

4 cies entering into the contract is authorized by law to perform, pro-  
 5 vided that such contract shall be authorized by the governing body of  
 6 each party to the contract. Such contract shall set forth fully the pur-  
 7 poses, powers, rights, objectives, and responsibilities of the contract-  
 8 ing parties.

1 SEC. 13. The powers granted by this Act shall be in addition to  
 2 any specific grant for intergovernmental agreements and contracts.

1 SEC. 14. Any contract or agreement authorized by this Act shall  
 2 not be limited as to period of existence, except as may be limited by  
 3 the agreement or contract itself.

Approved April 22, 1965.

## CHAPTER 84

### SALE OF MILITARY LANDS

S. F. 548

AN ACT relating to the sale or exchange of state military lands by the executive council on recommendation of the armory board.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Section twenty-nine point fifty-seven (29.57), Code  
 2 1962, is hereby amended by inserting in line twenty-nine (29) after  
 3 the word "sold" the following "or exchanged".

1 SEC. 2. This Act, being deemed of immediate importance, shall be  
 2 in full force and effect from and after its publication in The Osceola  
 3 Sentinel, a newspaper published at Osceola, Iowa, and the Winterset  
 4 Madisonian, a newspaper published at Winterset, Iowa.

Approved May 19, 1965.

I hereby certify that the foregoing Act, Senate File 548, was published in The Osceola Sentinel, Osceola, Iowa, May 27, 1965, and in the Winterset Madisonian, Winterset, Iowa, May 26, 1965.

GARY L. CAMERON, *Secretary of State.*

## CHAPTER 85

### CODE OF MILITARY JUSTICE

H. F. 560

AN ACT to establish a Code of Military Justice in Iowa.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 Sections twenty-nine point sixty-one (29.61), twenty-nine point  
 2 sixty-two (29.62), twenty-nine point sixty-three (29.63), twenty-nine  
 3 point sixty-four (29.64), twenty-nine point sixty-five (29.65), twenty-  
 4 nine point sixty-six (29.66), twenty-nine point sixty-seven (29.67),

5 twenty-nine point sixty-eight (29.68), twenty-nine point sixty-nine  
6 (29.69), twenty-nine point seventy (29.70), twenty-nine point seven-  
7 ty-one (29.71), twenty-nine point seventy-two (29.72), twenty-nine  
8 point seventy-three (29.73), twenty-nine point seventy-four (29.74),  
9 twenty-nine point seventy-five (29.75), twenty-nine point seventy-six  
10 (29.76), twenty-nine point seventy-seven (29.77), and twenty-nine  
11 point seventy-nine (29.79) Code 1962, as amended, are hereby re-  
12 pealed and the following enacted in lieu thereof.

1 SECTION 1. This chapter applies to all members of the state mili-  
2 tary forces who are not in federal service.

1 SEC. 2. Each person discharged from the state military forces who  
2 is later charged with having fraudulently obtained his discharge is,  
3 subject to section forty-four (44), subject to trial by court-martial on  
4 that charge and is after apprehension subject to this Code while in the  
5 custody of the military for that trial. Upon conviction of that charge  
6 he is subject to trial by court-martial for all offenses under this Code  
7 committed before the fraudulent discharge.

8 No person who has deserted from the state military forces may be  
9 relieved from amenability to the jurisdiction of this Code by virtue of  
10 a separation from any later period of service.

1 SEC. 3. This Code applies throughout the state. It also applies to  
2 all persons otherwise subject to this Code while they are serving out-  
3 side the state, and while they are going to and returning from such  
4 service outside the state, in the same manner and to the same extent  
5 as if they were serving inside the state.

6 Courts-martial and courts of inquiry may be convened and held in  
7 units of the state military forces while those units are serving outside  
8 the state with the same jurisdiction and powers as to persons subject  
9 to this Code as if the proceedings were held inside the state and of-  
10 fenses committed outside the state may be tried and punished either  
11 inside or outside the state.

1 SEC. 4. Apprehension is the taking of a person into custody. Any  
2 person authorized by this Code, or by regulations issued under it, to  
3 apprehend persons subject to this Code, any marshal of a court-martial  
4 appointed pursuant to the provisions of this Code, and any peace officer  
5 authorized to do so by law, may do so upon reasonable belief that an  
6 offense has been committed and that the person apprehended commit-  
7 ted it.

8 Commissioned officers, warrant officers, petty officers, and noncom-  
9 missioned officers have authority to quell quarrels, frays, and disorders  
10 among persons subject to this Code and to apprehend persons subject  
11 to this Code who take part therein.

1 SEC. 5. Any civil officer having authority to apprehend offenders  
2 under the laws of the United States or of a state, territory, common-  
3 wealth, or possession, or the District of Columbia may summarily ap-  
4 prehend a deserter from the state military forces and deliver him into  
5 the custody of the state military forces. If an offender is apprehended  
6 outside the state his return to the area must be in accordance with  
7 normal extradition procedures or reciprocal agreement.

1 SEC. 6. Arrest is the restraint of a person by an order, not imposed  
2 as a punishment for an offense, directing him to remain within certain  
3 specified limits. Confinement is the physical restraint of a person.

4 An enlisted member may be ordered into arrest or confinement by  
5 any commissioned officer by an order, oral or written, delivered in  
6 person or through other persons subject to this Code or through any  
7 person authorized by this Code to apprehend persons.

8 A commanding officer may authorize warrant officers, petty officers  
9 or noncommissioned officers to order enlisted members of his command  
10 or subject to his authority into arrest or confinement.

11 A commissioned officer or a warrant officer may be ordered appre-  
12 hended or into arrest or confinement only by a commanding officer to  
13 whose authority he is subject, by an order, oral or written, delivered  
14 in person or by another commissioned officer. The authority to order  
15 such persons apprehended or into arrest or confinement may not be  
16 delegated.

1 SEC. 7. No person may be ordered apprehended or into arrest or  
2 confinement except for probable cause.

3 This section does not limit the authority of persons authorized to  
4 apprehend offenders to secure the custody of an alleged offender until  
5 proper authority may be notified.

1 SEC. 8. Any person subject to this Code charged with an offense  
2 under this Code shall be ordered into arrest or confinement, as circum-  
3 stances may require; but when charged only with an offense normally  
4 tried by a summary court-martial, such person shall not ordinarily be  
5 placed in confinement. When any person subject to this Code is placed  
6 in arrest or confinement prior to trial, after charges are placed against  
7 him, immediate steps shall be taken to inform him of the specific  
8 wrong of which he is accused and to try him within sixty (60) days  
9 of informing the accused or to dismiss the charges and release him.

1 SEC. 9. The accused may post bond in the amount ordered by the  
2 convening authority but not to exceed twice the authorized fine for  
3 such offense, however, no bond is permitted for capital offenses.

1 SEC. 10. Persons confined other than in a guard house, whether  
2 before, during or after trial by a military court, shall be confined in  
3 civil jails, penitentiaries, or prisons.

1 SEC. 11. Every commander of a guard, master-at-arms, warden,  
2 keeper, or officer of a city or county jail or of any other jail, peni-  
3 tentiary, or prison, to whose charge a prisoner is committed shall,  
4 within twenty-four (24) hours after that commitment or as soon as  
5 he is relieved from guard, report to the commanding officer of the  
6 prisoner the name of the prisoner, the offense charged against him,  
7 and the name of the person who ordered or authorized the commit-  
8 ment.

1 SEC. 12. Subject to section fifty-eight (58), no person, while being  
2 held for trial or the result of a trial, may be subjected to punishment  
3 or penalty other than arrest or confinement upon the charges pending  
4 against him, nor shall the arrest or confinement imposed upon him be  
5 any more rigorous than the circumstances require to insure his pres-

6 ence, but he may be subjected to minor punishment during that period  
7 for infractions of discipline.

