suffer such punishment as a court-martial may direct.

1757 (b) A person subject to this code who negligently hazards or suffers to be hazarded
1758 any vessel of the armed forces of the United States or of any state military force shall be
1759 punished as a court-martial may direct.

1760 Article 112. Drunk on duty.

1761 A person subject to this code, other than a sentinel or lookout, who is found drunk on
1762 duty shall be punished as a court-martial may direct.

1763 Article 112A. Wrongful use, possession, manufacturing, distribution, and importing of
1764 controlled substances.

1765 (a) A person subject to this code who wrongfully uses, possesses, manufactures,
1766 distributes, imports into the customs territory of the United States, exports from the United States
1767 or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the
1768 armed forces of the United States or of any state military force a substance described in
1769 subsection (b) shall be punished as a court-martial may direct.

1770 (b) The following substances shall be subject to the punishment referred to in
1771 subsection (a):

1772 (1) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
1773 methamphetamine, phencyclidine, barbituric acid and marijuana and any compound or derivative
1774 of any such substance;

1775 (2) any substance not specified in clause (i) that is listed on a schedule of
1776 controlled substances prescribed by the President of the United States for the purposes of the
1777 Uniform Code of Military Justice of the Armed Forces of the United States in 10 U.S.C. section
1778 801, et seq.; and

1779 (3) any other substance not specified in clause (i) or contained on a list
1780 prescribed by the President of the United States under clause (ii) that is listed in schedules I to V,

1781 inclusive, in the schedules of controlled substances under section 202 of the Controlled
1782 Substances Act, 21 U.S.C. section 812.

1783 Article 113. Misbehavior of sentinel.

1784 A sentinel or lookout who is found drunk or sleeping upon such person's post or leaves it
1785 before being regularly relieved shall be punished, if the offense is committed in time of war, by
1786 confinement for not more than 10 years or by such other punishment as a court-martial may
1787 direct; provided, however, that if the offense is committed at any other time, such person shall be
1788 punished by such other punishment as a court-martial may direct.

1789 Article 114. Dueling.

1790 A person subject to this code who fights or promotes, or is concerned in or connives at
1791 fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report
1792 the fact promptly to the proper authority shall be punished as a court-martial may direct.

1793 Article 115. Malingering.

1794 A person subject to this code who for the purpose of avoiding work, duty or service: (1)
1795 feigns illness, physical disablement, mental lapse or derangement; or (2) intentionally inflicts
1796 self-injury shall be punished as a court-martial may direct.

1797 Article 116. Riot or breach of peace.

1798 A person subject to this code who causes or participates in a riot or breach of the peace
1799 shall be punished as a court-martial may direct.

1800 Article 117. Provoking speeches or gestures.

1801 A person subject to this code who uses provoking or reproachful words or gestures
1802 towards another person subject to this code shall be punished as a court-martial may direct.

1803 Article 132. Frauds against the government.

1804 A person subject to this code who engages in the following conduct shall be punished as
1805 a court-martial may direct:

1806 (1) knowing it to be false or fraudulent, (A) makes a claim against the United States,
1807 the commonwealth or an officer thereof or (B) presents to a person in the civil or military service
1808 thereof, for approval or payment, a claim against the United States, the commonwealth or an
1809 officer thereof;

1810 (2) for the purpose of obtaining the approval, allowance or payment of a claim
1811 against the United States, the commonwealth or an officer thereof (A) makes or uses a writing or
1812 other paper knowing it to contain any false or fraudulent statements, (B) makes an oath,
1813 affirmation or certification to a fact or to a writing or other paper knowing the oath, affirmation
1814 or certification to be false or (C) forges or counterfeits a signature upon a writing or other paper
1815 or uses any such signature knowing it to be forged or counterfeited;

1816 (3) having charge, possession, custody or control of any money or other property of the
1817 United States or the commonwealth that was furnished or intended for the armed forces of the
1818 United States or the state military forces, knowingly delivers to a person having authority to
1819 receive it, an amount thereof that is less than that for which such person received a certificate or
1820 receipt;

1821 or (4) being authorized to make or deliver a paper certifying the receipt of any property of
1822 the United States or the commonwealth that was furnished or intended for the armed forces of
1823 the United States or the state military forces, makes or delivers to another such writing without
1824 having full knowledge of the truth of the statements contained therein and with intent to defraud
1825 the United States or the commonwealth.

