

SENATE No. 2236

Senate, December 14, 2017 -- Message from His Excellency the Governor recommending legislation to establish the Massachusetts Code of Military Justice

The Commonwealth of Massachusetts



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December 13, 2017

To the Honorable Senate and House of Representatives,

Our National Guard includes the oldest serving units in the United States Military. Since 1636, the Guard has been a vital resource for the nation and for the Commonwealth. In support of our national defense, the Guard provides well-equipped, well-trained soldiers and airmen to support national security objectives and interests. As Governor and Commander-in-Chief, it is my honor to oversee the Guard’s state mission: assisting civil authorities in the preservation of life and property. We are fortunate to have been able to offer this sort of assistance not only to cities and towns in the Commonwealth, but also to our fellow citizens across the United States. Most recently, members of the Guard deployed to Puerto Rico to assist with hurricane recovery efforts.

When Guard members are in federal service, they are subject to the Uniform Code of Military Justice. However, when Guard members are in state service, there is no Code of Military Justice governing their conduct. This makes Massachusetts an outlier among our fellow states: we are one of only a handful of states that do not have a state Code of Military Justice. It also creates a situation in which people may be treated unequally based on whether they are serving in a federal capacity or in a state capacity.

Accordingly, I am submitting for your consideration “An Act Establishing the Massachusetts Code of Military Justice.” This legislation is modeled on the American Bar Association’s Model State Code of Military Justice. It establishes a series of military crimes that

parallel those found in the Uniform Code of Military Justice. It also establishes procedures for the convening and conduct of courts-martial. Should a Guard member commit a non-military crime, that person would be prosecuted in state court by the appropriate District Attorney or the Attorney General, just as they are today. Courts-martial would be limited to the specific military offenses set forth in the legislation.

This legislation also makes a number of updates to the National Guard's enabling statute, Chapter 33 of our General Laws. These updates modernize and streamline parts of the statute, and clarify the delegation of authority by the Commander-in-Chief to The Adjutant General. They include an increase to the minimum daily pay for soldiers and airmen performing state active duty from \$100 per day to \$200 per day. This would make the statewide minimum pay in Massachusetts the highest in the nation, ensuring appropriate compensation for members of the Guard, particularly benefiting those of junior rank.

I urge your prompt enactment of this legislation to ensure that we provide an appropriate framework for military justice. Updating our laws will ensure the Nation's oldest militia will continue to fulfill its missions and that the brave men and women of our Guard continue to lead the way while upholding the highest of standards.

Respectfully submitted,

Charles D. Baker,
Governor

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The Commonwealth of Massachusetts

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

An Act establishing the Massachusetts Code of Military Justice.

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

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

4 SECTION 2. Said section 18 of said chapter 6, as so appearing, is hereby further
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 any 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 to 16, the words “or the air equivalents of those 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
16 striking out, in line 4, the figure “45” and inserting in place thereof the following figure:- 65.

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

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

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

23 SECTION 8. Said section 13A of said chapter 33, as so appearing, is hereby further
24 amended by inserting after the word “insurance,” in line 25, the following words:- , and except
25 for the limitation of a cumulative five years of state military service, which shall instead be
26 extended to eight 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 words “be the,” in line 2, the following word:- military.

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

32 SECTION 11. Said section 15 of said chapter 33, as so appearing, is hereby further
33 amended by inserting after the words “commander-in-chief,” in line 138, the following words:-
34 Unless otherwise ordered by the commander-in-chief, the chief of the state staff shall serve as
35 acting, the adjutant general, during 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 to 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 inserting after the first sentence, the following sentence:- No person shall be eligible
44 for appointment, or be appointed, as any other legal, medical, dental or veterinary commissioned
45 officer unless duly qualified in accordance with such person's military service component
46 requirements.

47 SECTION 15. Section 22 of said chapter 33, as so appearing, is hereby amended by
48 striking out subsection (a).

49 SECTION 16. Section 23 of said chapter 33, as so appearing, is hereby amended by
50 striking out subsections (a) and (b).

51 SECTION 17. Said section 23 of said chapter 33, as so appearing, is hereby further
52 amended by striking out, in line 8, the word other.

53 SECTION 18. Section 25 of said chapter 33, as so appearing, is hereby amended by
54 inserting after the word “his,” in line 5, the following words:- or her.

55 SECTION 19. Section 26 of said chapter 33 is hereby repealed.

56 SECTION 20. Section 31 of said chapter 33, as so appearing, is hereby amended by
57 striking out, in line 1, the word “military” and inserting in place thereof the following word:-
58 armed.

59 SECTION 21. Said section 31 of said chapter 33, as so appearing, is hereby further
60 amended by striking out, in line 6, the words “armed forces” and inserting in place thereof the
61 following words:- army or air national guard.

62 SECTION 22. Said section 31 of said chapter 33, as so appearing, is hereby further
63 amended by striking out, in line 8, the words “armed forces of the commonwealth or” and
64 inserting in place thereof the following words:- army or air national guard of the commonwealth
65 or the uniformed services of.

66 SECTION 23. Said section 31 of said chapter 33, as so appearing, is hereby further
67 amended by striking out, in line 10, the words “armed forces of the commonwealth or the state
68 staff, may” and inserting in place thereof the following words:- army or air national guard of the
69 commonwealth or the state staff, shall.

70 SECTION 24. Said section 31 of said chapter 33, as so appearing, is hereby further
71 amended by striking out, in line 17, the words “Service members” and inserting in place thereof
72 the following words:- Members of the armed forces of the commonwealth.

73 SECTION 25. Said section 31 of said chapter 33, as so appearing, is hereby further
74 amended by striking out, in lines 19 to 20, the words with their former grade on the retired list, or
75 any lower grade.

76 SECTION 26. Section 32 of said chapter 33, as so appearing, is hereby amended by
77 striking out, in lines 1 to 2, 3, and 5, each time it appears, the words “service member” and
78 inserting in place thereof, in each instance, the following words:- member of the military forces
79 of the commonwealth.

80 SECTION 27. Section 33 of said chapter 33, as so appearing, is hereby amended by
81 striking out, in line 1, the words “shall be commissioned” and inserting in place thereof the
82 following words:- and non-commissioned officers shall be placed.

83 SECTION 28. Section 37 of said chapter 33 is hereby repealed.

84 SECTION 29. Section 41 of said chapter 33, as so appearing, is hereby amended by
85 inserting after the words "officers and," in line 18, the following words:- , when ordered to
86 perform law enforcement duties,.

87 SECTION 30. Section 43 of said chapter 33, as so appearing, is hereby amended by
88 striking out, in lines 2 to 3, the words “civil officers or persons issuing the same” and inserting in
89 place thereof the following words:- commander-in-chief or his or her designated representative.

90 SECTION 31. Section 45 of said chapter 33 is hereby repealed.

91 SECTION 32. Section 46 of said chapter 33, as so appearing, is hereby amended by
92 striking out, in line 1, the words “The troops” and inserting in place thereof the following
93 words:- Armed forces of the commonwealth.

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

96 SECTION 34. Said section 47 of said chapter 33, as so appearing, is hereby further
97 amended by striking out the second and third sentences.

98 SECTION 35. Section 48 of said chapter 33, as so appearing, is hereby amended by
99 striking out, in line 1, the word “governor” and inserting in place thereof the following words:-
100 commander-in-chief.

101 SECTION 36. Section 49 of said chapter 33, as so appearing, is hereby amended by
102 striking out, in lines 3 to 4, the words at the request of such sheriff, mayor, city manager or
103 selectmen under section forty-one.

104 SECTION 37. Said section 49 of said chapter 33, as so appearing, is hereby further
105 amended by inserting after the word “general,” in line 4, the following words:- or designated
106 representative.

107 SECTION 38. Section 50 of said chapter 33, as so appearing, is hereby amended by
108 striking out, in line 11, the word “military” and inserting in place thereof the following word:-
109 armed.

110 SECTION 39. Section 51 of said chapter 33, as so appearing, is hereby amended by
111 striking out, in line 2, the word “armed” and inserting in place thereof the following word:-
112 military.

113 SECTION 40. Section 54 of said chapter 33, as so appearing, is hereby amended by
114 striking out, in line 3, the word “shall” and inserting in place thereof the following word:- may.

115 SECTION 41. Section 56 of said chapter 33, as so appearing, is hereby amended by
116 striking out the fourth sentence.

117 SECTION 42. Section 57 of said chapter 33 is hereby repealed.

118 SECTION 43. Section 60 of said chapter 33, as so appearing, is hereby amended by
119 inserting after the word “each,” in line 2, the following words:- prescribed training.

120 SECTION 44. Said section 60 of said chapter 33, as so appearing, is hereby further
121 amended by striking out, in line 3, the words “commander-in-chief” and inserting in place
122 thereof the following words:- duly authorized orders.

123 SECTION 45. Section 61 of said chapter 33, as so appearing, is hereby amended by
124 striking out subsection (a) and inserting in place thereof the following subsection:-

125 (a) In addition to the duty required by sections 38, 40, 41 or 60, every unit of the armed
126 forces of the commonwealth, except the state defense force, inactive national guard, or similar
127 organizations composed as permitted by law, shall assemble for training at least 48 times in each
128 year, and more often if so directed by the unit or organization commander. Organization drills
129 and parades may be held in place of unit drills, and transportation to and from the place of such
130 drills and parades shall be furnished for the units composing the organization if authorized by the
131 adjutant general.

132 SECTION 46. Section 64 of said chapter 33, as so appearing, is hereby amended by
133 inserting after the word “from,” in line 1, the following words:- public ways and.

134 SECTION 47. Section 65 of said chapter 33, as so appearing, is hereby amended by
135 striking out, in line 10, the words “arrested” and inserting in place thereof the following word:-
136 detained.

137 SECTION 48. Section 67 of said chapter 33, as so appearing, is hereby amended by
138 striking out, in lines 2 to 3, the words “shall be awarded a” and inserting in place thereof the
139 following words:- , except the inactive national guard, shall be awarded a service.

140 SECTION 49. Said section 67 of said chapter 33, as so appearing, is hereby further
141 amended by inserting after the first sentence the following sentence:- All other members of the
142 organized militia may be awarded a service medal for completion of 3 years of honorable service
143 and for each additional 3 years of like service a clasp to be affixed to the ribbon pendant thereof.

144 SECTION 50. Said section 67 of said chapter 33, as so appearing, is hereby further
145 amended by striking out, in lines 7 and 60, each time it appears, the word “clasp” and inserting in
146 place thereof, in each instance the following word:- device.

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

151 SECTION 52. Said section 67 of said chapter 33, as so appearing, is hereby further
152 amended by striking out, in lines 18, 26, 37, and 45, each time they appear, the words “The
153 adjutant general” and inserting in place thereof, in each instance, the following words:- A general
154 officer.

155 SECTION 53. Section 67A of said chapter 33, as so appearing, in hereby amended by
156 striking out, in line 7, the words "commander-in-chief" and inserting in place thereof the
157 following words:- adjutant general

158 SECTION 54. Said chapter 33, as so appearing, is hereby amended by striking out
159 section 68 and inserting in place thereof the following section:-

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

163 SECTION 55. Sections 69 to 80, inclusive, and section 82 of said chapter 33 are hereby
164 repealed.

165 SECTION 56. Section 83 of said chapter 33, as so appearing, is hereby amended by
166 striking out, in line 15, the figure "\$100" and inserting in place thereof the following figure:-
167 \$200.

168 SECTION 57. Section 84 of said chapter 33, as so appearing, is hereby further amended
169 by striking out, in line 8, the words "rail or commercial airline" and inserting in place thereof the
170 following words:- modes of commercial travel.

171 SECTION 58. Said chapter 33, as so appearing, is hereby further amended by striking
172 out section 88 and inserting in place thereof the following section:-

173 Section 88. An officer or enlisted person of the organized militia, while performing any
174 duty lawfully ordered under this chapter, without willful neglect on the part of the person,
175 receives injury, is disabled or contracts a sickness or disease which incapacitates the person from

176 pursuing the person's usual business or occupation shall, during the period of incapacity, receive
177 compensation to be fixed by a board appointed under section 90 to inquire into the claim and
178 actual and necessary expenses for medical services and care, medicines and hospitalization or
179 replacement or repair of eyeglasses, dentures or prosthetic devices worn or carried, and amounts
180 related to lost wages. If the death of a member of the Massachusetts organized militia results
181 from injury, sickness or disease received while in the line of duty pursuant to orders under titles
182 10 and 32 of the United States Code or this chapter and the injury, sickness or disease resulting
183 in the death was not the result of the decedent's willful neglect, a single payment of \$100,000
184 shall be paid to the surviving spouse. If there is no surviving spouse, the amount shall be paid to
185 the children of the decedent in equal shares. If there is no surviving spouse and no children, the
186 surviving parents of the decedent, if the parent were dependent on the decedent for support at the
187 time of the decedent's death, shall each receive \$50,000. If only 1 parent was dependent on the
188 decedent for support at the time of the decedent's death, the parent shall receive \$100,000. The
189 standard for dependency shall be determined in accordance with clause (3) of section 1 and
190 section 32 of chapter 152. All claims presented under this section shall be made in accordance
191 with the procedure provided for under section 90.