1 SEC. 13. Under such regulations as may be prescribed under this  
2 Code a person subject to this Code who is on active state duty who is  
3 accused of an offense against civil authority may be delivered, upon  
4 request, to the civil authority for trial.

5 When delivery under this section is made to any civil authority of a  
6 person undergoing sentence of a court-martial, the delivery, if fol-  
7 lowed by conviction in a civil tribunal, shall be held to interrupt the  
8 execution of the sentence of the court-martial, and the offender after  
9 having answered to the civil authorities for his offense shall, upon the  
10 request of competent military authority, be returned to military cus-  
11 tody for the completion of his sentence.

1 SEC. 14. Under such regulations as the adjutant general may pre-  
2 scribe any commanding officer may, in addition to or in lieu of ad-  
3 monition or reprimand, impose one of the following disciplinary  
4 punishments for minor offenses without the intervention of a court-  
5 martial:

6 1. Upon officer of his command:

7 a. Withholding of privileges for not more than two (2) consecutive  
8 weeks;

9 b. Restriction to certain specified limits, with or without suspension  
10 from duty, for not more than two consecutive weeks; or

11 c. If imposed by a commanding officer of the state military forces of  
12 field grade or above, a fine or forfeiture of pay and allowances of not  
13 more than twenty-five (25) dollars;

14 2. Upon other military personnel of his command:

15 a. Withholding of privileges for not more than two (2) consecutive  
16 weeks,

17 b. Restriction to certain specified limits, with or without suspension  
18 from duty, for not more than two (2) consecutive weeks,

19 c. Extra duties for not more than fourteen (14) days, which need  
20 not be consecutive, and for not more than two (2) hours per day, holi-  
21 days included.

22 d. Reduction to the lowest or any intermediate grade within his  
23 promotion authority.

24 e. If imposed by an officer exercising special court-martial juris-  
25 diction over the offender, a fine or forfeiture of pay and allowances of  
26 not more than ten (10) dollars.

27 A person punished under this section who considers his punishment  
28 unjust or disproportionate to the offense may, through the proper  
29 channel, appeal to the next superior authority. The appeal shall be  
30 promptly forwarded and decided, but the person punished may in the  
31 meantime be required to undergo the punishment adjudged. The  
32 officer who imposes the punishment, his successor in command, or  
33 superior authority may suspend, set aside, or remit any part or amount  
34 of the punishment and restore all rights, privileges and property af-  
35 fected.

36 The imposition and enforcement of disciplinary punishment under  
37 this section for any act or omission is not a bar to trial by court-  
38 martial for a serious crime or offense growing out of the same act or

39 omission, and not properly punishable under this section, but the fact  
40 that a disciplinary punishment has been enforced may be shown by  
41 the accused upon trial, and when so shown shall be considered in  
42 determining the measure of punishment to be adjudged in the event  
43 of a finding of guilty.

44 Whenever a punishment of forfeiture of pay and allowances is im-  
45 posed under this section, the forfeiture may apply to pay or allowances  
46 accruing on or after that punishment is imposed and to any pay and  
47 allowances accrued before that date.

1 SEC. 15. In the state military forces not in federal service, there  
2 are general, special, and summary courts-martial constituted like sim-  
3 ilar courts of the armed forces of the United States. They have the  
4 jurisdiction and powers, except as to punishments, and shall follow  
5 the forms and procedures provided for those courts.

6 The three kinds of courts-martial are:

- 7 1. General courts-martial, consisting of a law officer and not less  
8 than five (5) members;
- 9 2. Special courts-martial, consisting of not less than three (3) mem-  
10 bers; and
- 11 3. Summary courts-martial, consisting of one (1) commissioned  
12 officer.

1 SEC. 16. Each force of the state military forces has court-martial  
2 jurisdiction over all persons subject to this Code.

1 SEC. 17. Subject to section sixteen (16), general courts-martial  
2 have jurisdiction to try persons subject to this Code for any offense  
3 made punishable by this Code and may, under such limitations as the  
4 adjutant general may prescribe, adjudge any of the following punish-  
5 ments:

- 6 1. A fine of not more than two (2) hundred dollars;
- 7 2. Forfeiture of pay and allowances not to exceed one thousand dol-  
8 lars (\$1,000.00).
- 9 3. A reprimand;
- 10 4. Dismissal or dishonorable discharge;
- 11 5. Reduction of a noncommissioned officer to the ranks; or
- 12 6. Any combination of these punishments.

1 SEC. 18. Subject to section sixteen (16), special courts-martial  
2 have jurisdiction to try persons subject to this Code for any offense  
3 for which they may have been punished under this Code. A special  
4 court-martial has the same powers of punishment as a general court-  
5 martial except that a fine imposed by a special court-martial may not  
6 be more than one (1) hundred dollars for a single offense.

7 Subject to section sixteen (16), summary courts-martial have juris-  
8 diction to try persons subject to this Code, except officers, for any  
9 offense made punishable by this Code.

10 No person with respect to whom summary courts-martial have juris-  
11 diction may be brought to trial before a summary court-martial if he  
12 objects thereto, unless under section fourteen (14) he has been per-  
13 mitted and has elected to refuse punishment under that section. If  
14 objection to trial by summary court-martial is made by an accused  
15 who has not been permitted to refuse punishment under section four-

16 teen (14), trial shall be ordered by special or general court-martial,  
17 as may be appropriate.

18 A summary court-martial may sentence to a fine of not more than  
19 twenty-five (25) dollars for a single offense, to forfeiture of pay and  
20 allowances, not to exceed two-thirds ( $\frac{2}{3}$ ) of one month's pay, and to  
21 reduction of a noncommissioned officer to the ranks.

1 SEC. 19. In the organized militia not in federal service, no sentence  
2 of dismissal or dishonorable discharge may be executed until it is  
3 approved by the governor.

1 SEC. 20. A dishonorable discharge, bad conduct discharge or dis-  
2 missal may not be adjudged by any court-martial unless a complete  
3 record of the proceedings and testimony before the court has been  
4 made.

1 SEC. 21. In the state military forces, not in federal service, a  
2 court-martial may, instead of imposing a fine, sentence to confinement  
3 for not more than one (1) day for each three (3) dollars of the author-  
4 ized fine.

1 SEC. 22. The adjutant general shall appoint an active or retired  
2 officer of the state military forces as state judge advocate. To be eli-  
3 gible for appointment, an officer must be a member of the bar of the  
4 highest court of the state and must have been a member of the bar of  
5 the state for at least five (5) years.

6 The adjutant general may appoint as many assistant state judge  
7 advocates as he considers necessary. To be eligible for appointment,  
8 assistant state judge advocates must be active officers of the state mili-  
9 tary forces and members of the bar of the highest court of the state.

10 Convening authorities shall at all times communicate directly with  
11 their staff judge advocates in matters relating to the administration  
12 of military justice; and the staff judge advocate of any command may  
13 communicate directly with the staff judge advocate of a superior or  
14 subordinate command, or with the state judge advocate.

15 No person who has acted as member, law officer, trial counsel, as-  
16 sistant trial counsel, defense counsel, assistant defense counsel, or  
17 investigating officer, or who has been a witness for either the prose-  
18 cution or defense, in any case may later act as staff judge advocate or  
19 legal officer to any reviewing authority upon the same case.

1 SEC. 23. In the state military forces not in federal service, general  
2 courts-martial may be convened by the governor, or by the adjutant  
3 general of the state of Iowa.