1826 Article 133. Conduct unbecoming an officer.

1827 A commissioned officer, cadet, candidate or midshipman who is convicted of
1828 conduct unbecoming an officer shall be punished as a court-martial may direct.

1829 Article 134. General article.

1830 In addition to the crimes enumerated in this code, all disorders and neglects to the
1831 prejudice of good order and discipline in the state military forces and all conduct of a nature to
1832 bring discredit upon the state military forces shall be taken cognizance of by a court-martial and
1833 punished at the discretion of a military court; provided, however, that where a crime constitutes
1834 an offense that violates both this code and the criminal laws of the state where the offense was
1835 committed or the criminal laws of the United States, jurisdiction of the military court shall be
1836 determined in accordance with subsection (b) of article 2.

1837 PART XI. MISCELLANEOUS PROVISIONS.

1838 Article 135. Courts of inquiry.

1839 (a) Courts of inquiry to investigate any matter of concern to the state military forces
1840 may be convened by a person authorized to convene a general court-martial, whether or not the
1841 persons involved have requested such an inquiry.

1842 (b) A court of inquiry shall consist of at least 3 commissioned officers. For each court
1843 of inquiry, the convening authority shall also appoint counsel for the court.

1844 (c) A person subject to this code whose conduct is subject to inquiry shall be
1845 designated as a party. A person subject to this code who has a direct interest in the subject of
1846 inquiry shall have the right to be designated as a party upon request to the court. A person
1847 designated as a party shall be given due notice and shall have the right to be present, to be
1848 represented by counsel, to cross-examine witnesses and to introduce evidence.

1849 (d) Members of a court of inquiry may be challenged by a party but only for cause
1850 stated to the court.

1851 (e) The members, counsel, the reporter and interpreters of courts of inquiry shall take
1852 an oath to faithfully perform their duties.

1853 (f) Witnesses may be summoned to appear and testify and be examined before courts
1854 of inquiry as provided for courts-martial.

1855 (g) Courts of inquiry shall make findings of fact but shall not express opinions or
1856 make recommendations unless required to do so by the convening authority.

1857 (h) Each court of inquiry shall keep a record of its proceedings which shall be
1858 authenticated by the signatures of the president and counsel for the court and forwarded to the
1859 convening authority. If the record cannot be authenticated by the president, it shall be signed by a
1860 member in lieu of the president. If the record cannot be authenticated by the counsel for the
1861 court, it shall be signed by a member in lieu of the counsel.

1862 Article 136. Authority to administer oaths and to act as notary.

1863 (a) The following persons may administer oaths for the purposes of military
1864 administration, including military justice:

1865 (1) judge advocates;

1866 (2) summary courts-martial;

1867 (3) adjutants, assistant adjutants, acting adjutants and personnel adjutants;

1868 (4) commanding officers of the naval militia; and

1869 (5) all other persons designated by regulations of the armed forces of the
1870 United States or by law.

1871 (b) The following persons may administer oaths necessary in the performance of their
1872 duties:

1873 (1) the president, military judges and trial counsel for all general and special
1874 courts- martial;

1875 (2) the president and the counsel for the court of any court of inquiry;

1876 (3) officers designated to take a deposition;

1877 (4) persons detailed to conduct an investigation;

1878 (5) recruiting officers; and

1879 (6) all other persons designated by regulations of the Armed Forces of the
1880 United States or by law.

1881 (c) The signature without seal of the person, together with the title of the person's
1882 office, shall be prima facie evidence of the person's authority.

1883 Article 137. Articles to be made available.

1884 The text of the code and of the regulations prescribed under the code shall be made
1885 available to a member of the state military forces, upon request by the member, for the member's
1886 personal examination.