192 SECTION 59. Said chapter 33, as so appearing, is hereby further amended by inserting
193 after section 88B the following section:-

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

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

203 SECTION 60. Section 90 of said chapter 33, as so appearing, is hereby amended by
204 striking out the first sentence and inserting in place thereof the following sentence:- Claims
205 against the commonwealth for compensation under section 88 shall be referred to a board of 3
206 officers all with a grade of major or higher, including a judge advocate and a medical or medical
207 service officer in the military forces of the commonwealth, appointed by the adjutant general.

208 SECTION 61. Said section 90 of said chapter 33, as so appearing, is hereby further
209 amended by striking out the third sentence and inserting in place thereof the following sentence:-
210 The board shall have the same power as the Division of Industrial Accidents to take evidence,
211 administer oaths, issue subpoenas and compel witnesses to attend, testify and produce books and
212 papers.

213 SECTION 62. Section 96 of said chapter 33, as so appearing, is hereby amended by
214 striking out the first sentence and inserting in place thereof the following sentence:- Organization
215 and unit funds, subject to available appropriations, shall be maintained and conducted as the
216 adjutant general may prescribe in regulations.

217 SECTION 63. Said section 96 of said chapter 33, as so appearing, is hereby further
218 amended by inserting after the word "general," in line 14, the following words:- , or his designee.

219 SECTION 64. Said chapter 33, as so appearing, is hereby further amended by striking
220 out section 97 and inserting in place thereof the following section:-

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

226 SECTION 65. Said chapter 33, as so appearing, is hereby amended by striking out
227 section 98 and inserting in place thereof the following section:-

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

231 SECTION 66. Section 101 of said chapter 33, as so appearing, is hereby amended by
232 striking out, in lines 2 to 3, the words and the cadets of the Massachusetts military academy.

233 SECTION 67. Said section 101 of said chapter 33, as so appearing, is hereby further
234 amended by striking out, in line 7, the words “commander-in-chief” and inserting in place
235 thereof the following words:- adjutant general.

236 SECTION 68. Section 102 of said chapter 33, as so appearing, is hereby amended by
237 striking out, in line 5, the words “ordered by the commander-in-chief” and inserting in place
238 thereof the following words:- directed by the adjutant general.

239 SECTION 69. Section 105 of said chapter 33, as so appearing, is hereby amended by
240 striking out, in line 5, the word “surveying” and inserting in place thereof the following word:-
241 investigating.

242 SECTION 70. Said section 105 of said chapter 33, as so appearing, is hereby further
243 amended by striking out, in line 6, the words “commander-in-chief” and inserting in place
244 thereof the following words:- adjutant general.

245 SECTION 71. Said section 105 of said chapter 33, as so appearing, is hereby further
246 amended by striking out, in line 7, the word “surveying” and inserting in place thereof the
247 following word:- investigating.

248 SECTION 72. Said section 105 of said chapter 33, as so appearing, is hereby further
249 amended by striking out subsection (b).

250 SECTION 73. Section 106 of said chapter 33 is hereby repealed.

251 SECTION 74. Section 108 of said chapter 33, as so appearing, is hereby amended by
252 striking out, in lines 5 and 9, each time they appear, the words “commander-in-chief” and
253 inserting in place thereof, in each instance, the following words:- adjutant general.

254 SECTION 75. Section 109 of said chapter 33, as so appearing, is hereby amended by
255 striking out, in line 6, the words “commander-in-chief” and inserting in place thereof the
256 following words:- the adjutant general.

257 SECTION 76. Section 111 of said chapter 33, as so appearing, is hereby amended by
258 striking out the first sentence and inserting in place thereof the following sentence:- A service
259 member shall be responsible for military property of the United States and the commonwealth
260 received and the service member shall not sell, loan or transfer the military property or any part
261 of the property without the authority of the adjutant general.

262 SECTION 77. Section 113 of said chapter 33, as so appearing, is hereby amended by
263 striking out, in lines 9 and 11, the word “survey” and inserting in place thereof, in each instance,
264 the following word:- investigation.

265 SECTION 78. Said section 113 of said chapter 33, as so appearing, is hereby further
266 amended by striking out, in line 13, the word “commonwealth” and inserting in place thereof the
267 following words:- military division of the commonwealth.

268 SECTION 79. Said chapter 33, as so appearing, is hereby further amended by striking
269 out section 122 and inserting in place thereof the following section:-

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

275 SECTION 80. Sections 123 to 129, inclusive, of said chapter 33 are hereby repealed.

276 SECTION 81. Section 134 of said chapter 33, as so appearing, is hereby amended by
277 striking out, in line 6, the words “by the act of congress known as the National Defense Act” and
278 inserting in place thereof the following words:- in Title 32 of the United States Code.

279 SECTION 82. Section 135 of said chapter 33, as so appearing, is hereby amended by
280 striking out, in lines 1 and 5, the words “commander-in-chief” and inserting in place thereof, in
281 each instance, the following words:- adjutant general.

282 SECTION 83. The General Laws are hereby further amended by inserting after chapter
283 33 the following chapter:-

284 Chapter 33A. MASSACHUSETTS CODE OF MILITARY JUSTICE

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459 MASSACHUSETTS CODE OF MILITARY JUSTICE

460 PART I. GENERAL PROVISIONS

461 Article 1. Definitions

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

463 (1) The term “accuser” means a person who signs and swears to charges, any person
464 who directs that charges nominally be signed and sworn to by another, and any other person who
465 has an interest other than an official interest in the prosecution of the accused.

466 (2) The term “cadet,” “candidate,” or “midshipman” means a person who is enrolled
467 in or attending a state military academy, a regional training institute, or any other formal
468 education program for the purpose of becoming a commissioned officer in the state military
469 forces.

470 (3) The term “classified information” means —

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

474 (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954
475 (42 U.S.C. § 2014(y)).

476 (4) The term “code” means this Act.

477 (5) The term “commanding officer” includes only commissioned officers of the state
478 military forces and shall include officers in charge only when administering nonjudicial
479 punishment under article 15 of this code. The term ‘commander’ has the same meaning as
480 ‘commanding officer’ unless the context otherwise requires.

481 (6) The term “convening authority” includes, in addition to the person who convened
482 the court, a commissioned officer commanding for the time being or a successor in command to
483 the convening authority.

484 (7) The term “day” means calendar day and is not synonymous with the term “unit
485 training assembly.” Any punishment authorized by this article which is measured in terms of
486 days shall, when served in a status other than annual field training, be construed to mean
487 succeeding duty days.

488 (8) The term “duty status other than state active duty” means any other type of duty
489 not in federal service and not full-time duty in the active service of the state; under an order
490 issued by authority of law and includes travel to and from such duty.

491 (9) The term “enlisted member” means a person in an enlisted grade.

492 (10) The term “judge advocate” means a commissioned officer of the organized state
493 military forces who is a member in good standing of the bar of the highest court of a State, and is

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

497 (B) certified as a non-federally recognized judge advocate, by the state judge advocate
498 as defined in Massachusetts General Laws Chapter 33, as competent to perform such military
499 justice duties required by this Code. If there is no such judge advocate available, then such
500 certification may be made by such senior judge advocate of the commander of another force in
501 the state military forces, as the convening authority directs.

502 (11) The term “may” is used in a permissive sense. The phrase “no person may . . .”
503 means that no person is required, authorized, or permitted to do the act prescribed.

504 (12) The term “military court” means a court-martial or a court of inquiry.

505 (13) The term “military judge” means an official of a general or special court-martial
506 detailed in accordance with article 26 of this code.

507 (14) The term “military offenses” means those offenses prescribed under articles 77
508 (Principals), 78 (Accessory after the fact), 80 (Attempts), 81 (Conspiracy), 82 (Solicitation), 83
509 (Fraudulent enlistment, appointment, or separation), 84 (Unlawful enlistment, appointment, or
510 separation), 85 (Desertion), 86 (Absence without leave), 87 (Missing movement), 88 (Contempt
511 toward officials), 89 (Disrespect towards superior commissioned officer), 90 (Assaulting or
512 willfully disobeying superior commissioned officer), 91 (Insubordinate conduct toward warrant
513 officer, noncommissioned officer, or petty officer), 92 (Failure to obey order or regulation), 93
514 (Cruelty and maltreatment), 94 (Mutiny or sedition), 95 (Resistance, flight, breach of arrest, and
515 escape), 96 (Releasing prisoner without proper authority), 97 (Unlawful detention), 98

516 (Noncompliance with procedural rules), 99 (Misbehavior before the enemy), 100 (Subordinate
517 compelling surrender), 101 (Improper use of countersign), 102 (Forcing a safeguard), 103
518 (Captured or abandoned property), 104 (Aiding the enemy), 105 (Misconduct as prisoner), 107
519 (False official statements), 108 (Military property — Loss, damage, destruction, or wrongful
520 disposition), 109 (Property other than military property — Waste, spoilage, or destruction), 110
521 (Improper hazarding of vessel), 112 (Drunk on duty), 112a. (Wrongful use, possession, etc., of
522 controlled substances), 113 (Misbehavior of sentinel), 114 (Dueling), 115 (Malingering), 116
523 (Riot or breach of peace), 117 (Provoking speeches or gestures), 132 (Frauds against the
524 government), 133 (Conduct unbecoming an officer and a gentleman), and 134 (General article)
525 of this code.

526 (15) The term “national security” means the national defense and foreign relations of
527 the United States.

528 (16) The term “officer” means a commissioned or warrant officer.

529 (17) The term “officer in charge” means a member of the naval militia, the Navy, the
530 Marine Corps, or the Coast Guard designated as such by appropriate authority.

531 (18) The term “record,” when used in connection with the proceedings of a court-
532 martial, means —

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

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

537 (19) “Shall” is used in an imperative sense.

538 (20) “State” means one of the several states, the District of Columbia, the
539 Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands.

540 (21) “State active duty” means full-time duty in the state military forces under an order
541 of the Commander-in-chief or otherwise issued by authority of law, and paid by state funds, and
542 includes travel to and from such duty.

543 (22) “Senior force judge advocate” means the senior judge advocate of the commander
544 of the same force of the state military forces as the accused and who is that commander’s chief
545 legal advisor.

546 (23) “State military forces” means the National Guard of Massachusetts, as defined in
547 title 32, United States Code, and any other military force organized under the Constitution and
548 laws of Massachusetts, not to include the unorganized militia when not in a status subjecting
549 them to exclusive jurisdiction under chapter 47 of title 10, United States Code. The unorganized
550 militia or any other name of any state force that does not meet this definition shall not be part of
551 the “state military forces” under this Code.

552 (24) The term “superior commissioned officer” means a commissioned officer superior
553 in rank or command.

554 (25) “Senior force commander” means the commander of the same force of the state
555 military forces as the accused.

556 Article 2. Persons subject to this code; jurisdiction

557 (a) This code applies to all members of the state military forces. This code does not
558 apply to members serving in a title 10 status.

559 (b) Subject matter jurisdiction is established if a nexus exists between an offense,
560 either military or non-military, and the state military force. Courts-martial have primary
561 jurisdiction of military offenses as defined in article 1(a) (14) of this code. A proper civilian
562 court has primary jurisdiction of a non-military offense when an act or omission violates both
563 this code and local criminal law, foreign or domestic. In such a case, a court-martial may be
564 initiated only after the civilian authority has declined to prosecute or dismissed the charge,
565 provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes,
566 solicitation, and accessory crimes must be determined by the underlying offense.

567 Article 3. Jurisdiction to try certain personnel

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

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

577 Article 4. [Reserved]

578 Article 5. Territorial applicability of the code

579 (a) This code has applicability at all times and in all places subject to the personal
580 jurisdiction as provided in Art. 2, or, if not in a duty status, that there is a nexus between the act
581 or omission constituting the offense and the efficient functioning of the state military forces;
582 however, this grant of military jurisdiction shall neither preclude nor limit civilian jurisdiction
583 over an offense, which is limited only by the prohibition of double jeopardy.

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

588 Article 6. Judge Advocates

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

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

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

599 PART II. APPREHENSION AND RESTRAINT

600 Article 7. Apprehension

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

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

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

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

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

617 Article 8. [Reserved]

618 Article 9. Imposition of restraint

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

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

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

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

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

635 Article 10. Restraint of persons charged with offenses

636 Any person subject to this code charged with an offense under this code may be ordered
637 into arrest or confinement, as circumstances may require. When any person subject to this code
638 is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the

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

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

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

644 (b) No person authorized to receive prisoners pursuant to subsection (a) may refuse to
645 receive or keep any prisoner committed to the person's charge by a commissioned officer of the
646 state military forces, when the committing officer furnishes a statement, signed by such officer,
647 of the offense charged against the prisoner, unless otherwise authorized by law.

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

653 Article 12. Confinement with enemy prisoners prohibited

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

656 Article 13. Punishment prohibited before trial

657 No person, while being held for trial or awaiting a verdict, may be subjected to
658 punishment or penalty other than arrest or confinement upon the charges pending against the

659 person, nor shall the arrest or confinement imposed upon such person be any more rigorous than
660 the circumstances required to insure the person's presence, but the person may be subjected to
661 minor punishment during that period for infractions of discipline.

662 Article 14. Delivery of offenders to civil authorities

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

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

671

672 PART III. NON-JUDICIAL PUNISHMENT

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

674 (a) Under such regulations as prescribed, any commanding officer (and for purposes
675 of this article, officers-in-charge) may impose disciplinary punishments for minor offenses
676 without the intervention of a court-martial pursuant to this article. The Commander-in-chief, The
677 Adjutant General, or an officer of a general or flag rank in command may delegate the powers
678 under this article to a principal assistant who is a member of the state military forces.