1 SEC. 24. In the state military forces not in federal service, the  
2 commanding officer of a garrison, fort, post, camp, air base, auxiliary  
3 air base, or other place where troops are on duty, or of a division,  
4 brigade, regiment, wing, group, detached battalion, separate squadron,  
5 or other detached command, may convene special courts-martial.  
6 When any such officer is an accuser, the court shall be convened by  
7 superior competent authority.

8 A special court-martial may not try a commissioned officer.

1     SEC. 25. In the state military forces not in federal service, the  
2 commanding officer of a garrison, fort, post, camp, air base, auxiliary  
3 air base, or other place where troops are on duty, or of a division,  
4 brigade, regiment, wing, group, detached battalion, detached squadron,  
5 detached company, or other detachment, may convene a summary  
6 court-martial consisting of an assistant state judge advocate. The  
7 proceedings shall be informal.

8     When only one commissioned officer is present with a command or  
9 detachment he shall be the summary court officer of that command or  
10 detachment and shall hear and determine all summary court martial  
11 cases brought before him.

1     SEC. 26. Any commissioned officer of or on duty with the state  
2 military forces is eligible to serve on all courts-martial for the trial of  
3 any person who may lawfully be brought before such courts for trial.

4     Any warrant officer of or on duty with the state military forces is  
5 eligible to serve on general and special courts-martial for the trial of  
6 any person, other than a commissioned officer, who may lawfully be  
7 brought before such courts for trial.

8     Any enlisted member of the state military forces who is not a mem-  
9 ber of the same unit as the accused is eligible to serve on general and  
10 special courts-martial for the trial of any enlisted member who may  
11 lawfully be brought before such courts for trial, but he shall serve as  
12 a member of a court only if, before the convening of the court, the  
13 accused personally has requested in writing that enlisted members  
14 serve on it. After such a request, the accused may not be tried by a  
15 general or special court-martial the membership of which does not  
16 include enlisted members in a number comprising at least one-third  
17 ( $\frac{1}{3}$ ) of the total membership of the court, unless eligible members  
18 cannot be obtained on account of physical conditions or military exi-  
19 gencies. If such members cannot be obtained, the court may be con-  
20 vened and the trial held without them, but the convening authority  
21 shall make a detailed written statement, to be appended to the record,  
22 stating why they could not be obtained.

23     In this section, the word "unit" means any regularly organized body  
24 of the state military forces not larger than a company, a squadron, or  
25 a body corresponding to one of them.

26     When it can be avoided, no person subject to this Code may be tried  
27 by a court-martial any member of which is junior to him in rank or  
28 grade.

29     When convening a court-martial, the convening authority shall de-  
30 tail as members thereof such members as, in his opinion, are best  
31 qualified for the duty by reason of age, education, training, experience,  
32 length of service, and judicial temperament. No member is eligible to  
33 serve as a member of a general or special court-martial when he is the  
34 accuser or a witness for the prosecution or has acted as investigating  
35 officer, staff judge advocate, or as counsel in the same case. If within  
36 the command of the convening authority there is present and not  
37 otherwise disqualified a commissioned officer who is a member of the  
38 bar of the highest court of the state and of appropriate rank and grade,  
39 the convening authority shall appoint him as president of a special  
40 court-martial. Although this requirement is binding on the convening

41 authority, failure to meet it in any case does not divest a military court  
42 of jurisdiction.

1 SEC. 27. The authority convening a general court-martial shall  
2 detail as law officer thereof a commissioned officer who is a member  
3 of the bar of the highest court of the state, or a member of the bar of  
4 a federal court, and who is certified to be qualified for such duty by the  
5 state judge advocate. No person is eligible to act as law officer in a  
6 case if he is the accuser of a witness or has acted as investigating  
7 officer or as counsel in the same case.

8 The law officer may not consult with the members of the court, other  
9 than on the form of the findings as provided in section forty (40),  
10 except in the presence of the accused, trial counsel, and defense coun-  
11 sel, nor may he vote with the members of the court.

1 SEC. 28. For each general and special court-martial the authority  
2 convening the court shall detail trial counsel and defense counsel and  
3 such assistants as he considers appropriate. No person who has acted  
4 as investigating officer, law officer, or court member in any case may  
5 act later as trial counsel, assistant trial counsel, or, unless expressly  
6 requested by the accused, as defense counsel, or assistant defense  
7 counsel in the same case. No person who has acted for the prosecution  
8 may act later in the same case for the defense, nor may any person  
9 who has acted for the defense act later in the same case for the prose-  
10 cution.

11 Trial counsel or defense counsel detailed for a general court-martial  
12 must be a person who is a member of the bar of the highest court of  
13 the state, or a member of the bar of a federal court.

14 In the case of a special court-martial:

15 1. If the trial counsel is qualified to act as counsel before a general  
16 court-martial, the defense counsel detailed by the convening authority  
17 must be a person similarly qualified; and

18 2. If the trial counsel is a member of the bar of the highest court of  
19 the state, the defense counsel detailed by the convening authority must  
20 also be a member of the bar of the highest court of the state.

1 SEC. 29. Under such regulations as the adjutant general may pre-  
2 scribe, the convening authority of a general or special court-martial or  
3 court of inquiry shall detail or employ certified court reporters, who  
4 shall record the proceedings of and testimony taken before that court.  
5 Under like regulations, the convening authority of a military court  
6 may detail or employ interpreters who shall interpret for the court.

1 SEC. 30. No member of a general or special court-martial may be  
2 absent or excused after the accused has been arraigned except for  
3 physical disability or as the result of a challenge or by order of the  
4 convening authority for good cause.

5 Whenever a general court-martial is reduced below five (5) mem-  
6 bers, the trial may not proceed unless the convening authority details  
7 new members sufficient in number to provide not less than five (5)  
8 members. When the new members have been sworn, the trial shall  
9 proceed as if no evidence has been previously introduced, unless a ver-  
10 batim record of the testimony of previously examined witnesses or a



11 stipulation thereof is read to the court in the presence of the accused  
12 and counsel.

1 SEC. 31. Charges and specifications shall be signed by a person  
2 subject to this Code under oath before a person authorized by this  
3 Code to administer oaths and shall state:

4 1. That the signer has personal knowledge of, or has investigated,  
5 the matters set forth therein; and

6 2. That they are true in fact to the best of his knowledge and be-  
7 lief.

8 Upon the preferring of charges, the proper authority shall take im-  
9 mediate steps to determine what disposition should be made thereof  
10 in the interest of justice and discipline, and the person accused shall  
11 be informed of the charges against him as soon as practicable.

1 SEC. 32. No person subject to this Code may compel any person to  
2 incriminate himself or to answer any question the answer to which  
3 may tend to incriminate him.

4 No person subject to this Code may interrogate, or request any  
5 statement from, an accused or a person suspected of an offense with-  
6 out first informing him of the nature of the accusation and advising  
7 him that he does not have to make any statement regarding the of-  
8 fense of which he is accused or suspected and that any statement made  
9 by him may be used as evidence against him in a trial by court-martial.

10 No person subject to this Code may compel any person to make a  
11 statement or produce evidence before any military tribunal if the  
12 statement or evidence is not material to the issue and may tend to  
13 degrade him.

14 No statement obtained from any person in violation of this section,  
15 or through the use of coercion, unlawful influence, or unlawful induce-  
16 ment may be received in evidence against him in a trial by court-  
17 martial.

1 SEC. 33. No charge or specification may be referred to a general  
2 court-martial for trial until a thorough and impartial investigation of  
3 all the matters set forth therein has been made. This investigation  
4 shall include inquiry as to the truth of the matter set forth in the  
5 charges, consideration of the form of charges, and a recommendation  
6 as to the disposition which should be made of the case in the interest  
7 of justice and discipline.