1887 Article 138. Complaints of wrongs.

1888 A member of the state military forces who believes they have been wronged by a
1889 commanding officer and who, upon due application to that commanding officer, is refused
1890 redress may complain to a superior commissioned officer who shall forward the complaint to the
1891 officer exercising general court-martial jurisdiction over the officer against whom it is made. The
1892 officer exercising general court-martial jurisdiction shall investigate the complaint and take
1893 proper measures for redressing the wrong complained of and shall, as soon as possible, send to
1894 the adjutant general a true statement of that complaint, with the proceedings had thereon.

1895 Article 139. Redress of injuries to property.

1896 (a) Whenever complaint is made to a commanding officer that willful damage has
1897 been done to the property of a person or that the person's property has been wrongfully taken by
1898 members of the state military forces, the commanding officer may, under such regulations
1899 prescribed, convene a board to investigate the complaint. The board shall consist of from 1 to 3
1900 commissioned officers and, for the purposes of that investigation, may summon witnesses and
1901 examine them upon oath, receive depositions or other documentary evidence and assess the

1902 damages sustained against the responsible parties. The assessment of damages made by the board
1903 shall be subject to the approval of the commanding officer and the amount approved by that
1904 officer shall be charged against the pay of the offenders. The order of the commanding officer
1905 directing charges herein authorized shall be conclusive on any disbursing officer for payment to
1906 the injured parties of the damages so assessed and approved.

1907 (b) If the offenders cannot be ascertained but the organization or detachment to which
1908 they belong is known, charges totaling the amount of damages assessed and approved may be
1909 made in such proportion as may be considered just upon the individual members thereof who are
1910 shown to have been present at the scene at the time the damages complained of were inflicted, as
1911 determined by the approved findings of the board.

1912 Article 140. Delegation by the Commander-in-chief.

1913 The commander-in-chief may delegate any authority vested in the commander-in-chief
1914 under this code and may provide for the subdelegation of any such authority, except the power
1915 given to the commander-in-chief by article 22.

1916 Article 141. Payment of fees, costs, and expenses.

1917 (a) The fees and authorized travel expenses of all witnesses, experts, victims, court
1918 reporters and interpreters, the fees for the service of process, the costs of collection,
1919 apprehension, detention and confinement and all other necessary expenses of prosecution and the
1920 administration of military justice that are not otherwise payable by any other source shall be paid
1921 out of the Military Justice Fund.

1922 (b) There shall be a Military Justice Fund that shall be administered by the adjutant
1923 general, from which expenses of military justice shall be paid in the amounts and manner as
1924 prescribed by law. Funds may be appropriated and deposited into the fund as may be necessary
1925 to carry out the purposes of the code.

1926 Article 142. Payment of fines and disposition thereof.

1927 (a) Fines imposed by a military court or through imposition of non-judicial
1928 punishment may be paid to the commonwealth and delivered to the court or imposing officer or
1929 to a person executing their process. Fines may be collected by:

1930 (1) cash or money order;

1931 (2) retention of any pay or allowances due or to become due to the person
1932 fined from any state or the United States; or

1933 (3) garnishment or levy, together with costs, on the wages, goods and chattels
1934 of a person delinquent in paying a fine, as provided by law.

1935 (b) Any sum so received or retained shall be deposited to whomever the court so
1936 directs.

1937 Article 143. Uniformity of interpretation and Military Rules of Evidence.

1938 (a) This code shall be so construed as to effectuate its general purpose to make it
1939 uniform, so far as practical, with the Uniform Code of Military Justice, 10 U.S.C. section 801, et
1940 seq.

1941 (b) The federal Military Rules of Evidence at the time of the offense shall apply to
1942 court-martial proceedings convened under this chapter.

1943 Article 144. Immunity for action of military courts

1944 A person acting under this code, whether as a member of the military or as a civilian,
1945 shall be immune from personal liability for any acts or omissions which they did or failed to do
1946 as part of their duties under this code.

1947 Article 145. Severability.

1948 The provisions of this code shall be severable and if any provision of this code or the
1949 application of such provision to a person or circumstance is declared invalid for any reason, such
1950 declaration shall not affect the validity of the remaining portions of the code.

1951 Article 146. Short Title.

1952 This chapter may be cited as the Massachusetts Code of Military Justice.