679 (b) Any commanding officer may impose upon enlisted members of the officer's
680 command —

681 (1) an admonition;

682 (2) a reprimand;

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

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

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

686 (6) a reduction to the next inferior pay grade, if the grade from which demoted is
687 within the promotion authority of the officer imposing the reduction or any officer subordinate to
688 the one who imposes the reduction;

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

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

693 (c) Any commanding officer of the grade of major or lieutenant commander, or
694 above may impose upon enlisted members of the officer's command —

695 (1) any punishment authorized in subsections (b)(1), (2), and (3);

696 (2) the forfeiture of not more than one-half (1/2) of one (1) month's pay per month
697 for two (2) months;

698 (3) a fine of not more than one (1) month's pay;

699 (4) a reduction to the lowest or any intermediate pay grade, if the grade from which
700 demoted is within the promotion authority of the officer imposing the reduction or any officer
701 subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above
702 E-4 may not be reduced more than two (2) pay grades;

703 (5) extra duties, including fatigue or other duties, for not more than forty-five (45)
704 days which need not be consecutive; and

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

707 (d) The Commander-in-chief, The Adjutant General, an officer exercising general
708 court-martial convening authority, or an officer of a general or flag rank in command may
709 impose —

710 (1) upon officers of the officer's command —

711 (A) any punishment authorized in subsections (c)(1), (2), (3), and (6); and

712 (B) arrest in quarters for not more than thirty (30) days which need not be
713 consecutive.

714 (2) upon enlisted members of the officer's command —

715 (A) any punishment authorized in subsection (c).

716 (e) Whenever any of those punishments are combined to run consecutively, the total
717 length of the combined punishment cannot exceed the authorized duration of the longest

718 punishment in the combination, and there must be an apportionment of punishments so that no
719 single punishment in the combination exceeds its authorized length under this article.

720 (f) Prior to the offer of non-judicial punishment, the commanding officer shall
721 determine whether arrest in quarters or restriction shall be considered as punishments. Should the
722 commanding officer determine that the punishment options may include arrest in quarters or
723 restriction, the accused shall be notified of the right to demand trial by court-martial. Should the
724 commanding officer determine that the punishment options will not include arrest in quarters or
725 restriction, the accused shall be notified that there is no right to trial by courts-martial in lieu of
726 non-judicial punishment.

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

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

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

732 (3) mitigate extra duties to restriction.

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

737 (h) A person punished under this article who considers the punishment unjust or
738 disproportionate to the offense may, through the proper channel, appeal to the next superior

739 authority within fifteen (15) days after the punishment is either announced or sent to the accused,
740 as the commander may determine. The appeal shall be promptly forwarded and decided within
741 15 days, but the person punished may in the meantime be required to undergo the punishment
742 adjudged. The superior authority may exercise the same powers with respect to the punishment
743 imposed as may be exercised under subsection (g) by the officer who imposed the punishment.
744 Before acting on an appeal from a punishment, the authority that is to act on the appeal may refer
745 the case to a judge advocate for consideration and advice.

746 (i) The imposition and enforcement of disciplinary punishment under this article for
747 any act or omission is not a bar to trial by court-martial or a civilian court of competent
748 jurisdiction for a serious crime or offense growing out of the same act or omission and not
749 properly punishable under this article; but the fact that a disciplinary punishment has been
750 enforced may be shown by

751 the accused upon trial and, when so shown, it shall be considered in determining the
752 measure of punishment to be adjudged in the event of a finding of guilty.

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

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

757 PART IV. COURT-MARTIAL JURISDICTION

758 Article 16. Courts-martial classified

759 The three kinds of courts-martial in the state military forces are —

- 760 (1) general courts-martial, consisting of —
- 761 (A) a military judge and not less than five (5) members; or
- 762 (B) only a military judge, if before the court is assembled the accused, knowing the
763 identity of the military judge and after consultation with defense counsel, requests orally on the
764 record or in writing a court composed only of a military judge and the military judge approves;
- 765 (2) special courts-martial, consisting of —
- 766 (A) a military judge and not less than three (3) members; or
- 767 (B) only a military judge, if one has been detailed to the court, and the accused under
768 the same conditions as those prescribed in subsection (1) (B) so requests; and
- 769 (3) summary courts-martial, consisting of one (1) commissioned officer.

770

771 Article 17. Jurisdiction of courts-martial in general

772 Each component of the state military forces has court-martial jurisdiction over all
773 members of the particular component who are subject to this code. The Army and Air National
774 Guard state military forces shall have court-martial jurisdiction over all members subject to this
775 code.

776 Article 18. Jurisdiction of general courts-martial

777 Subject to article 17 of this code, general courts-martial have jurisdiction to try persons
778 subject to this code for any offense made punishable by this code, and may, under such

779 limitations as the Commander-in-chief may prescribe, adjudge any punishment not forbidden by
780 this code.

781 Article 19. Jurisdiction of special courts-martial

782 Subject to article 17, special courts-martial have jurisdiction to try persons subject to this
783 code for any offense made punishable by this code, and may, under such limitations as the
784 Commander-in-chief may prescribe, adjudge any punishment not forbidden by this code except
785 dishonorable discharge, dismissal, confinement for more than one (1) year, forfeiture of pay
786 exceeding two-thirds (2/3) pay per month, or forfeiture of pay for more than one (1) year.

787 Article 20. Jurisdiction of summary courts-martial

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

791 (b) No person with respect to whom summary courts-martial have jurisdiction may be
792 brought to trial before a summary court-martial if that person objects thereto. If objection to trial
793 by summary court-martial is made by an accused, trial by special or general court-martial may be
794 ordered, as may be appropriate. Summary courts-martial may, under such limitations as the
795 Commander-in-chief may prescribe, adjudge any punishment not forbidden by this code except
796 dismissal, dishonorable or bad-conduct discharge, confinement for more than one (1) month,
797 restriction to specified limits for more than two (2) months, or forfeiture of more than two-thirds
798 (2/3) of one

799 (1) month's pay.

800 Article 21. [Reserved]

801 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

802 Article 22. Who may convene general courts-martial

803 (a) General courts-martial may be convened by—

804 (1) The Commander-in-chief, or;

805 (2) The Adjutant General;

806 (3) the commanding officer of a force of the state military forces (Air Component
807 Commander or Land Component Commander); or

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

809 (5) the commanding officer of a separate wing.

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

813 Article 23. Who may convene special courts-martial

814 (a) Special courts-martial may be convened by —

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

816 (2) the commanding officer of a garrison, fort, post, camp, station, Air National
817 Guard base, or naval base or station;

818 (3) the commanding officer of a brigade, regiment,
819 detached battalion, or corresponding unit of the Army;

820 (4) the commanding officer of a wing, group, separate squadron, or corresponding
821 unit of the Air Force; or

822 (5) the commanding officer or officer in charge of any other command when
823 empowered by The Adjutant General.

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

827 Article 24. Who may convene summary courts-martial

828 (a) Summary courts-martial may be convened by —

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

830 (2) the commanding officer of a detached company or other detachment,
831 or corresponding unit of the Army;

832 (3) the commanding officer of a detached squadron or other detachment,
833 or corresponding unit of the Air Force; or

834 (4) the commanding officer or officer in charge of any other command when
835 empowered by The Adjutant General.

836 (b) When only one commissioned officer is present with a command or detachment
837 that officer shall be the summary court-martial of that command or detachment and shall hear

838 and determine all summary court-martial cases. Summary courts-martial may, however, be
839 convened in any case by superior competent authority if considered desirable by such authority.

840 Article 25. Who may serve on courts-martial

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

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

846 (c) Any enlisted member of the state military forces who is not a member of the same
847 unit as the accused is eligible to serve on general and special courts-martial for the trial of any
848 enlisted member subject to this code, but that member shall serve as a member of a court only if,
849 before the conclusion of a session called by the military judge under article 39(a) of this code
850 prior to trial or, in the absence of such a session, before the court is assembled for the trial of the
851 accused, the accused personally has requested orally on the record or in writing that enlisted
852 members serve on it. After such a request, the accused may not be tried by a general or special
853 court- martial the membership of which does not include enlisted members in a number
854 comprising at least one-third (1/3) of the total membership of the court, unless eligible enlisted
855 members cannot be obtained on account of physical conditions or military exigencies. If such
856 members cannot be obtained, the court may be assembled and the trial held without them, but the
857 convening authority shall make a detailed written statement, to be appended to the record, stating
858 why they could not be obtained. In this article, "unit" means any regularly organized body of the

859 state military forces not larger than a company, a squadron, a division of the naval militia, or a
860 body corresponding to one of them.

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

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

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

873 Article 25a. [Reserved]

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

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

878 (b) A military judge shall be —

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

880 (2) a member in good standing of the bar of the highest court of a State or a member
881 of the bar of a Federal court for at least five (5) years; and

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

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

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

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

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

898 (g) There is no requirement that a military judge be a member of the same military force
899 or the same branch of the convening authority or accused.

900 Article 27. Detail of trial counsel and defense counsel

901 (a)

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

904 (2) No person who has acted as investigating officer, military judge, witness or court
905 member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly
906 requested by the accused, as defense counsel or assistant or associate defense counsel in the same
907 case. No person who has acted for the prosecution may act later in the same case for the defense
908 nor may any person who has acted for the defense act later in the same case for the prosecution.

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

911 (1) a judge advocate as defined in article 1(10) of this code; and (2) in the case of trial
912 counsel, a member in good standing of the bar of the highest court of the State where the court-
913 martial is held.

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

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

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

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

922 (4) a judge advocate as defined in article 1 (10) of this Code.

923 Article 28. Detail or employment of reporters and interpreters

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

928 Article 29. Absent and additional members

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

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

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

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

954 PART VI. PRE-TRIAL PROCEDURE

955 Article 30. Charges and specifications

956 (a) Charges and specifications shall be signed by a person subject to this code under
957 oath before a commissioned officer authorized by article 136(a) of this code to administer oaths
958 and shall state —

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

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

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

965 Article 31. Compulsory self-incrimination prohibited

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

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

973 (c) No person subject to this code may compel any person to make a statement or
974 produce evidence before any military court if the statement or evidence is not material to the
975 issue and may tend to degrade the person.

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

979

980 Article 32. Investigation

981 (a) Preliminary Hearing Required.—

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

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

985 (A) Determining whether there is probable cause to believe an offense has
986 been committed and the accused committed the offense.

987 (B) Determining whether the convening authority has court-martial
988 jurisdiction over the offense and the accused.

989 (C) Considering the form of charges,

990 (D) Recommending the disposition that should be made of the case.

991 (b) Hearing Officer.—

992 (1) A preliminary hearing under subsection (a) shall be conducted
993 by an impartial judge advocate certified under article 27(b) whenever practicable or, in
994 exceptional circumstances in which the interests of justice warrant, by an impartial hearing
995 officer who is not a judge advocate. If the hearing officer is not a judge advocate, a judge
996 advocate certified under article 27(b) shall be available to provide legal advice to the hearing
997 officer.

998 (2) Whenever practicable, when the judge advocate or other
999 hearing officer is detailed to conduct the preliminary hearing, the officer shall be equals to or

1000 senior in grade to military counsel detailed to represent the accused or the Government at the
1001 preliminary hearing.

1002 (c) Report of Results.—After conducting a preliminary hearing under subsection (a),
1003 the judge advocate or other officer conducting the preliminary hearing shall prepare a report that
1004 addresses the matters specified in subsection (a) and (f).

1005 (d) Rights of Accused and Victim.—

1006 (1) The accused shall be advised of the charges against the accused and of the
1007 accused's right to be represented by counsel at the preliminary hearing under subsection (a). the
1008 accused has the right to be represented at the preliminary hearing as provided in article 38 and in
1009 regulations prescribed under that section.

1010 (2) The accused may cross-examine witnesses who testify at the preliminary hearing
1011 and present additional evidence in defense and mitigation, relevant to the limited purposes of the
1012 hearing, as provided for in paragraph (4) and subsection (a)(2).

1013 (3) A victim may not be required to testify at the preliminary hearing. A victim who
1014 declines to testify shall be deemed to be not available for purposes of the preliminary hearing.

1015 (4) The presentation of evidence and examination (including cross-examination) of
1016 witnesses at a preliminary hearing shall be limited to the matters relevant to the purposes of the
1017 hearing, as provided in subsection (a)(2).

1018 (e) Recording of Preliminary Hearing.—A preliminary hearing under subsection (a)
1019 shall be recorded by a suitable recording device. The victim may request the recording and shall
1020 have access to the recording.

1021

1022 (f) Effect of Evidence of Uncharged Offense.—If evidence adduced in a preliminary
1023 hearing under subsection (a) indicates that the accused committed an uncharged offense, the
1024 hearing officer may consider the subject matter of that offense without the accused having first
1025 been charged with the offense if the accused—

1026 (1) is present at the preliminary hearing;

1027 (2) is informed of the nature of each uncharged offense considered; and

1028 (3) is afforded the opportunities for representation, cross-examination, and presentation
1029 consistent with subsection (d).

1030 (g) Effect of Violation.—the requirements of this section are binding on all persons
1031 administering this chapter, but failure to follow the requirements does not constitute
1032 jurisdictional error.