8 The accused shall be advised of the charges against him and of his  
9 right to be represented at that investigation by counsel. Upon his own  
10 request he shall be represented by civilian counsel if provided by him,  
11 or military counsel of his own selection if such counsel is reasonably  
12 available, or by counsel detailed by the officer exercising general court-  
13 martial jurisdiction over the command. At that investigation full  
14 opportunity shall be given to the accused to cross-examine witnesses  
15 against him if they are available and to present anything he may  
16 desire in his own behalf, either in defense or mitigation, and the in-  
17 vestigating officer shall examine witnesses requested by the accused.  
18 If the charges are forwarded after the investigation, they shall be  
19 accompanied by a statement of the substance of the testimony taken  
20 on both sides and a copy thereof shall be given to the accused.

21 If an investigation of the subject matter of an offense has been con-  
22 ducted before the accused is charged with the offense, and if the ac-  
23 cused was present at the investigation and afforded the opportunities  
24 for representation, cross-examination, and presentation prescribed  
25 above, no further investigation of that charge is necessary under this  
26 section unless it is demanded by the accused after he is informed of  
27 the charge. A demand for further investigation entitles the accused  
28 to recall witnesses for further cross-examination and to offer any new  
29 evidence in his own behalf.

30 The requirements of this section are binding on all persons admin-  
31 istering this Code but failure to follow them does not divest a military  
32 court of jurisdiction.

1 SEC. 34. When a person is held for trial by general court-martial  
2 the commanding officer shall, within eight (8) days after the accused  
3 is ordered into arrest or confinement, if practicable, forward the  
4 charges to the adjutant general direct, together with the investigation  
5 and allied papers. If that is not practicable, he shall report in writing  
6 to the adjutant general the reasons for delay.

1 SEC. 35. Before directing the trial of any charge by general court-  
2 martial, the convening authority shall refer it to the state judge advo-  
3 cate for consideration and advice. The convening authority may not  
4 refer a charge to a general court-martial for trial unless he has found  
5 that the charge alleges an offense under this Code and is warranted  
6 by evidence indicated in the report of the investigation.

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

1 SEC. 36. The trial counsel to whom court-martial charges are re-  
2 ferred for trial shall cause to be served upon the accused a copy of the  
3 charges upon which trial is to be had. In time of peace no person may,  
4 against his objection, be brought to trial before a general court-martial  
5 within a period of five (5) days after the service of the charges upon  
6 him, or before a special court-martial within a period of three (3)  
7 days after the service of the charges upon him.

1 SEC. 37. The procedures, including modes of proof, in cases before  
2 military courts and other military tribunals may be prescribed by the  
3 adjutant general by regulations, which shall, so far as he considers  
4 practicable, apply the principles of law and the rule of evidence gen-  
5 erally recognized in the trial of criminal cases in the courts of the  
6 state, but which may not be contrary to or inconsistent with this Code.

1 SEC. 38. No authority convening a general, special, or summary  
2 court-martial nor any other commanding officer, or officer serving on  
3 the staff thereof, may censure, reprimand, or admonish the court or  
4 any member, law officer, or counsel thereof, with respect to the find-  
5 ings or sentence adjudged by the court, or with respect to any other  
6 exercise of its or his functions in the conduct of the proceeding. No  
7 person subject to this Code may attempt to coerce or, by any unauthor-

8 ized means, influence the action of the court-martial or any other mili-  
9 tary tribunal or any member thereof, in reaching the findings or sen-  
10 tence in any case, or the action of any convening, approving, or re-  
11 viewing authority with respect to his judicial acts. Any violation of  
12 this section shall be punished as a court-martial may direct.

1 SEC. 39. The trial counsel of a general or special court-martial  
2 shall prosecute in the name of the state, and shall, under the direction  
3 of the court, prepare the record of the proceedings.

4 The accused has the right to be represented in his defense before a  
5 general or special court-martial by civilian counsel if provided by him,  
6 or by military counsel of his own selection if reasonably available,  
7 or by the defense counsel detailed under section twenty-eight (28).  
8 Should the accused have counsel of his own selection, the defense  
9 counsel, and assistant defense counsel, if any, who were detailed,  
10 shall, if the accused so desires, act as his associate counsel; otherwise  
11 they shall be excused by the president of the court.

12 In every court-martial proceeding, the defense counsel may, in the  
13 event of conviction, forward for attachment to the record of proceed-  
14 ings a brief of such matters he feels should be considered in behalf of  
15 the accused on review, including any objection to the contents of the  
16 record which he considers appropriate.

17 An assistant trial counsel of a general court-martial may, under the  
18 direction of the trial counsel or when he is qualified to be a trial coun-  
19 sel as required by section twenty-eight (28), perform any duty im-  
20 posed by law, regulation, or the custom of the service upon the trial  
21 counsel of the court. An assistant trial counsel of a special court-  
22 martial may perform any duty of the trial counsel.

23 An assistant defense counsel of a general or special court-martial  
24 may, under the direction of the defense counsel or when he is qualified  
25 to be the defense counsel as required by section twenty-eight (28),  
26 perform any duty imposed by law, regulation, or the custom of the  
27 service upon counsel for the accused.

1 SEC. 40. Whenever a general or special court-martial deliberates  
2 or votes, only the members of the court may be present. After a gen-  
3 eral court-martial has finally voted on the findings, the court may  
4 request the law officer and the reporter to appear before the court to  
5 put the findings in proper form, and those proceedings shall be on the  
6 record. All other proceedings, including any other consultation of the  
7 court with counsel or the law officer, shall be made a part of the record,  
8 and shall be in the presence of the accused, the defense counsel, the  
9 trial counsel, and in general court-martial cases, the law officer.

1 SEC. 41. A court-martial may, for reasonable cause, grant a con-  
2 tinuance to any party for such time, and as often, as may appear to be  
3 just.

1 SEC. 42. Members of a general or special court-martial and the law  
2 officer of a general court-martial may be challenged by the accused or  
3 the trial counsel for cause stated to the court. The court shall deter-  
4 mine the relevancy and validity of challenges for cause, and may not  
5 receive a challenge to more than one person at a time. Challenges by

6 the trial counsel shall ordinarily be presented and decided before those  
7 by the accused are offered.

8 Each accused and the trial counsel is entitled to one peremptory  
9 challenge, but the law officer may not be challenged except for cause,  
10 as outlined in rules of civil procedure one hundred eighty-seven (187)  
11 (f) and stated to the court.

1 SEC. 43. The law officer, interpreters, and, in general and special  
2 courts-martial, members, trial counsel, assistant trial counsel, defense  
3 counsel, assistant defense counsel, and reporters shall take an oath or  
4 affirmation in the presence of the accused to perform their duties  
5 faithfully.

6 Each witness before a military court shall be examined on oath or  
7 affirmation.

1 SEC. 44. A person charged with desertion or absence without leave  
2 in time of war, or with aiding the enemy or with mutiny may be tried  
3 and punished at any time without limitation.

4 Except as otherwise provided in this section, a person charged with  
5 desertion in time of peace or with the offense punishable under section  
6 one hundred twelve (112) is not liable to be tried by court-martial if  
7 the offense was committed more than three (3) years before the re-  
8 ceipt of sworn charges and specifications by an officer exercising sum-  
9 mary court-martial jurisdiction over the command.

10 Except as otherwise provided in this section, a person charged with  
11 any offense is not liable to be tried by court-martial or punished under  
12 section fourteen (14) if the offense was committed more than two (2)  
13 years before the receipt of sworn charges and specifications by an  
14 officer exercising summary court-martial jurisdiction over the com-  
15 mand or before the imposition of punishment under section fourteen  
16 (14).

17 Periods in which the accused was absent from territory in which the  
18 state has the authority to apprehend him, or in the custody of civil  
19 authorities, or in the hands of the enemy, shall be excluded in com-  
20 puting the period of limitation prescribed in this section.