1033 (h) Victim Defined.—In this section, the term “victim” means a person who

1034 (1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result
1035 of the matters set forth in a charge or specification being considered; and

1036 (2) is named in one of the specifications

1037 Article 33. Forwarding of charges

1038 When a person is held for trial by general court-martial, the commanding officer shall
1039 within eight (8) calendar days after the accused is ordered into arrest or confinement, if
1040 practicable, forwards the charges, together with the investigation and allied papers, to the person

1041 exercising general court- martial jurisdiction. If that is not practicable, the commanding officer
1042 shall report in writing to that person the reasons for delay.

1043 Article 34. Advice of judge advocate and reference for trial

1044 (a) Before directing the trial of any charge by general court-martial, the convening
1045 authority shall refer it to a judge advocate for consideration and advice. The convening authority
1046 may not refer a specification under a charge to a general court-martial for trial unless the
1047 convening authority has been advised in writing by a judge advocate that —

1048 (1) the specification alleges an offense under this code;

1049 (2) the specification is warranted by the evidence indicated in the report of
1050 investigation under article 32 of this code, if there is such a report; and

1051 (3) a court-martial would have jurisdiction over the accused and the offense.

1052 (b) The advice of the judge advocate under subsection (a) with respect to a
1053 specification under a charge shall include a written and signed statement by the judge advocate
1054 —

1055 (1) expressing conclusions with respect to each matter set forth in subsection (a); and

1056 (2) recommending action that the convening authority take regarding the
1057 specification.

1058 If the specification is referred for trial, the recommendation of the judge advocate shall
1059 accompany the specification.

1060 (c) If the charges or specifications are not correct formally or do not conform to the
1061 substance of the evidence contained in the report of the investigating officer, formal corrections,
1062 and such changes in the charges and specifications as are needed to make them conform to the
1063 evidence, may be made.

1064 Article 35. Service of charges

1065 The trial counsel shall serve or caused to be served upon the accused a copy of the
1066 charges. No person may, against the person's objection, be brought to trial before a general
1067 court-martial case within a period of ten (10) days after the service of charges upon the accused,
1068 or in a special court-martial, within a period of six (6) days after the service of charges upon the
1069 accused.

1070 PART VII. TRIAL PROCEDURE

1071 Article 36. Commander-in-chief or The Adjutant General may prescribe rules

1072 Pretrial, trial, and post-trial procedures, including modes of proof, for courts-martial
1073 cases arising under this code, and for courts of inquiry, may be prescribed by the Commander-in-
1074 chief or The Adjutant General by regulations, or as otherwise provided by law, which shall apply
1075 the principles of law and the rules of evidence generally recognized in military criminal cases in
1076 the courts of the armed forces but which may not be contrary to or inconsistent with this code.

1077 Article 37. Unlawfully influencing action of court

1078 (a) No authority convening a general, special, or summary court-martial, nor any
1079 other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or
1080 admonish the court or any member, the military judge, or counsel thereof, with respect to the

1081 findings or sentence adjudged by the court or with respect to any other exercise of its or their
1082 functions in the conduct of the proceedings. No person subject to this code may attempt to coerce
1083 or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any
1084 member thereof, in reaching the findings or sentence in any case, or the action of any convening,
1085 approving, or reviewing authority with respect to their judicial acts. The foregoing provisions of
1086 the subsection shall not apply with respect to (1) general instructional or informational courses in
1087 military justice if such courses are designed solely for the purpose of instructing members of a
1088 command in the substantive and procedural aspects of courts-martial or

1089 (2) to statements and instructions given in open court by the military judge, summary
1090 court- martial officer, or counsel.

1091 (b) In the preparation of an effectiveness, fitness, or efficiency report, or any other
1092 report or document used in whole or in part for the purpose of determining whether a member of
1093 the state military forces is qualified to be advanced in grade, or in determining the assignment or
1094 transfer of a member of the state military forces, or in determining whether a member of the state
1095 military forces should be retained on active status, no person subject to this code may, in
1096 preparing any such report, (1) consider or evaluate the performance of duty of any such member
1097 as a member of a court-martial or witness therein or (2) give a less favorable rating or evaluation
1098 of any counsel of the accused because of zealous representation before a court-martial.

1099 Article 38. Duties of trial counsel and defense counsel

1100 (a) The trial counsel of a general or special court-martial shall be a member in good
1101 standing of the State bar and shall prosecute in the name of the State, and shall, under the
1102 direction of the court, prepare the record of the proceedings.

1103 (b)

1104 (1) The accused has the right to be represented in defense before a general or special
1105 court-martial or at an investigation under article 32 of this code as provided in this subsection.

1106 (2) The accused may be represented by civilian counsel at the provision and expense
1107 of the accused.

1108 (3) The accused may be represented —

1109 (A) by military counsel detailed under article 27 of this code; or

1110 (B) by military counsel of the accused’s own selection if that counsel is reasonably
1111 available as determined under paragraph (7).

1112 (4) If the accused is represented by civilian counsel, military counsel detailed or
1113 selected under paragraph (3) shall act as associate counsel unless excused at the request of the
1114 accused.

1115 (5) Except as provided under paragraph (6), if the accused is represented by military
1116 counsel of his own selection under paragraph (3)(B), any military counsel detailed under
1117 paragraph (3)(A) shall be excused.

1118 (6) The accused is not entitled to be represented by more than one military counsel.
1119 However, the person authorized under regulations prescribed under article 27 of this code to
1120 detail counsel, in that person’s sole discretion —

1121 (A) may detail additional military counsel as assistant defense counsel; and

1122 (B) if the accused is represented by military counsel of the accused's own selection
1123 under paragraph (3)(B), may approve a request from the accused that military counsel detailed
1124 under paragraph (3)(A) act as associate defense counsel.

1125 (7) The senior force judge advocate of the same force of which the accused is a
1126 member, shall determine whether the military counsel selected by an accused is reasonably
1127 available.

1128 (c) In any court-martial proceeding resulting in a conviction, the defense counsel —

1129 (1) may forward for attachment to the record of proceedings a brief of such matters as
1130 counsel determines should be considered in behalf of the accused on review, including any
1131 objection to the contents of the record which counsel considers appropriate;

1132 (2) may assist the accused in the submission of any matter under article 60 of this
1133 code;

1134 and may take other action authorized by this code.

1135 Article 39. Sessions

1136 (a) At any time after the service of charges which have been referred for trial to a
1137 court-martial composed of a military judge and members, the military judge may, subject to
1138 article 35 of this code, call the court into session without the presence of the members for the
1139 purpose of —

1140 (1) hearing and determining motions raising defenses or objections which are capable
1141 of determination without trial of the issues raised by a plea of not guilty;

1142 (2) hearing and ruling upon any matter which may be ruled upon by the military
1143 judge under this code, whether or not the matter is appropriate for later consideration or decision
1144 by the members of the court;

1145 (3) holding the arraignment and receiving the pleas of the accused; and

1146 (4) performing any other procedural function which does not require the presence of
1147 the members of the court under this code. These proceedings shall be conducted in the presence
1148 of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.
1149 These proceedings may be conducted notwithstanding the number of court members and without
1150 regard to Article 29.

1151 (b) When the members of a court-martial deliberate or vote, only the members may
1152 be present. All other proceedings, including any other consultation of the members of the court
1153 with counsel or the military judge, shall be made a part of the record and shall be in the presence
1154 of the accused, the defense counsel, the trial counsel, and the military judge.

1155 Article 40. Continuances

1156 The military judge of a court-martial or a summary court-martial may, for reasonable
1157 cause, grant a continuance to any party for such time, and as often, as may appear to be just.

1158 Article 41. Challenges

1159 (a)

1160 (1) The military judge and members of a general or special court-martial may be
1161 challenged by the accused or the trial counsel for cause stated to the court. The military judge or

1162 the court shall determine the relevancy and validity of challenges for cause and may not receive a
1163 challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be
1164 presented and decided before those by the accused are offered.

1165 (2) If exercise of a challenge for cause reduces the court below the minimum number
1166 of members required by article 16 of this code, all parties shall, notwithstanding article 29 of this
1167 code, either exercise or waive any challenge for cause then apparent against the remaining
1168 members of the court before additional members are detailed to the court. However, peremptory
1169 challenges shall not be exercised at that time.

1170 (b)

1171 (1) Each accused and the trial counsel are entitled initially to three (3) peremptory
1172 challenges of members of the court. The military judge may not be challenged except for cause.

1173 (2) If exercise of a peremptory challenge reduces the court below the minimum
1174 number of members required by article 16 of this code, the parties shall, notwithstanding article
1175 29 of this code, either exercise or waive any remaining peremptory challenge, not previously
1176 waived, against the remaining members of the court before additional members are detailed to
1177 the court.

1178 (3) Whenever additional members are detailed to the court, and after any challenges
1179 for cause against such additional members are presented and decided, each accused and the trial
1180 counsel are entitled to three (3) peremptory challenges against members not previously subject to
1181 peremptory challenge.

1182 Article 42. Oaths or Affirmations

1183 (a) Before performing their respective duties, military judges, general and special
1184 courts- martial members, trial counsel, defense counsel, reporters, and interpreters shall take an
1185 oath or affirmation in the presence of the accused to perform their duties faithfully. The form of
1186 the oath or affirmation, the time and place of the taking thereof, the manner of recording the
1187 same, and whether the oath or affirmation shall be taken for all cases in which these duties are to
1188 be performed or for a particular case, shall be as prescribed in regulation or as provided by law.
1189 These regulations may provide that an oath or affirmation to perform faithfully the duties as a
1190 military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate
1191 or other person certified or designated to be qualified or competent for the duty, and if such an
1192 oath or affirmation is taken, it need not again be taken at the time the judge advocate or other
1193 person is detailed to that duty.

1194 (b) Each witness before a court-martial shall be examined under oath or affirmation.

1195 Article 43. Statute of limitations

1196 (a) A person charged with absent without leave or missing movement may be tried
1197 and punished at any time without limitation.

1198 (b)

1199 (1) Except as otherwise provided in this article, a person charged with an offense is not
1200 liable to be tried by court-martial if the offense was committed more than 6 years before the
1201 receipt of sworn charges and specifications by an officer exercising summary court-martial
1202 jurisdiction over the command.

1203 (2) A person charged with an offense is not liable to be punished under section 15 of this
1204 chapter if the offense was committed more than two years before the imposition of punishment.

1205 (c) Periods in which the accused is absent without authority or fleeing from justice shall
1206 be excluded in computing the period of limitation prescribed in this section.

1207 (d) Periods in which the accused was absent from territory in which the United States has
1208 the authority to apprehend him, or in the custody of civil authorities, or in the hands of the
1209 enemy, shall be excluded in computing the period of limitation prescribed in this article.

1210 (e) When the United States is at war or when the Commander-in-chief declares a state of
1211 emergency in accordance with state law, the running of any statute of limitations applicable to
1212 any offense under this chapter—

1213 (1) involving fraud or attempted fraud against the United States, any state, or any
1214 agency of either in any manner, whether by conspiracy or not;

1215 (2) committed in connection with the acquisition, care, handling, custody, control, or
1216 disposition of any real or personal property of the United States or any state; or

1217 (3) committed in connection with the negotiation, procurement, award, performance,
1218 payment, interim financing, cancellation, or other termination or settlement, of any contract,
1219 subcontract, or purchase order which is connected with or related to the prosecution of the war,
1220 or with any disposition of termination inventory by any war contractor or Government agency; is
1221 suspended until three (3) years after the termination of hostilities as proclaimed by the President,
1222 by a joint resolution of Congress or by the Commander-in-chief.

1223 (f)

1224 (1) If charges or specifications are dismissed as defective or insufficient for any cause
1225 and the period prescribed by the applicable statute of limitations —

1226 (A) has expired; or.

1227 (B) will expire within 180 days after the date of dismissal of the charges and
1228 specifications, trial and punishment under new charges and specifications are not barred by the
1229 statute of limitations if the conditions specified in paragraph (2) are met.

1230 (2) The conditions referred to in paragraph (1) are that the new charges and
1231 specifications must —

1232 (A) be received by an officer exercising summary court-martial jurisdiction over the
1233 command within 180 days after the dismissal of the charges or specifications; and

1234 (B) allege the same acts or omissions that were alleged in the dismissed charges or
1235 specifications (or allege acts or omissions that were included in the dismissed charges or
1236 specifications).

1237 Article 44. Former jeopardy

1238 (a) No person may, without his consent, be tried a second time for the same offense.

1239 (b) No proceeding in which an accused has been found guilty by a court-martial upon
1240 any charge or specification is a trial in the sense of this article until the finding of guilty has
1241 become final after review of the case has been fully completed.

1242 (c) A proceeding which, after the introduction of evidence but before a finding, is
1243 dismissed or terminated by the convening authority or on motion of the prosecution for failure of

1244 available evidence or witnesses without any fault of the accused is a trial in the sense of this
1245 article.

1246 Article 45. Pleas of the accused

1247 (a) If an accused after arraignment makes an irregular pleading, or after a plea of
1248 guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the
1249 plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the
1250 accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court
1251 shall proceed as though the accused had pleaded not guilty.

1252 (b) With respect to any charge or specification to which a plea of guilty has been
1253 made by the accused and accepted by the military judge or by a court-martial without a military
1254 judge, a finding of guilty of the charge or specification may be entered immediately without
1255 vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn
1256 prior to announcement of the sentence, in which event, the proceedings shall continue as though
1257 the accused had pleaded not guilty.

1258 Article 46. Opportunity to obtain witnesses and other evidence

1259 The trial counsel, the defense counsel, and the court-martial shall have equal opportunity
1260 to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process
1261 issued in court-martial cases to compel witnesses to appear and testify and to compel the
1262 production of other evidence shall apply the principles of law and the rules of courts-martial
1263 generally recognized in military criminal cases in the courts of the armed forces of the United
1264 States, but which may not be contrary to or inconsistent with this code. Process shall run to any
1265 part of the United States, or the Territories, Commonwealths, and possessions, and may be

1266 executed by civil officers as prescribed by the laws of the place where the witness or evidence is
1267 located or of the United States.

1268 Article 47. Refusal to appear or testify

1269 (a) Any person not subject to this code who —

1270 (1) has been duly subpoenaed to appear as a witness or to produce books and records
1271 before a court-martial or court of inquiry, or before any military or civil officer designated to
1272 take a deposition to be read in evidence before such a court;

1273 (2) has been duly paid or tendered the fees and mileage of a witness at the rates
1274 allowed to witnesses attending a criminal court of the State; and

1275 (3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to
1276 testify or to produce any evidence which that person may have been legally subpoenaed to
1277 produce;

1278 may be punished by the military court in the same manner as a criminal court of the State.

1279 (b) The fees and mileage of witnesses shall be advanced or paid out of the
1280 appropriations for the compensation of witnesses.

1281 Article 48. Contempts

1282 A military judge or summary court-martial officer may punish for contempt any person
1283 who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by
1284 any riot or disorder.

1285 (a) A person subject to this code may be punished for contempt by confinement not to
1286 exceed thirty (30) days or a fine of one hundred dollars (\$100), or both.

1287 A person not subject to this code may be punished for contempt by a military court in the
1288 same manner as a criminal court of the State.

1289 Article 49. Depositions

1290 (a) At any time after charges have been signed as provided in article 30 of this code,
1291 any party may take oral or written depositions unless the military judge or summary court-
1292 martial officer hearing the case or, if the case is not being heard, an authority competent to
1293 convene a court- martial for the trial of those charges forbids it for good cause.

1294 (b) The party at whose instance a deposition is to be taken shall give to every other
1295 party reasonable written notice of the time and place for taking the deposition.

1296 (c) Depositions may be taken before and authenticated by any military or civil officer
1297 authorized by the laws of the State or by the laws of the place where the deposition is taken to
1298 administer oaths.

1299 (d) A duly authenticated deposition taken upon reasonable notice to the other parties,
1300 so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the
1301 case of audiotape, videotape, digital image or file, or similar material, may be played in evidence
1302 before any military court, if it appears —

1303 (1) that the witness resides or is beyond the State in which the court is ordered to sit,
1304 or beyond one hundred (100) miles from the place of trial or hearing Section 848, Art. 48;

1305 (2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment,
1306 military necessity, non amenability to process, or other reasonable cause, is unable or refuses to
1307 appear and testify in person at the place of trial or hearing; or

1308 (3) that the present whereabouts of the witness is unknown.

1309 Article 50. Admissibility of records of courts of inquiry

1310 (a) In any case not extending to the dismissal of a commissioned officer, the sworn
1311 testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a
1312 person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of
1313 evidence, be read in evidence by any party before a court-martial if the accused was a party
1314 before the court of inquiry and if the same issue was involved or if the accused consents to the
1315 introduction of such evidence.

1316 (b) Such testimony may be read in evidence only by the defense in cases extending to
1317 the dismissal of a commissioned officer.

1318 (c) Such testimony may also be read in evidence before a court of inquiry.

1319 Article 50a. Defense of lack of mental responsibility

1320 (a) It is an affirmative defense in a trial by court-martial that, at the time of the
1321 commission of the acts constituting the offense, the accused, as a result of a severe mental
1322 disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts.
1323 Mental disease or defect does not otherwise constitute a defense.

1324 (b) The accused has the burden of proving the defense of lack of mental
1325 responsibility by clear and convincing evidence.

1326 (c) Whenever lack of mental responsibility of the accused with respect to an offense
1327 is properly at issue, the military judge shall instruct the members of the court as to the defense of
1328 lack of mental responsibility under this article and charge them to find the accused —

1329 (1) guilty;

1330 (2) not guilty; or

1331 (3) not guilty only by reason of lack of mental responsibility.

1332 (d) Subsection (c) does not apply to a court-martial composed of a military judge
1333 only. In the case of a court-martial composed of a military judge only or a summary court-
1334 martial officer, whenever lack of mental responsibility of the accused with respect to an offense
1335 is properly at issue, the military judge or summary court-martial officer shall find the accused —

1336 (1) guilty;

1337 (2) not guilty; or

1338 (3) not guilty only by reason of lack of mental responsibility.

1339 (e) Notwithstanding the provisions of article 52 of this code, the accused shall be
1340 found not guilty only by reason of lack of mental responsibility if —

1341 (1) a majority of the members of the court-martial present at the time the vote is taken
1342 determines that the defense of lack of mental responsibility has been established; or

1343 (2) in the case of a court-martial composed of a military judge only or a summary
1344 court-martial officer, the military judge or summary court-martial officer determines that the
1345 defense of lack of mental responsibility has been established.

1346 Article 51. Voting and rulings

1347 (a) Voting by members of a general or special court-martial on the findings and on
1348 the sentence shall be by secret written ballot. The junior member of the court shall count the
1349 votes. The count shall be checked by the president, who shall forthwith announce the result of
1350 the ballot to the members of the court.

1351 (b) The military judge shall rule upon all questions of law and all interlocutory
1352 questions arising during the proceedings. Any such ruling made by the military judge upon any
1353 question of law or any interlocutory question other than the factual issue of mental responsibility
1354 of the accused is final and constitutes the ruling of the court. However, the military judge may
1355 change the ruling at any time during the trial. Unless the ruling is final, if any member objects
1356 thereto, the court shall be cleared and closed and the question decided by a voice vote as
1357 provided in article 52 of this code, beginning with the junior in rank.

1358 (c) Before a vote is taken on the findings, the military judge shall, in the presence of
1359 the accused and counsel, instruct the members of the court as to the elements of the offense and
1360 charge them —

1361 (1) that the accused must be presumed to be innocent until his guilt is established by
1362 legal and competent evidence beyond reasonable doubt;

1363 (2) that in the case being considered, if there is a reasonable doubt as to the guilt of
1364 the accused, the doubt must be resolved in favor of the accused and the accused must be
1365 acquitted;

1366 (3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in
1367 a lower degree as to which there is no reasonable doubt; and

1368 (4) that the burden of proof to establish the guilt of the accused beyond reasonable
1369 doubt is upon the State.

1370 (d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a
1371 military judge only. The military judge of such a court-martial shall determine all questions of
1372 law and fact arising during the proceedings and, if the accused is convicted, adjudge an
1373 appropriate sentence. The military judge of such a court-martial shall make a general finding and
1374 shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is
1375 filed, it will be sufficient if the findings of fact appear therein.

1376 Article 52. Number of votes required

1377 (a) No person may be convicted of an offense except as provided in article 45(b) of
1378 this code or by the concurrence of all of the members present at the time the vote is taken.

1379 (b) All other questions to be decided by the members of a general or special court-
1380 martial shall be determined by a majority vote, but a determination to reconsider a finding of
1381 guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser
1382 vote which indicates that the reconsideration is not opposed by the number of votes required for
1383 that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote

1384 on a motion relating to the question of the accused's sanity is a determination in favor of the
1385 accused. A tie vote on any other question is a determination in favor of the accused.

1386 Article 53. Court to announce action

1387 A court-martial shall announce its findings and sentence to the parties as soon as
1388 determined.

1389 Article 54. Record of trial

1390 (a) Each general and special court-martial shall keep a separate record of the
1391 proceedings in each case brought before it, and the record shall be authenticated by the signature
1392 of the military judge. If the record cannot be authenticated by the military judge by reason of his
1393 death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by
1394 that of a member, if the trial counsel is unable to authenticate it by reason of his death, disability,
1395 or absence. In a court-martial consisting of only a military judge, the record shall be
1396 authenticated by the court reporter under the same conditions which would impose such a duty
1397 on a member under this subsection.

1398 (b)

1399 (1) A complete verbatim record of the proceedings and testimony shall be prepared in
1400 each general and special court-martial case resulting in a conviction; and

1401 (2) In all other court-martial cases, the record shall contain such matters as may be
1402 prescribed by regulations.

1403 (c) Each summary court-martial shall keep a separate record of the proceedings in
1404 each case, and the record shall be authenticated in the manner as may be prescribed by
1405 regulations.

1406 (d) A copy of the record of the proceedings of each general and special court-martial
1407 shall be given to the accused as soon as it is authenticated.

1408 PART VIII. SENTENCES

1409 Article 55. Cruel and unusual punishments prohibited

1410 Punishment by flogging, or by branding, marking, or tattooing on the body, or any other
1411 cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person
1412 subject to this code. The use of irons, single or double, except for the purpose of safe custody, is
1413 prohibited.

1414 Article 56. Maximum limits

1415 (a) The punishment which a court-martial may direct for an offense may not exceed
1416 such limits as prescribed by this code, but in no instance may a sentence exceed more than ten
1417 (10) years for a military offense, nor shall a sentence of death be adjudged. A conviction by
1418 general court-martial of any military offense for which an accused may receive a sentence of
1419 confinement for more than one (1) year is a felony offense. Except for convictions by a summary
1420 court-martial, all other military offenses are misdemeanors. Any conviction by a summary court-
1421 martial is not a criminal conviction. The limits of punishment for violations of the punitive
1422 articles prescribed herein shall be as prescribed by the manual for courts-martial of the

1423 Commonwealth of Massachusetts in effect at the time of the offense, but in no instance shall any
1424 punishment exceed ten (10) years confinement.

1425 Article 56a. [Reserved]

1426 Article 57. Effective date of sentences

1427 (a) Whenever a sentence of a court-martial as lawfully adjudged and approved
1428 includes a forfeiture of pay or allowances in addition to confinement not suspended, the
1429 forfeiture may apply to pay or allowances becoming due on or after the date the sentence is
1430 approved by the convening authority. No forfeiture may extend to any pay or allowances accrued
1431 before that date.

1432 (b) Any period of confinement included in a sentence of a court-martial begins to run
1433 from the date the sentence is adjudged by the court-martial, but periods during which the
1434 sentence to confinement is suspended or deferred shall be excluded in computing the service of
1435 the term of confinement.

1436 (c) All other sentences of courts-martial are effective on the date ordered executed.

1437

1438 Article 57a. Deferment of sentences

1439 (a) On application by an accused who is under sentence to confinement that has not
1440 been ordered executed, the convening authority or, if the accused is no longer under that person's
1441 jurisdiction, the person exercising general court-martial jurisdiction over the command to which
1442 the accused is currently assigned, may in that person's sole discretion defer service of the

1443 sentence to confinement. The deferment shall terminate when the sentence is ordered executed.
1444 The deferment may be rescinded at any time by the person who granted it or, if the accused is no
1445 longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction
1446 over the command to which the accused is currently assigned.

1447 (b)

1448 (1) In any case in which a court-martial sentences an accused referred to in paragraph

1449 (2) to confinement, the convening authority may defer the service of the sentence to
1450 confinement, without the consent of the accused, until after the accused has been permanently
1451 released to the state military forces by a State, the United States, or a foreign country referred to
1452 in that paragraph.

1453 (2) Paragraph (1) applies to a person subject to this code who —

1454 (A) while in the custody of a State, the United States, or a foreign country is
1455 temporarily returned by that State, the United States, or a foreign country to the state military
1456 forces for trial by court-martial; and

1457 (B) after the court-martial, is returned to that State, the United States, or a foreign
1458 country under the authority of a mutual agreement or treaty, as the case may be.

1459 (3) In this subsection, the term "State" includes the District of Columbia and any
1460 Commonwealth, Territory, or possession of the United States.

1461 (c) In any case in which a court-martial sentences an accused to confinement and the
1462 sentence to confinement has been ordered executed, but in which review of the case under article

1463 67(a) of this code is pending, The Adjutant General may defer further service of the sentence to
1464 confinement while that review is pending.

1465 .

1466 Article 58. Execution of confinement

1467 (a) A sentence of confinement adjudged by a court-martial, whether or not the
1468 sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been
1469 executed, may be carried into execution by confinement in any place authorized by this code.
1470 Persons so confined are subject to the same discipline and treatment as persons regularly
1471 confined or committed to that place of confinement.

1472 (b) No place of confinement may require payment of any fee or charge for so
1473 receiving or confining a person except as otherwise provided by law.

1474 Article 58a. Sentences: reduction in enlisted grade upon approval

1475 (a) A court-martial sentence of an enlisted member in a pay grade above E-1, as
1476 approved by the convening authority, that includes —

1477 (1) a dishonorable or bad-conduct discharge; or

1478 (2) confinement;

1479 reduces that member to pay grade E-1, effective on the date of that approval.

1480 (b) If the sentence of a member who is reduced in pay grade under subsection (a) is
1481 set aside or disapproved, or, as finally approved, does not include any punishment named in
1482 subsection (a)

1483 (1) or (2), the rights and privileges of which the person was deprived because of that
1484 reduction shall be restored, including pay and allowances.