1 SEC. 45. No person may, without his consent, be tried a second  
2 time in any military court of the state for the same offense.

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

7 A proceeding which, after the introduction of evidence but before a  
8 finding, is dismissed or terminated by the convening authority or on  
9 motion of the prosecution for failure of available evidence or witnesses  
10 without any fault of the accused is a trial in the sense of this section.

1 SEC. 46. If an accused arraigned before a court-martial makes an  
2 irregular pleading, or after a plea of guilty sets up matter inconsistent  
3 with the plea, or if it appears that he has entered the plea of guilty  
4 improvidently or through lack of understanding of its meaning and  
5 effect, or if he fails or refuses to plead, a plea of not guilty shall be  
6 entered in the record, and the court shall proceed as though he had  
7 pleaded not guilty.

1 SEC. 47. The trial counsel, the defense counsel, and the court-  
 2 martial shall have equal opportunity to obtain witnesses and other  
 3 evidence in accordance with such regulations as the adjutant general  
 4 may prescribe.

5 The president of a court-martial or a summary court officer may :

6 1. Issue a warrant for the arrest of any accused person who having  
 7 been served with a warrant and a copy of the charges, disobeys a writ-  
 8 ten order by the convening authority to appear before the court;

9 2. Issue subpoenas duces tecum and other subpoenas;

10 3. Enforce by attachment the attendance of witnesses and the pro-  
 11 duction of books and papers; and

12 4. Sentence for refusal to be sworn or to answer, as provided in  
 13 actions before civil courts of the state.

14 Process issued in court-martial cases to compel witnesses to appear  
 15 and testify and to compel the production of other evidence shall run  
 16 to any part of the state and shall be executed by civil officers as pre-  
 17 scribed by laws of the state.

1 SEC. 48. Any person not subject to this Code who :

2 1. Has been duly subpoenaed to appear as a witness or to produce  
 3 books and records before a military court or before any military or  
 4 civil officer and designated to take a deposition to be read in evidence  
 5 before such a court;

6 2. Has been duly paid or tendered the fees and mileage of a witness  
 7 at the rates allowed to witnesses attending the courts of the state; and

8 3. Willfully neglects or refuses to appear, or refuses to qualify as a  
 9 witness or to testify or to produce any evidence which that person may  
 10 have been legally subpoenaed to produce; is guilty of an offense against  
 11 the state and a military court may punish him in the same manner as  
 12 the civil courts of the state.

1 SEC. 49. A military court may punish for contempt any person  
 2 who uses any menacing word, sign, or gesture in its presence, or who  
 3 disturbs its proceedings by any riot or disorder. The punishment may  
 4 not exceed confinement for thirty (30) days or a fine of one hundred  
 5 dollars (\$100.00), or both.

1 SEC. 50. At any time after charges have been signed, as provided  
 2 in section thirty-one (31), any party may take depositions under the  
 3 procedure set forth in Iowa rules of civil procedure number one hun-  
 4 dred forty through one hundred sixty-six (140-166) inclusive.

1 SEC. 51. In any case not extending to the dismissal of a commis-  
 2 sioned officer, the sworn testimony, contained in the duly authenticated  
 3 record of proceedings of a court of inquiry, of a person whose oral  
 4 testimony cannot be obtained, may, if otherwise admissible under the  
 5 rules of evidence, be read in evidence by any party before a court-mar-  
 6 tial if the accused was a party before the court of inquiry, and if the  
 7 same issue was involved or if the accused consents to the introduction  
 8 of such evidence.

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

11 Such testimony may also be read in evidence before a court of in-  
 12 quiry or a military board.

1 SEC. 52. Voting by members of a general or special court-martial  
2 upon questions or challenge, on the findings, and on the sentence shall  
3 be by secret written ballot. The junior member of the court shall in  
4 each case count the votes. The count shall be checked by the president,  
5 who shall forthwith announce the results of the ballot to the members  
6 of the court.

7 The law officer of a general court-martial and the president of a  
8 special court-martial shall rule upon interlocutory questions, other  
9 than challenge, arising during the proceedings. Any such ruling made  
10 by the law officer of a general court-martial or by the president of a  
11 special court-martial upon any interlocutory question other than a  
12 motion for a finding of not guilty, or the question of the accused's  
13 sanity, is final and constitutes the ruling of the court. However, the  
14 law officer or president may change the ruling at any time during the  
15 trial except a ruling on a motion for a finding of not guilty that was  
16 granted. Unless a ruling is final, if any member objects thereto, the  
17 court shall be cleared and closed and the question decided by a voice  
18 vote as provided in section fifty-three (53) beginning with the junior  
19 in rank.

20 Before a vote is taken on the findings, the law officer of a general  
21 court-martial and the president of a special court-martial shall, in the  
22 presence of the accused and counsel, instruct the court as to the ele-  
23 ments of the offense and charge the court:

24 1. That the accused must be presumed to be innocent until his guilt  
25 is established by legal and competent evidence beyond a reasonable  
26 doubt;

27 2. That in the case being considered, if there is a reasonable doubt  
28 as to the guilt of the accused, the doubt must be resolved in favor of  
29 the accused and he must be acquitted;

30 3. That, if there is a reasonable doubt as to the degree of guilt, the  
31 finding must be in a lower degree as to which there is no reasonable  
32 doubt; and

33 4. That the burden of proof of establishing the guilt of the accused  
34 beyond reasonable doubt is upon the state.

1 SEC. 53. No person may be convicted of an offense, except by the  
2 concurrence of two-thirds ( $\frac{2}{3}$ ) of the members present at the time the  
3 vote is taken.

4 All sentences shall be determined by the concurrence of two-thirds  
5 ( $\frac{2}{3}$ ) of the members present at the time that the vote is taken.

6 All other questions to be decided by the members of a general or  
7 special court-martial shall be determined by a majority vote. A tie  
8 vote on a challenge disqualifies the member challenged. A tie vote on  
9 a motion for a finding of not guilty or on a motion relating to the ques-  
10 tion of the accused's sanity is a determination against the accused.  
11 A tie vote on any other question is a determination in favor of the  
12 accused.

1 SEC. 54. A court-martial shall announce its findings and sentence  
2 to the parties as soon as determined.

1 SEC. 55. Each court-martial shall keep a separate record of the  
2 proceedings of the trial of each case brought before it and the record  
3 shall be authenticated by the signatures of the president and the law

4 officer. If the record cannot be authenticated by either the president  
5 or the law officer, by reason of his death, disability or absence, it shall  
6 be signed by a member in lieu of him. If both the president and the  
7 law officer are unavailable, the record shall be authenticated by two  
8 members. A record of the proceedings of a trial in which the sentence  
9 adjudged includes a bad-conduct discharge or is more than that which  
10 could be adjudged by a special court-martial shall contain a verbatim  
11 account of the proceedings and testimony before the court. All other  
12 records of trial shall contain such matter and be authenticated in such  
13 manner as the adjutant general may by regulation prescribe.

14 A copy of the record of the proceedings of each general and special  
15 court-martial shall be given to the accused as soon as it is authenti-  
16 cated. If a verbatim record of trial by general court-martial is not  
17 required, but has been made, the accused may buy such a record under  
18 such regulations as the adjutant general may prescribe.

1 SEC. 56. Punishment by cruel or unusual punishment may not be  
2 adjudged by any court-martial or inflicted upon any person subject to  
3 this Code.

1 SEC. 57. The punishment which a court-martial may direct for an  
2 offense may not exceed limits prescribed by this Code.

1 SEC. 58. Whenever a sentence of a court-martial as lawfully ad-  
2 judged and approved includes a forfeiture of pay or allowances in  
3 addition to confinement not suspended, the forfeiture may apply to pay  
4 or allowances becoming due on or after the date the sentence is ap-  
5 proved by the convening authority. No forfeiture may extend to any  
6 pay or allowances accrued before that date.

7 Any period of confinement included in a sentence of a court-martial  
8 begins to run from the date the sentence is adjudged by the court-  
9 martial but periods during which the sentence to confinement is sus-  
10 pended shall be excluded in computing the service of the term of con-  
11 finement, provided however that credit be given for confinement served  
12 prior to trial. Regulations prescribed by the adjutant general may  
13 provide that sentences of confinement may not be executed until ap-  
14 proved by designated officers.

15 All other sentences of courts-martial are effective on the date or-  
16 dered executed.

1 SEC. 59. A sentence of confinement adjudged by a military court,  
2 whether or not the sentence includes discharge or dismissal, and  
3 whether or not the discharge or dismissal has been executed, may be  
4 carried into execution by confinement in any place of confinement  
5 under the control of any of the forces of the state military forces or in  
6 any jail, penitentiary, or prison designated for that purpose. Persons  
7 so confined in a jail, penitentiary, or prison are subject to the same  
8 discipline and treatment as persons confined or committed to the jail,  
9 penitentiary or prison by the courts of the state or of any political  
10 subdivision thereof.

11 The omission of the words "hard labor" from any sentence or pun-  
12 ishment of a court-martial adjudging confinement does not deprive the  
13 authority executing that sentence or punishment of the power to re-  
14 quire hard labor as a part of the punishment.

15 The keepers, officer, and wardens of city or county jails and of other  
16 jails, penitentiaries, or prisons shall receive persons ordered into con-  
17 finement before trial and persons committed to such confinement by  
18 a military court and shall confine them according to law. No such  
19 keeper, officer or warden may require payment of any fee or charge  
20 for so receiving or confining a person.

1 SEC. 60. Except as provided in sections twenty (20) and sixty-five  
2 (65) of this Code, a court-martial sentence, unless suspended, may be  
3 ordered executed by the convening authority when approved by him.  
4 He shall approve the sentence or such part, amount, or commuted form  
5 of the sentence as he sees fit, and may suspend the execution of the sen-  
6 tence as approved by him.

1 SEC. 61. After a trial by court-martial the record shall be for-  
2 warded to the convening authority, as reviewing authority, and action  
3 thereon may be taken by the person who convened the court, a commis-  
4 sioned officer commanding for the time being, a successor in command,  
5 or by the adjutant general.

1 SEC. 62. The convening authority shall refer the record of each  
2 general court-martial to the state judge advocate, who shall submit  
3 his written opinion thereon to the convening authority. If the final  
4 action of the court has resulted in an acquittal of all charges and speci-  
5 fications, the opinion shall be limited to questions of jurisdiction.

1 SEC. 63. If a specification before a court-martial has been dis-  
2 missed on motion and the ruling does not amount to a finding of not  
3 guilty, the convening authority may return the record to the court for  
4 reconsideration of the ruling and any further appropriate action.

5 Where there is an apparent error or omission in the record or where  
6 the record shows improper or inconsistent action by a court-martial  
7 with respect to a finding or sentence which can be rectified without  
8 material prejudice to the substantial rights of the accused, the conven-  
9 ing authority may return the record to the court for appropriate  
10 action. In no case, however, may the record be returned:

11 1. For reconsideration of a finding of not guilty, or a ruling which  
12 amounts to a finding of not guilty;

13 2. For reconsideration of a finding of not guilty of any charge, un-  
14 less the record shows a finding of guilty under a specification laid  
15 under that charge, which sufficiently alleges a violation of some section  
16 of this Code; or

17 3. For increasing the severity of the sentence unless the sentence  
18 prescribed for the offense is mandatory.

1 SEC. 64. If the convening authority disapproves the findings and  
2 sentence of a court-martial he may, except where there is lack of suffi-  
3 cient evidence in the record to support the findings, order a rehearing.  
4 In such case he shall state the reasons for disapproval. If he disap-  
5 proves the findings and sentence and does not order a rehearing, he  
6 shall dismiss the charges.

7 Each rehearing shall take place before a court-martial composed of  
8 members not members of the court-martial which first heard the case.  
9 Upon a rehearing the accused may not be tried for any offense of  
10 which he was found not guilty by the first court-martial, and no sen-



11 tence in excess of or more severe than the original sentence may be  
12 imposed, unless the sentence is based upon a finding of guilty of an  
13 offense not considered upon the merits in the original proceedings, or  
14 unless the sentence prescribed for the offense is mandatory.

1 SEC. 65. If the convening authority is the governor or adjutant  
2 general, his action on the review of any record of trial is final.

3 In all other cases not covered by this section, if the sentence of a  
4 special court-martial as approved by the convening authority includes  
5 a bad-conduct discharge, whether or not suspended, the entire record  
6 shall be sent to the appropriate staff judge advocate of the state force  
7 concerned to be reviewed in the same manner as a record of trial by  
8 general court-martial. The record and the opinion of the staff judge  
9 advocate or legal officer shall then be sent to the state judge advocate  
10 for review.

11 All other special and summary court-martial records shall be sent  
12 to the staff judge advocate of the appropriate force of the state mili-  
13 tary forces and shall be acted upon, transmitted, and disposed of as  
14 may be prescribed by regulations prescribed by the adjutant general.

15 The state judge advocate shall review the record of trial in each case  
16 sent to him for review as provided under this section. If the final  
17 action of the court-martial has resulted in an acquittal of all charges  
18 and specifications, the opinion of the state judge advocate is limited to  
19 questions of jurisdiction.

20 The state judge advocate shall take final action in any case review-  
21 able by him.

22 In a case reviewable by the appropriate state judge advocate under  
23 this section, the state judge advocate may act only with respect to the  
24 findings and sentence as approved by the convening authority. He may  
25 affirm only such findings of guilty, and the sentence or such part or  
26 amount of the sentence, as he finds correct in law and fact and deter-  
27 mines, on the basis of the entire record, should be approved. In  
28 consideration of the record, he may weigh the evidence, judge the  
29 credibility of witnesses, and determine controverted questions of fact,  
30 recognizing that the trial court saw and heard the witnesses. If the  
31 state judge advocate sets aside the findings and sentence, he may,  
32 except where the setting aside is based on lack of sufficient evidence  
33 in the record to support the findings, order a rehearing. If he sets  
34 aside the findings and sentence and does not order a rehearing, he shall  
35 order that the charges be dismissed.

36 In a case reviewable by the state judge advocate under this section,  
37 he shall instruct the convening authority to act in accordance with his  
38 decision on the review. If he has ordered a rehearing but the conven-  
39 ing authority finds a rehearing impracticable, he may dismiss the  
40 charges.

41 The state judge advocate may order one or more boards of review  
42 each composed of not less than three (3) commissioned officers of the  
43 state military forces, each of whom must be a member of the bar of  
44 the highest court of the state. Each board of review shall review the  
45 record of any trial by special court-martial including a sentence to a  
46 bad-conduct discharge, referred to it by the state judge advocate.  
47 Boards of review have the same authority on review as the state judge  
48 advocate has under this section.

1 SEC. 66. A finding or sentence of a court-martial may not be held  
2 incorrect on the ground of an error of law unless the error materially  
3 prejudices the substantial rights of the accused.

4 Any reviewing authority with the power to approve or affirm a find-  
5 ing of guilty may approve or affirm so much of the finding as includes  
6 a lesser included offense.

1 SEC. 67. Upon the final review of a sentence of a general court-  
2 martial or of a sentence to a bad-conduct discharge, the accused has  
3 the right to be represented by counsel before the reviewing authority,  
4 before the staff judge advocate, and before the appropriate state judge  
5 advocate.