1485 Article 58b. Sentences: forfeiture of pay and allowances during confinement

1486 (a)

1487 (1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of
1488 pay, or of pay and allowances, due that member during any period of confinement or parole. The
1489 forfeiture pursuant to this article shall take effect on the date determined under article 57(a) of

1490 this code and may be deferred as provided by that article. The pay and allowances
1491 forfeited, in the case of a general court-martial, shall be all pay and allowances due that member
1492 during such period and, in the case of a special court-martial, shall be two-thirds (2/3) of all pay
1493 due that member during such period.

1494 (2) A sentence covered by this article is any sentence that includes —

1495 (A) confinement for more than six (6) months; or

1496 (B) confinement for six (6) months or less and a dishonorable or bad-conduct
1497 discharge or dismissal.

1498 (b) In a case involving an accused who has dependents, the convening authority or
1499 other person acting under article 60 of this code may waive any or all of the forfeitures of pay
1500 and allowances required by subsection (a) for a period not to exceed six (6) months. Any amount
1501 of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be

1502 paid, as the convening authority or other person taking action directs, to the dependents of the
1503 accused.

1504 (c) If the sentence of a member who forfeits pay and allowances under subsection (a)
1505 is set aside or disapproved or, as finally approved, does not provide for a punishment referred to
1506 in subsection (a) (2), the member shall be paid the pay and allowances which the member would
1507 have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

1508 PART IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

1509 Article 59. Error of law; lesser included offense

1510 (a) A finding or sentence of a court-martial may not be held incorrect on the ground
1511 of an error of law unless the error materially prejudices the substantive rights of the accused.

1512 (b) Any reviewing authority with the power to approve or affirm a finding of guilty
1513 may approve or affirm, instead, so much of the finding as includes a lesser included offense.

1514 Article 60. Reserved

1515 Article 61. Withdrawal of appeal

1516 (a) In each case subject to appellate review under this code, the accused may file with
1517 the convening authority a statement expressly withdrawing the right of the accused to such
1518 appeal. Such a withdrawal shall be signed by both the accused and his defense counsel and must
1519 be filed in accordance with appellate procedures as provided by law.

1520 (b) The accused may withdraw an appeal at any time in accordance with appellate
1521 procedures as provided by law.

1522 Article 62. Appeal by the State

1523 (a)

1524 (1) In a trial by court-martial in which a punitive discharge may be adjudged, the
1525 State may appeal the following, other than a finding of not guilty with respect to the charge or
1526 specification by the members of the court-martial, or by a judge in a bench trial so long as it is
1527 not made in reconsideration:

1528 (A) An order or ruling of the military judge which terminates the proceedings with
1529 respect to a charge or specification.

1530 (B) An order or ruling which excludes evidence that is substantial proof of a fact
1531 material in the proceeding.

1532 (C) An order or ruling which directs the disclosure of classified information.

1533 (D) An order or ruling which imposes sanctions for nondisclosure of classified
1534 information.

1535 (E) A refusal of the military judge to issue a protective order sought by the State to
1536 prevent the disclosure of classified information.

1537 (F) A refusal by the military judge to enforce an order described in subparagraph

1538 (E) that has previously been issued by appropriate authority.

1539 (2) An appeal of an order or ruling may not be taken unless the trial counsel provides
1540 the military judge with written notice of appeal from the order or ruling within seventy-two (72)
1541 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the

1542 appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which
1543 excludes evidence, that the evidence excluded is substantial proof of a fact material in the
1544 proceeding.

1545 (3) An appeal under this article shall be diligently prosecuted as provided by law.

1546 (b) An appeal under this article shall be forwarded to the court prescribed in article
1547 67a of this code. In ruling on an appeal under this article, that court may act only with respect to
1548 matters of law.

1549 (c) Any period of delay resulting from an appeal under this article shall be excluded
1550 in deciding any issue regarding denial of a speedy trial unless an appropriate authority
1551 determines that the appeal was filed solely for the purpose of delay with the knowledge that it
1552 was totally frivolous and without merit.

1553 Article 63. Rehearings

1554 Each rehearing under this code shall take place before a court-martial composed of
1555 members not members of the court-martial which first heard the case. Upon a rehearing the
1556 accused may not be tried for any offense of which he or she was found not guilty by the first
1557 court-martial, and no sentence in excess of or more severe than the original sentence may be
1558 approved, unless the sentence is based upon a finding of guilty of an offense not considered upon
1559 the merits in the original proceedings, or unless the sentence prescribed for the offense is
1560 mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial
1561 agreement and the accused at the rehearing changes a plea with respect to the charges or
1562 specifications upon which the pretrial agreement was based, or otherwise does not comply with

1563 the pretrial agreement, the approved sentence as to those charges or specifications may include
1564 any punishment not in excess of that lawfully adjudged at the first court-martial.

1565 Article 64. Review by the Senior Force Judge Advocate

1566 (a) Each general and special court-martial case in which there has been a finding of
1567 guilty shall be reviewed by the senior force judge advocate, or a designee. The senior force judge
1568 advocate, or designee, may not review a case under this subsection if that person has acted in the
1569 same case as an accuser, investigating officer, member of the court, military judge, or counsel or
1570 has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's
1571 review shall be in writing and shall contain the following:

1572 (1) Conclusions as to whether —

1573 (A) the court had jurisdiction over the accused and the offense;

1574 (B) the charge and specification stated an offense; and

1575 (C) the sentence was within the limits prescribed as a matter of law.

1576 (2) A response to each allegation of error made in writing by the accused.

1577 (3) If the case is sent for action under subsection (b), a recommendation as to the
1578 appropriate action to be taken and an opinion as to whether corrective action is required as a
1579 matter of law.

1580 (b) The record of trial and related documents in each case reviewed under subsection
1581 (a) shall be sent for action to The Adjutant General, if —

1582 (1) the judge advocate who reviewed the case recommends corrective action;

1583 (2) the sentence approved under article 60(c) of this code extends to dismissal, a bad-
1584 conduct or dishonorable discharge, or confinement for more than six (6) months; or

1585 (3) such action is otherwise required by regulations of The Adjutant General.

1586 (c)

1587 (1) The Adjutant General may —

1588 (A) disapprove or approve the findings or sentence, in whole or in part;

1589 (B) remit, commute, or suspend the sentence in whole or in part;

1590 (C) except where the evidence was insufficient at the trial to support the findings,
1591 order a rehearing on the findings, on the sentence, or on both; or

1592 (D) dismiss the charges.

1593 (2) If a rehearing is ordered but the convening authority finds a
1594 rehearing impracticable, the convening authority shall dismiss the charges.

1595 (3) If the opinion of the senior force judge advocate, or designee, in the senior force
1596 judge advocate’s review under subsection (a) is that corrective action is required as a matter of
1597 law and if The Adjutant General does not take action that is at least as favorable to the accused
1598 as that recommended by the judge advocate, the record of trial and action thereon shall be sent to
1599 the Commander-in-chief for review and action as deemed appropriate.

1600 (d) The senior force judge advocate, or a designee, may review any case in which
1601 there has been a finding of not guilty of all charges and specifications. The senior force judge
1602 advocate, or designee, may not review a case under this subsection if that person has acted in the

1603 same case as an accuser, investigating officer, member of the court, military judge, or counsel or
1604 has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's
1605 review shall be limited to questions of subject matter jurisdiction.

1606 (e) The record of trial and related documents in each case reviewed under subsection
1607 (d) shall be sent for action to The Adjutant General.

1608 (1) The Adjutant General may —

1609 (A) when subject matter jurisdiction is found to be lacking, void the court-martial ab
1610 initio, with or without prejudice to the Government, as The Adjutant General deems appropriate;
1611 or

1612 (B) return the record of trial and related documents to the senior force judge
1613 advocate for appeal by the Government as provided by law.

1614 Article 65. Disposition of records after review by the convening authority

1615 Except as otherwise required by this code, all records of trial and related documents shall
1616 be transmitted and disposed of as prescribed by regulation and provided by law.

1617 Article 66. [Reserved]

1618 Article 67. [Reserved]

1619 Article 67a. Review by State Appellate Authority

1620 Decisions of a court-martial are from a court with jurisdiction to issue felony convictions
1621 and appeals are to the court provided by the law of the state in which the court-martial was held.

1622 The appellate procedures to be followed shall be those provided by law for the appeal of criminal
1623 cases thereto.

1624

1625 Article 68. [Reserved]

1626 Article 69. [Reserved]

1627 Article 70. Appellate counsel

1628 (a) The senior force judge advocate shall detail a judge advocate as appellate
1629 Government counsel to represent the State in the review or appeal of cases specified in article
1630 67a of this code and before any Federal court when requested to do so by the State Attorney
1631 General. Appellate Government counsel must be a member in good standing of the bar of the
1632 highest court of the State to which the appeal is taken.

1633 (b) Upon an appeal by the State, an accused has the right to be represented by
1634 detailed military counsel before any reviewing authority and before any appellate court.

1635 (c) Upon the appeal by an accused, the accused has the right to be represented by
1636 military counsel before any reviewing authority.

1637 (d) Upon the request of an accused entitled to be so represented, the senior force
1638 judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of
1639 cases specified in subsections (b) and (c) of this article.

1640 (e) An accused may be represented by civilian appellate counsel at no expense to the
1641 State.

1642 Article 71. Execution of sentence; suspension of sentence

1643 (a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-
1644 conduct discharge and if the right of the accused to appellate review is not waived, and an appeal
1645 is not withdrawn under article 61 of this code, that part of the sentence extending to dismissal or
1646 a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to
1647 the legality of the proceedings. A judgment as to the legality of the proceedings is final in
1648 such cases when review is completed by an appellate court prescribed in article 67a. of this code,
1649 and is deemed final by the law of state where the judgment was had. —

1650 (b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad
1651 conduct discharge and if the right of the accused to appellate review is waived, or an appeal is
1652 withdrawn under article 61 of this code, that part of the sentence extending to dismissal or a
1653 dishonorable or bad-conduct discharge may not be executed until review of the case by the
1654 senior force judge advocate and any action on that review under article 64 of this code is
1655 completed. Any other part of a court-martial sentence may be ordered executed by the convening
1656 authority or other person acting on the case under article 60 of this code when so approved under
1657 that article.

1658 Article 72. Vacation of suspension

1659 (a) Before the vacation of the suspension of a special court-martial sentence, which
1660 as approved includes a bad-conduct discharge, or of any general court-martial sentence, the
1661 officer having special court-martial jurisdiction over the probationer shall hold a hearing on an
1662 alleged violation of probation. The probationer shall be represented at the hearing by military
1663 counsel if the probationer so desires.

1664 (b) The record of the hearing and the recommendation of the officer having special
1665 court- martial jurisdiction shall be sent for action to the officer exercising general court-martial
1666 jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the
1667 sentence, except a dismissal, shall be executed, subject to applicable restrictions in this code.

1668 (c) The suspension of any other sentence may be vacated by any authority competent
1669 to convene, for the command in which the accused is serving or assigned, a court of the kind that
1670 imposed the sentence.

1671 Article 73. Petition for a new trial

1672 At any time within two (2) years after approval by the convening authority of a court-
1673 martial sentence the accused may petition The Adjutant General for a new trial on the grounds of
1674 newly discovered evidence or fraud on the court-martial.

1675 Article 74. Remission and suspension

1676 (a) Any authority competent to convene, for the command in which the accused is
1677 serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part
1678 or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than
1679 a sentence approved by the Commander-in-chief.

1680 (b) The Commander-in-chief may, for good cause, substitute an administrative form
1681 of discharge for a discharge or dismissal executed in accordance with the sentence of a court-
1682 martial.

1683 Article 75. Restoration

1684 (a) Under such regulations as may be prescribed, all rights, privileges, and property
1685 affected by an executed part of a court-martial sentence which has been set aside or disapproved,
1686 except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is
1687 ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

1688 (b) If a previously executed sentence of dishonorable or bad-conduct discharge is not
1689 imposed on a new trial, the Commander-in-chief, if authorized, may substitute therefore a form
1690 of discharge authorized for administrative issuance unless the accused is to serve out the
1691 remainder of the accused's enlistment.

1692 (c) If a previously executed sentence of dismissal is not imposed on a new trial, the
1693 Commander-in-chief, if authorized, may substitute therefore a form of discharge authorized for
1694 administrative issue, and the commissioned officer dismissed by that sentence may be
1695 reappointed by the Commander-in-chief alone to such commissioned grade and with such rank
1696 as in the opinion of the Commander-in-chief that former officer would have attained had he or
1697 she not been dismissed. The reappointment of such a former officer shall be without regard to the
1698 existence of a vacancy and shall affect the promotion status of other officers only insofar as the
1699 Commander-in-chief may direct. All time between the dismissal and there appointment shall be
1700 considered as actual service for all purposes, including the right to pay and allowances.

1701 Article 76. Finality of proceedings, findings, and sentences

1702 The appellate review of records of trial provided by this code, the proceedings, findings,
1703 and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and
1704 all dismissals and discharges carried into execution under sentences by courts-martial following
1705 approval, review, or affirmation as required by this code, are final and conclusive. Orders

1706 publishing the proceedings of courts-martial and all action taken pursuant to those proceedings
1707 are binding upon all departments, courts, agencies, and officers of the United States and the
1708 several states, subject only to action upon a petition for a new trial as provided in article 73 of
1709 this code and to action under article 74 of this code.