6 Upon the request of an accused entitled to be so represented, the  
7 state judge advocate shall appoint a lawyer who is a member of the  
8 state military forces and who has the qualifications prescribed in sec-  
9 tion twenty-eight (28), if available, to represent the accused before  
10 the reviewing authority, before the staff judge advocate, and before  
11 the appropriate state judge advocate, in the review of cases specified in  
12 this section.

13 If provided by him, an accused entitled to be so represented may be  
14 represented by civilian counsel before the reviewing authority, before  
15 the staff judge advocate and before the appropriate state judge advo-  
16 cate.

1 SEC. 68. Before the vacation of the suspension of a special court-  
2 martial sentence which as approved includes a bad-conduct discharge,  
3 or of any general court-martial sentence, the officer having special  
4 court-martial jurisdiction over the probationer shall hold a hearing on  
5 the alleged violation of probation. The probationer shall be repre-  
6 sented at the hearing by counsel if he so desires.

7 The record of the hearing and the recommendation of the officer  
8 having special court-martial jurisdiction shall be sent for action to the  
9 adjutant general in cases involving a general court-martial sentence  
10 and to the commanding officer of the force of the state military forces  
11 of which the probationer is a member in all other cases covered by this  
12 section. If the adjutant general or commanding officer vacates the  
13 suspension, any unexecuted part of the sentence except a dismissal  
14 shall be executed.

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

1 SEC. 69. At any time within two (2) years after approval by the  
2 convening authority of a court-martial sentence which extends to dis-  
3 missal, dishonorable or bad-conduct discharge, the accused may peti-  
4 tion the governor for a new trial on ground of newly discovered evi-  
5 dence of fraud on the court-martial.

1 SEC. 70. A convening authority may remit or suspend any part or  
2 amount of the unexecuted part of any sentence, including all uncol-  
3 lected forfeitures.

4 The governor may, for good cause, substitute an administrative  
5 form of discharge for a discharge or dismissal executed in accordance  
6 with the sentence of a court-martial.

1 SEC. 71. Under such regulations as the adjutant general may pre-  
 2 scribe, all rights, privileges, and property affected by an executed part  
 3 of a court-martial sentence which has been set aside or disapproved,  
 4 except an executed dismissal or discharge, shall be restored unless a  
 5 new trial or rehearing is ordered and such executed part is included  
 6 in a sentence imposed upon a new trial or rehearing.

7 If a previously executed sentence of dishonorable or bad-conduct  
 8 discharge is not imposed on a new trial, the adjutant general shall  
 9 substitute therefor a form of discharge authorized for administrative  
 10 issuance unless the accused is to serve out the remainder of his enlist-  
 11 ment.

12 If a previously executed sentence of dismissal is not imposed on a  
 13 new trial, the adjutant general shall substitute therefor a form of  
 14 discharge authorized for administrative issue, and the commissioned  
 15 officer dismissed by that sentence may be reappointed by the governor  
 16 alone to such commissioned grade and with such rank as in the opinion  
 17 of the governor that former officer would have attained had he not  
 18 been dismissed. The reappointment of such a former officer may be  
 19 made if a position vacancy is available under applicable tables of  
 20 organization. All times between the dismissal and reappointment  
 21 shall be considered as service for all purposes.

1 SEC. 72. The proceedings, findings, and sentences of court-martial  
 2 as reviewed and approved, as required by this Code, and all dismissals  
 3 and discharges carried into execution under sentences by courts-  
 4 martial following review and approval, as required by this Code, are  
 5 final and conclusive. Orders publishing the proceedings are binding  
 6 upon all departments, courts, agencies, and officers of the state, sub-  
 7 ject only to action upon a petition for a new trial as provided in section  
 8 sixty-nine (69) of this Code.

1 SEC. 73. No person may be tried or punished for any offense pro-  
 2 vided for in this Code unless it was committed while he was in a duty  
 3 status.

1 SEC. 74. Any person subject to this Code who:

2 1. Commits an offense punishable by this Code, or aids, abets, coun-  
 3 sels, commands, or procures its commission; or

4 2. Causes an act to be done which if directly performed by him  
 5 would be punishable by this Code;  
 6 is a principal.

1 SEC. 75. Any person subject to this Code who, knowing that an  
 2 offense punishable by this Code has been committed, receives, com-  
 3 forts, or assists the offender in order to hinder or prevent his appre-  
 4 hension, trial or punishment shall be punished as a court-martial may  
 5 direct.

1 SEC. 76. An accused may be found guilty of an offense necessarily  
 2 included in the offense charged or of an attempt to commit either the  
 3 offense charged or an offense necessarily included therein.

1 SEC. 77. An act, done with specific intent to commit an offense  
 2 under this Code, amounting to more than mere preparation and tend-

3 ing, even though failing, to effect its commission, is an attempt to  
4 commit that offense.

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

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

1 SEC. 78. Any person subject to this Code who conspires with any  
2 other person to commit an offense under this Code shall, if one or more  
3 of the conspirators does an act to effect the object of the conspiracy,  
4 be punished as a court-martial may direct.

1 SEC. 79. Any person subject to this Code who solicits or advises  
2 another or others to desert in violation of section eighty-two (82) of  
3 this Code or mutiny in violation of section ninety-one (91) of this Code  
4 shall, if the offense solicited or advised is attempted or committed, be  
5 punished with the punishment provided for the commission of the  
6 offense, but, if the offense solicited or advised is not committed or  
7 attempted, he shall be punished as a court-martial may direct.

8 Any person subject to this Code who solicits or advises another or  
9 others to commit an act of misbehavior before the enemy in violation  
10 of section ninety-six (96) of this Code or sedition in violation of sec-  
11 tion ninety-one (91) of this Code shall, if the offense solicited or  
12 advised is committed, be punished with the punishment provided for  
13 the commission of the offense, but, if the offense solicited or advised is  
14 not committed, he shall be punished as a court-martial may direct.

1 SEC. 80. Any person who:

2 1. Procures his own enlistment or appointment in the state military  
3 forces by knowingly false representation or deliberate concealment as  
4 to his qualifications for that enlistment or appointment and receives  
5 pay or allowances thereunder; or

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

1 SEC. 81. Any person subject to this Code who effects an enlistment  
2 or appointment in or a separation from the state military forces of  
3 any person who is known to him to be ineligible for that enlistment,  
4 appointment, or separation because it is prohibited by law, regulation,  
5 or order shall be punished as a court-martial may direct.

1 SEC. 82. Any member of the state military forces who:

2 1. Without authority goes or remains absent from his unit, organi-  
3 zation, or place of duty with intent to remain away therefrom perma-  
4 nently;

5 2. Quits his unit, organization or place of duty with intent to avoid  
6 hazardous duty or to shirk important services; or

7 3. Without being regularly separated from one of the state military  
8 forces enlists or accepts an appointment in the same or another one of  
9 the state military forces, or in one of the armed forces of the United

10 States, without duly disclosing the fact that he has not been regularly  
 11 separated;  
 12 is guilty of desertion.

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

17 Any person found guilty of desertion or attempt to desert shall be  
 18 punished as a court-martial may direct.

1 SEC. 83. Any person subject to this Code who, without authority:

2 1. Fails to go to his appointed place of duty at the time prescribed;

3 2. Goes from that place; or

4 3. Absents himself or remains absent from his unit, organization,  
 5 or place of duty at which he is required to be at the time prescribed;

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

1 SEC. 84. Any person subject to this Code who through neglect or  
 2 design misses the movement of a ship, aircraft, or unit with which he  
 3 is required in the course of duty to move shall be punished as a court-  
 4 martial may direct.