1710 Article 76a. Leave required to be taken pending review of certain court-martial
1711 convictions

1712 Under regulations prescribed, an accused who has been sentenced by a court-martial may
1713 be required to take leave pending completion of action under this article if the sentence, as
1714 approved under article 60 of this code, includes an unsuspended dismissal or an unsuspended
1715 dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the
1716 date on which the sentence is approved under article 60 of this code or at any time after such
1717 date, and such leave may be continued until the date on which action under this article is
1718 completed or may be terminated at any earlier time.

1719 Article 76b. Lack of mental capacity or mental responsibility: commitment of accused for
1720 examination and treatment

1721 (a) Persons incompetent to stand trial.

1722 In the case of a person determined under this code to be presently suffering from a mental
1723 disease or defect rendering the person mentally incompetent to the extent that the person is
1724 unable to understand the nature of the proceedings against that person or to conduct or cooperate
1725 intelligently in the defense of the case, the general court-martial convening authority shall
1726 proceed in accordance with state law and regulation applicable to the person's lack of capacity.

1727 (b) Persons found not guilty by reason of lack of mental responsibility.

1728 If a person is found by a court-martial not guilty only by reason of lack of mental
1729 responsibility, the court-martial convening authority shall proceed in accordance with law and
1730 regulation applicable to the finding of not guilty by reason of lack of mental responsibility.

1731 PART X. PUNITIVE ARTICLES

1732 Article 77. Principals

1733 Any person subject to this code who —

1734 (1) commits an offense punishable by this code, or aids, abets, counsels, commands,
1735 or procures its commission; or

1736 (2) causes an act to be done which if directly performed by him or her would be
1737 punishable by this code;

1738 is a principal.

1739 Article 78. Accessory after the fact

1740 Any person subject to this code who, knowing that an offense punishable by this code has
1741 been committed, receives, comforts, or assists the offender in order to hinder or prevent his
1742 apprehension, trial, or punishment shall be punished as a court-martial may direct.

1743 Article 79. Conviction of lesser included offense

1744 An accused may be found guilty of an offense necessarily included in the offense charged
1745 or of an attempt to commit either the offense charged or an offense necessarily included therein.

1746 Article 80. Attempts

1747 (a) An act, done with specific intent to commit an offense under this code, amounting
1748 to more than mere preparation and tending, even though failing, to effect its commission, is an
1749 attempt to commit that offense.

1750 (b) Any person subject to this code who attempts to commit any offense punishable
1751 by this code shall be punished as a court-martial may direct, unless otherwise specifically
1752 prescribed.

1753 (c) Any person subject to this code may be convicted of an attempt to commit an
1754 offense although it appears on the trial that the offense was consummated.

1755 Article 81. Conspiracy

1756 Any person subject to this code who conspires with any other person to commit an
1757 offense under this code shall, if one or more of the conspirators does an act to effect the object of
1758 the conspiracy, be punished as a court-martial may direct.

1759 Article 82. Solicitation

1760 (a) Any person subject to this code who solicits or advises another or others to desert
1761 in violation of article 85 of this code or mutiny in violation of article 94 of this code shall, if the
1762 offense solicited or advised is attempted or committed, be punished with the punishment
1763 provided for the commission of the offense, but, if the offense solicited or advised is not
1764 committed or attempted, the person shall be punished as a court-martial may direct.

1765 (b) Any person subject to this code who solicits or advises another or others to
1766 commit an act of misbehavior before the enemy in violation of article 99 of this code or sedition
1767 in violation of article 94 of this code shall, if the offense solicited or advised is committed, be
1768 punished with the punishment provided for the commission of the offense, but, if the offense
1769 solicited or advised is not committed, the person shall be punished as a court-martial may direct.

1770 Article 83. Fraudulent enlistment, appointment, or separation

1771 Any person who —

1772 (1) procures his own enlistment or appointment in the state military forces by
1773 knowingly false representation or deliberate concealment as to his qualifications for that
1774 enlistment or appointment and receives pay or allowances there under; or

1775 (2) procures his own separation from the state military forces by knowingly false
1776 representation or deliberate concealment as to his eligibility for that separation;

1777 shall be punished as a court-martial may direct.

1778 Article 84. Unlawful enlistment, appointment, or separation

1779 Any person subject to this code who effects an enlistment or appointment in or a
1780 separation from the state military forces of any person who is known to him or her to be
1781 ineligible for that enlistment,

1782 appointment, or separation because it is prohibited by law, regulation, or order shall be
1783 punished as a court-martial may direct.

1784 Article 85. Desertion

- 1785 (a) Any member of the state military forces who —
- 1786 (1) without authority goes or remains absent from his unit, organization, or place of
1787 duty with intent to remain away there from permanently;
- 1788 (2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or
1789 to shirk important service; or
- 1790 (3) without being regularly separated from one of the state military forces enlists or
1791 accepts an appointment in the same or another one of the state military forces, or in one of the
1792 armed forces of the United States, without fully disclosing the fact that he or she has not been
1793 regularly separated, or enters any foreign armed service except when authorized by the United
1794 States;
- 1795 is guilty of desertion.
- 1796 (b) Any commissioned officer of the state military forces who, after tender of his
1797 resignation and before notice of its acceptance, quits his post or proper duties without leave and
1798 with intent to remain away there from permanently is guilty of desertion.
- 1799 (c) Any person found guilty of desertion or attempt to desert shall be punished, if the
1800 offense is committed in time of war, by confinement of not more than ten (10) years or such
1801 other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at
1802 any other time, by such punishment as a court-martial may direct.

1803 Article 86. Absence without leave

1804 Any person subject to this code who, without authority —

- 1805 (1) fails to go to his appointed place of duty at the time prescribed;
- 1806 (2) goes from that place; or
- 1807 (3) absents himself or herself or remains absent from his unit, organization, or place
- 1808 of duty at which he or she is required to be at the time prescribed;
- 1809 shall be punished as a court-martial may direct.

1810

1811 Article 87. Missing movement

1812 Any person subject to this code who through neglect or design misses the movement of a

1813 ship, aircraft, or unit with which he or she is required in the course of duty to move shall be

1814 punished as a court-martial may direct.

1815 Article 88. Contempt toward officials

1816 Any commissioned officer who uses contemptuous words against the President, the Vice

1817 President, Congress, the Secretary of Defense, the Secretary of a military department, the

1818 Secretary of Homeland Security, or the Commander-in-chief or legislature of the State shall be

1819 punished as a court-martial may direct.

1820 Article 89. Disrespect toward superior commissioned officer

1821 Any person subject to this code who behaves with disrespect toward his superior

1822 commissioned officer shall be punished as a court-martial may direct.

1823 Article 90. Assaulting or willfully disobeying superior commissioned officer

1824 Any person subject to this code who —

1825 (1) strikes his superior commissioned officer or draws or lifts up any weapon or
1826 offers any violence against him or her while he or she is in the execution of his office; or

1827 (2) willfully disobeys a lawful command of his superior commissioned officer; shall
1828 be punished, if the offense is committed in time of war, by confinement of not more than ten (10)
1829 years or such other punishment as a court-martial may direct, and if the offense is committed at
1830 any other time, by such punishment as a court-martial may direct.

1831 Article 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or
1832 petty officer

1833 Any warrant officer or enlisted member who —

1834 (1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer,
1835 while that officer is in the execution of his office;

1836 (2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer,
1837 or petty officer; or

1838 (3) treats with contempt or is disrespectful in language or deportment toward a
1839 warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution
1840 of his office;

1841 shall be punished as a court-martial may direct.

1842 Article 92. Failure to obey order or regulation

1843 Any person subject to this code who —

- 1844 (1) violates or fails to obey any lawful general order or regulation;
- 1845 (2) having knowledge of any other lawful order issued by a member of the state
- 1846 military forces, which it is his duty to obey, fails to obey the order; or
- 1847 (3) is derelict in the performance of his duties; shall be punished as a court-martial
- 1848 may direct.

1849 Article 93. Cruelty and maltreatment

1850 Any person subject to this code who is guilty of cruelty toward, or oppression or

1851 maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

1852 Article 94. Mutiny or sedition

1853 (a) Any person subject to this code who —

1854 (1) with intent to usurp or override lawful military authority, refuses, in concert with

1855 any other person, to obey orders or otherwise do his duty or creates any violence or disturbance

1856 is guilty of mutiny;

1857 (2) with intent to cause the overthrow or destruction of lawful civil authority, creates,

1858 in concert with any other person, revolt, violence, or other disturbance against that authority is

1859 guilty of sedition;

1860 (3) fails to do his utmost to prevent and suppress a mutiny or sedition being

1861 committed in his presence, or fails to take all reasonable means to inform his superior

1862 commissioned officer or commanding officer of a mutiny or sedition which he or she knows or

1863 has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or
1864 sedition.

1865 (b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to
1866 suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

1867 Article 95. Resistance, flight, breach of arrest, and escape

1868 Any person subject to this code who —

1869 (1) resists apprehension;

1870 (2) flees from apprehension;

1871 (3) breaks arrest; or

1872 (4) escapes from custody or confinement;

1873 shall be punished as a court-martial may direct.

1874 Article 96. Releasing prisoner without proper authority

1875 Any person subject to this code who, without proper authority, releases any prisoner
1876 committed to his charge, or who through neglect or design suffers any such prisoner to escape,
1877 shall be punished as a court-martial may direct, whether or not the prisoner was committed in
1878 strict compliance with law.

1879 Article 97. Unlawful detention

1880 Any person subject to this code who, except as provided by law or regulation,
1881 apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

1882 Article 98. Noncompliance with procedural rules

1883 Any person subject to this code who —

1884 (1) is responsible for unnecessary delay in the disposition of any case of a person
1885 accused of an offense under this code; or

1886 (2) knowingly and intentionally fails to enforce or comply with any provision of this
1887 code regulating the proceedings before, during, or after trial of an accused;
1888 shall be punished as a court-martial may direct.

1889 Article 99. Misbehavior before the enemy

1890 Any person subject to this code who before or in the presence of the enemy —

1891 (1) runs away;

1892 (2) shamefully abandons, surrenders, or delivers up any command, unit, place,
1893 or military property which it is his duty to defend;

1894 (3) through disobedience, neglect, or intentional misconduct endangers the safety of
1895 any such command, unit, place, or military property;

1896 (4) casts away his arms or ammunition;

1897 (5) is guilty of cowardly conduct;

1898 (6) quits his place of duty to plunder or pillage;

1899 (7) causes false alarms in any command, unit, or place under control of the armed
1900 forces of the United States or the state military forces;

1901 (8) willfully fails to do his utmost to encounter, engage, capture, or destroy any
1902 enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to
1903 encounter, engage, capture, or destroy; or

1904 (9) does not afford all practicable relief and assistance to any troops, combatants,
1905 vessels, or aircraft of the armed forces belonging to the United States or their allies, to the State,
1906 or to any other state, when engaged in battle;

1907 shall be punished as a court-martial may direct.

1908 Article 100. Subordinate compelling surrender

1909 Any person subject to this code who compels or attempts to compel the commander of
1910 any of the state military forces of the State, or of any other state, place, vessel, aircraft, or other
1911 military property, or of any body of members of the armed forces, to give it up to an enemy or to
1912 abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be
1913 punished as a court-martial may direct.

1914 Article 101. Improper use of countersign

1915 Any person subject to this code who in time of war discloses the parole or countersign to
1916 any person not entitled to receive it or who gives to another, who is entitled to receive and use
1917 the parole or countersign, a different parole or countersign from that which, to his knowledge, he
1918 or she was authorized and required to give, shall be punished as a court-martial may direct.

1919 Article 102. Forcing a safeguard

1920 Any person subject to this code who forces a safeguard shall be punished as a court-
1921 martial may direct.

1922 Article 103. Captured or abandoned property

1923 (a) All persons subject to this code shall secure all public property taken for the
1924 service of the United States or the State, and shall give notice and turn over to the proper
1925 authority without delay all captured or abandoned property in their possession, custody, or
1926 control.

1927 (b) Any person subject to this code who —

1928 (1) fails to carry out the duties prescribed in subsection (a);

1929 (2) buys, sells, trades, or in any way deals in or disposes of taken, captured, or
1930 abandoned property, whereby he or she receives or expects any profit, benefit, or advantage to
1931 himself or herself or another directly or indirectly connected with himself or herself; or

1932 (3) engages in looting or pillaging; shall be punished as a court-martial may direct.

1933 Article 104. Aiding the enemy

1934 Any person subject to this code who —

1935 (1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or
1936 other things; or

1937 (2) without proper authority, knowingly harbors or protects or gives intelligence to,
1938 or communicates or corresponds with or holds any intercourse with the enemy, either directly or
1939 indirectly;

1940 (3)

1941 shall be punished as a court-martial may direct.

1942 Article 105. Misconduct as prisoner

1943 Any person subject to this code who, while in the hands of the enemy in time of war —

1944 (1) for the purpose of securing favorable treatment by his captors acts without proper

1945 authority in a manner contrary to law, custom, or regulation, to the detriment of others of

1946 whatever nationality held by the enemy as civilian or military prisoners; or

1947 (2) while in a position of authority over such persons maltreats them without

1948 justifiable

1949 cause;

1950 shall be punished as a court-martial may direct.

1951 Article 106. [Reserved]

1952 Article 106a. [Reserved]

1953 Article 107. False official statements

1954 Any person subject to this code who, with intent to deceive, signs any false record,

1955 return, regulation, order, or other official document made in the line of duty, knowing it to be

1956 false, or makes any other false official statement made in the line of duty, knowing it to be false,

1957 shall be punished as a court-martial may direct.

1958 Article 108. Military property — Loss, damage, destruction, or wrongful disposition

1959 Any person subject to this code who, without proper authority —
1960 sells or otherwise disposes of;
1961 (1) willfully or through neglect damages, destroys, or loses; or
1962 (2) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or
1963 wrongfully disposed of;

1964 any military property of the United States or of any State, shall be punished as a court-
1965 martial may direct.

1966 Article 109. Property other than military property — Waste, spoilage, or destruction

1967 Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise
1968 willfully and wrongfully destroys or damages any property other than military property of the
1969 United States or of any State shall be punished as a court-martial may direct.

1970 Article 110. Improper hazarding of vessel

1971 (a) Any person subject to this code who willfully and wrongfully hazards or suffers
1972 to be hazarded any vessel of the armed forces of the United States or any state military forces
1973 shall suffer such punishment as a court-martial may direct.

1974 (b) Any person subject to this code who negligently hazards or suffers to be hazarded
1975 any vessel of the armed forces of the United States or any state military forces shall be punished
1976 as a court-martial may direct.

1977 Article 111. [Reserved]

1978 Article 112. Drunk on duty

1979 Any person subject to this code other than a sentinel or lookout, who is found drunk on
1980 duty, shall be punished as a court-martial may direct.

1981

1982 Article 112a. Wrongful use, possession, etc., of controlled substances

1983 (a) Any person subject to this code who wrongfully uses, possesses, manufactures,
1984 distributes, imports into the customs territory of the United States, exports from the United
1985 States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control
1986 of the armed forces of the United States or of any state military forces a substance described in
1987 subsection (b) shall be punished as a court-martial may direct.

1988 (b) The substances referred to in subsection (a) are the following:

1989 (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
1990 methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or
1991 derivative of any such substance.

1992 (2) Any substance not specified in clause (1) that is listed on a schedule of controlled
1993 substances prescribed by the President for the purposes of the Uniform Code of Military Justice
1994 of the armed forces of the United States [10 U.S.C. § 801 et seq.].

1995 (3) Any other substance not specified in clause (1) or contained on a list prescribed
1996 by the President under clause (2) that is listed in schedules I through V of article 202 of the
1997 Controlled Substances Act (21 U.S.C. § 812).

1998 Article 113. Misbehavior of sentinel

1999 Any sentinel or look-out who is found drunk or sleeping upon his post or leaves it before
2000 being regularly relieved, shall be punished, if the offense is committed in time of war, by
2001 confinement of not more than ten (10) years or other punishment as a court-martial may direct,
2002 but if the offense is committed at any other time, by such punishment as a court-martial may
2003 direct.

2004 Article 114. Dueling

2005 Any person subject to this code who fights or promotes, or is concerned in or connives at
2006 fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report
2007 the fact promptly to the proper authority, shall be punished as a court-martial may direct.

2008 Article 115. Malingering

2009 Any person subject to this code who for the purpose of avoiding work, duty, or service —

2010 (1) feigns illness, physical disablement, mental lapse, or derangement; or

2011 (2) intentionally inflicts self-injury;

2012 shall be punished as a court-martial may direct.

2013 Article 116. Riot or breach of peace

2014 Any person subject to this code who causes or participates in any riot or breach of the
2015 peace shall be punished as a court-martial may direct.

2016 Article 117. Provoking speeches or gestures

2017 Any person subject to this code who uses provoking or reproachful words or gestures
2018 towards any other person subject to this code shall be punished as a court-martial may direct.

2019 Article 118. [Reserved]

2020 Article 119. [Reserved]

2021 Article 120. [Reserved]

2022 Article 121. [Reserved]

2023 Article 122. [Reserved]

2024 Article 123. [Reserved]

2025 Article 123a. [Reserved]

2026 Article 124. [Reserved]

2027 Article 125. [Reserved]

2028 Article 126. [Reserved]

2029 Article 127. [Reserved]

2030 Article 128. [Reserved]

2031 Article 129. [Reserved]

2032 Article 130. [Reserved]

2033 Article 131. [Reserved]

2034

2035 Article 132. Frauds against the government Any person subject to this code —

2036 (1) who, knowing it to be false or fraudulent —

2037 (A) makes any claim against the United States, the State, or any officer thereof; or

2038 (B) presents to any person in the civil or military service thereof, for approval or

2039 payment, any claim against the United States, the State, or any officer thereof;

2040 (2) who, for the purpose of obtaining the approval, allowance, or payment of any

2041 claim against the United States, the State, or any officer thereof —

2042 (A) makes or uses any writing or other paper knowing it to contain any false or

2043 fraudulent statements;

2044 (B) makes any oath, affirmation or certification to any fact or to any writing or other

2045 paper knowing the oath, affirmation or certification to be false; or

2046 (C) forges or counterfeits any signature upon any writing or other paper, or uses any

2047 such signature knowing it to be forged or counterfeited;

2048 (3) who, having charge, possession, custody, or control of any money, or other

2049 property of the United States or the State, furnished or intended for the armed forces of the

2050 United States or the state military forces, knowingly delivers to any person having authority to

2051 receive it, any amount thereof less than that for which he or she receives a certificate or receipt;

2052 or

2053 (4) who, being authorized to make or deliver any paper certifying the receipt of any

2054 property of the United States or the State, furnished or intended for the armed forces of the

2055 United States or the state military forces, makes or delivers to any person such writing without
2056 having full knowledge of the truth of the statements therein contained and with intent to defraud
2057 the United States or the State;

2058 shall, upon conviction, be punished as a court-martial may direct.

2059 Article 133. Conduct unbecoming an officer

2060 Any commissioned officer, cadet, candidate, or midshipman who is convicted of
2061 conduct unbecoming an officer shall be punished as a court-martial may direct.

2062 Article 134. General article

2063 Though not specifically mentioned in this code, all disorders and neglects to the prejudice
2064 of good order and discipline in the state military forces and all conduct of a nature to bring
2065 discredit upon the state military forces shall be taken cognizance of by a court-martial and
2066 punished at the discretion of a military court. However, where a crime constitutes an offense that
2067 violates both this code and the criminal laws of the state where the offense occurs or criminal
2068 laws of the United States, jurisdiction of the military court must be determined in accordance
2069 with article 2(b) of this code.

2070 PART XI. MISCELLANEOUS PROVISIONS

2071 Article 135. Courts of inquiry

2072 (a) Courts of inquiry to investigate any matter of concern to the state military forces
2073 may be convened by any person authorized to convene a general court-martial, whether or not
2074 the persons involved have requested such an inquiry.

2075 (b) A court of inquiry consists of three (3) or more commissioned officers. For each
2076 court of inquiry, the convening authority shall also appoint counsel for the court.

2077 (c) Any person subject to this code whose conduct is subject to inquiry shall be
2078 designated as a party. Any person subject to this code who has a direct interest in the subject of
2079 inquiry has the right to be designated as a party upon request to the court. Any person designated
2080 as a party shall be given due notice and has the right to be present, to be represented by counsel,
2081 to cross- examine witnesses, and to introduce evidence.

2082 (d) Members of a court of inquiry may be challenged by a party, but only for cause
2083 stated to the court.

2084 (e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take
2085 an oath to faithfully perform their duties.

2086 (f) Witnesses may be summoned to appear and testify and be examined before courts
2087 of inquiry, as provided for courts-martial.

2088 (g) Courts of inquiry shall make findings of fact but may not express opinions or
2089 make recommendations unless required to do so by the convening authority.

2090 (h) Each court of inquiry shall keep a record of its proceedings, which shall be
2091 authenticated by the signatures of the president and counsel for the court and forwarded to the
2092 convening authority. If the record cannot be authenticated by the president, it shall be signed by a
2093 member in lieu of the president. If the record cannot be authenticated by the counsel for the
2094 court, it shall be signed by a member in lieu of the counsel.

2095 Article 136. Authority to administer oaths and to act as notary

- 2096 (a) The following persons may administer oaths for the purposes of military
2097 administration, including military justice:
- 2098 (1) All judge advocates.
- 2099 (2) All summary courts-martial.
- 2100 (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- 2101 (4) All commanding officers of the naval militia.
- 2102 (5) All other persons designated by regulations of the armed forces of the United
2103 States or by statute.
- 2104 (b) The following persons may administer oaths necessary in the performance of their
2105 duties:
- 2106 (1) The president, military judge, and trial counsel for all general and special courts-
2107 martial.
- 2108 (2) The president and the counsel for the court of any court of inquiry.
- 2109 (3) All officers designated to take a deposition.
- 2110 (4) All persons detailed to conduct an investigation.
- 2111 (5) All recruiting officers.
- 2112 (6) All other persons designated by regulations of the armed forces of the United
2113 States or by statute.

2114 (c) The signature without seal of any such person, together with the title of his office,
2115 is prima facie evidence of the person's authority.

2116 Article 137. Articles to be made available

2117 The text of the code and of the regulations prescribed under such code shall be made
2118 available to a member of the state military forces, upon request by the member, for the member's
2119 personal examination.

2120 Article 138. Complaints of wrongs

2121 Any member of the state military forces who believes himself or herself wronged by a
2122 commanding officer, and who, upon due application to that commanding officer, is refused
2123 redress, may complain to any superior commissioned officer, who shall forward the complaint to
2124 the officer exercising general court-martial jurisdiction over the officer against whom it is made.
2125 The officer exercising general court-martial jurisdiction shall examine into the complaint and
2126 take proper measures for redressing the wrong complained of; and shall, as soon as possible,
2127 send to The Adjutant General a true statement of that complaint, with the proceedings had
2128 thereon.

2129 Article 139. Redress of injuries to property

2130 (a) Whenever complaint is made to any commanding officer that willful damage has
2131 been done to the property of any person or that the person's property has been wrongfully taken
2132 by members of the state military forces, that person may, under such regulations prescribed,
2133 convene a board to investigate the complaint. The board shall consist of from one (1) to three (3)
2134 commissioned officers and, for the purpose of that investigation, it has power to summon

2135 witnesses and examine them upon oath, to receive depositions or other documentary evidence,
2136 and to assess the damages sustained against the responsible parties. The assessment of damages
2137 made by the board is subject to the approval of the commanding officer, and in the amount
2138 approved by that officer shall be charged against the pay of the offenders. The order of the
2139 commanding officer directing charges herein authorized is conclusive on any disbursing officer
2140 for payment to the injured parties of the damages so assessed and approved.

2141 (b) If the offenders cannot be ascertained, but the organization or detachment to
2142 which they belong is known, charges totaling the amount of damages assessed and approved may
2143 be made in such proportion as may be considered just upon the individual members thereof who
2144 are shown to have been present at the scene at the time the damages complained of were
2145 inflicted, as determined by the approved findings of the board.

2146 Article 140. Delegation by the Commander-in-chief

2147 The Commander-in-chief may delegate any authority vested in the Commander-in-chief
2148 under this code, and provide for the sub delegation of any such authority, except the power given
2149 the Commander-in-chief by article 22 of this code.

2150 Article 141. Payment of fees, costs, and expenses

2151 (a) The fees and authorized travel expenses of all witnesses, experts, victims, court
2152 reporters, and interpreters, fees for the service of process, the costs of collection, apprehension,
2153 detention and confinement, and all other necessary expenses of prosecution and the
2154 administration of military justice, not otherwise payable by any other source, shall be paid out of
2155 the military justice fund.

2156 (b) For the foregoing purposes, there is created in the state treasury a fund to be
2157 designated the military justice fund that shall be administered by The Adjutant General, from
2158 which expenses of military justice shall be paid in the amounts and manner as prescribed by law.
2159 The legislature may appropriate and have deposited in the military justice fund such funds as it
2160 deems necessary to carry out the purposes of this code.

2161 Article 142. Payment of fines and disposition thereof

2162 (a) Fines imposed by a military court or through imposition of non-judicial
2163 punishment may be paid to the State and delivered to the court or imposing officer, or to a person
2164 executing their process. Fines may be collected in the following manner:

2165 (1) By cash or money order;

2166 (2) By retention of any pay or allowances due or to become due the person fined from
2167 any state or the United States;

2168 (3) By garnishment or levy, together with costs, on the wages, goods, and chattels of
2169 a person delinquent in paying a fine, as provided by law.

2170 (b) Any sum so received or retained shall be deposited to whomever the court so
2171 directs.

2172 Article 143. Uniformity of interpretation and Military Rules of Evidence.

2173 (a) This code shall be so construed as to effectuate its general purpose to make it uniform,
2174 so far as practical, with the Uniform Code of Military Justice, chapter 47 of title 10, United
2175 States Code.

2176 (b) The current version of the federal Military Rules of Evidence at the time of the
2177 offense applies to court-martial proceedings convened under this chapter.

2178 Article 144. Immunity for action of military courts

2179 All persons acting under the provisions of this code, whether as a member of the military
2180 or as a civilian, shall be immune from any personal liability for any of the acts or omissions
2181 which they did or failed to do as part of their duties under this code.

2182 Article 145. Severability

2183 The provisions of this code are hereby declared to be severable and if any provision of
2184 this code or the application of such provision to any person or circumstance is declared invalid
2185 for any reason, such declaration shall not affect the validity of the remaining portions of this
2186 code.

2187 Article 146. Short Title

2188 This chapter may be cited as the Massachusetts Code of Military Justice (MCMJ).