1 SEC. 85. Any person subject to this Code who uses contemptuous  
 2 words against the president, the governor, or the governor of any other  
 3 state, territory, commonwealth, or possession in which that person  
 4 may be serving, shall be punished as a court-martial may direct.

1 SEC. 86. Any person subject to this Code who behaves with dis-  
 2 respect towards\* his superior commissioned officer shall be punished  
 3 as a court-martial may direct.

1 SEC. 87. Any person subject to this Code who:

2 1. Strikes his superior commissioned officer or draws or lifts up any  
 3 weapon or offers any violence against him while he is in the execution  
 4 of his office; or

5 2. Willfully disobeys a lawful command of his superior commis-  
 6 sioned officer;

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

1 SEC. 88. Any warrant officer or enlisted member who:

2 1. Strikes or assaults a warrant officer, noncommissioned officer or  
 3 petty officer, while that officer is in the execution of his office;

4 2. Willfully disobeys the lawful order of a warrant officer, noncom-  
 5 missioned officer, or petty officer; or

6 3. Treats with contempt or is disrespectful in language or deport-  
 7 ment toward a warrant officer, noncommissioned officer, or petty offi-  
 8 cer, while that officer is in the execution of his office;

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

1 SEC. 89. Any person subject to this Code who:

2 1. Violates or fails to obey any lawful general order or regulation;

3 2. Having knowledge of any other lawful order issued by a member  
 4 of the state military forces which it is his duty to obey, fails to obey  
 5 the order; or

\*According to enrolled Act.

6 3. Is derelict in the performance of his duties ;  
7 shall be punished as a court-martial may direct.

1 SEC. 90. Any person subject to this Code who is guilty of cruelty  
2 toward, or oppression or maltreatment of, any person subject to his  
3 orders shall be punished as a court-martial may direct.

1 SEC. 91. Any person subject to this Code who :

2 1. With intent to usurp or override lawful military authority re-  
3 fuses, in concert with any other person, to obey orders or otherwise  
4 do his duty or creates any violence or disturbance against that author-  
5 ity is guilty of mutiny ;

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

9 3. Fails to do his utmost to prevent and suppress a mutiny or sedi-  
10 tion being committed in his presence, or fails to take all reasonable  
11 means to inform his superior commissioned officer or commanding  
12 officer of a mutiny or sedition which he knows or has reason to believe  
13 is taking place, is guilty of a failure to suppress or report a mutiny or  
14 sedition.

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

1 SEC. 92. Any person subject to this Code who resists apprehension  
2 or breaks arrest or who escapes from physical restraint lawfully im-  
3 posed shall be punished as a court-martial may direct.

1 SEC. 93. Any person subject to this Code who, without proper  
2 authority, releases any prisoner committed to his charge, or who  
3 through neglect or design suffers any such prisoner to escape, shall be  
4 punished as a court-martial may direct, whether or not the prisoner  
5 was committed in strict compliance with law.

1 SEC. 94. Any person subject to this Code who, except as provided  
2 by law or regulation, apprehends, arrests, or confines any person shall  
3 be punished as a court-martial may direct.

1 SEC. 95. Any person subject to this Code who :

2 1. Is responsible for unnecessary delay in the disposition of any  
3 case of a person accused of an offense under this Code ; or

4 2. Knowingly and intentionally fails to enforce or comply with any  
5 provisions of this Code regulating the proceedings before, during, or  
6 after trial of an accused ;

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

1 SEC. 96. Any person subject to this Code who before or in the  
2 presence of the enemy :

3 1. Runs away ;

4 2. Shamefully abandons, surrenders, or delivers up any command,  
5 unit, place, or military property which it is his duty to defend ;

6 3. Through disobedience, neglect, or intentional misconduct endan-  
7 gers the safety of any such command, unit, place, or military property ;

8 4. Casts away his arms or ammunition ;

- 9 5. Is guilty of cowardly conduct ;  
 10 6. Quits his place of duty to plunder or pillage ;  
 11 7. Causes false alarms in any command, unit, or place under control  
 12 of the armed forces of the United States or the state military forces ;  
 13 8. Willfully fails to do his utmost to encounter, engage, capture, or  
 14 destroy any enemy troops, combatants, vessels, aircraft, or any other  
 15 thing, which it is his duty so to encounter, engage, capture or destroy ;  
 16 or  
 17 9. Does not afford all practicable relief and assistance to any troops,  
 18 combatants, vessels, or aircraft of the armed forces belonging to the  
 19 United States or their allies, to the state, or to any other state, when  
 20 engaged in battle ;  
 21 shall be punished as a court-martial may direct.

1 SEC. 97. Any person subject to this Code who compels or attempts  
 2 to compel the commander of any of the state military forces of the  
 3 state, or of any other state, to give it up to an enemy or to abandon it,  
 4 or who strikes the colors or flag to an enemy without proper authority,  
 5 shall be punished as a court-martial may direct.

1 SEC. 98. Any person subject to this Code who in time of war dis-  
 2 closes the parole or countersign to any person not entitled to receive  
 3 it, or who gives to another who is entitled to receive and use the parole  
 4 or countersign a different parole or countersign from that which, to  
 5 his knowledge, he was authorized and required to give, shall be pun-  
 6 ished as a court-martial may direct.

1 SEC. 99. Any person subject to this Code who forces a safeguard  
 2 shall be punished as a court-martial may direct.

1 SEC. 100. All persons subject to this Code shall secure all public  
 2 property taken from the enemy for the service of the United States,  
 3 and shall give notice and turn over to the proper authority without  
 4 delay all captured or abandoned property in their possession, custody  
 5 or control.

6 Any person subject to this Code who :

7 1. Fails to carry out the duties prescribed herein ;

8 2. Buys, sells, trades, or in any way deals in or disposes of captured  
 9 or abandoned property, whereby he receives or expects any profit,  
 10 benefit or advantage to himself or another directly or indirectly con-  
 11 nected with himself ; and

12 3. Engages in looting or pillaging ;  
 13 shall be punished as a court-martial may direct.

1 SEC. 101. Any person subject to this Code who :

2 1. Aids, or attempts to aid, the enemy with arms, ammunition, sup-  
 3 plies, money, or other things ; or

4 2. Without proper authority, knowingly harbors or protects or gives  
 5 intelligence to, or communicates or corresponds with or holds any  
 6 intercourse with the enemy, either directly or indirectly ;  
 7 shall be punished as a court-martial may direct.

1 SEC. 102. Any person subject to this Code who, while in the hands  
 2 of the enemy in time of war ;

3 1. For the purpose of securing favorable treatment by his captors

4 acts without proper authority in a manner contrary to law, custom, or  
5 regulation, to the detriment of others of whatever nationality held by  
6 the enemy as civilian or military prisoners; or

7 2. While in a position of authority over such persons maltreats them  
8 without justifiable cause;  
9 shall be punished as a court-martial may direct.

1 SEC. 103. Any person subject to this Code who, with intent to  
2 deceive, signs any false record, return, regulation, order, or other  
3 official document, knowing it to be false, or makes any other false  
4 official statement knowing it to be false, shall be punished as a court-  
5 martial may direct.

1 SEC. 104. Any person subject to this Code who, while in a duty  
2 status, willfully or recklessly wastes, spoils, or otherwise willfully and  
3 wrongfully destroys or damages any property other than military  
4 property of the United States or of the state shall be punished as a  
5 court-martial may direct.

1 SEC. 105. Any person subject to this Code who willfully and  
2 wrongfully hazards or suffers to be hazarded any vessel of the armed  
3 forces of the United States or of the state military forces shall be pun-  
4 ished as a court-martial may direct.

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

1 SEC. 106. Any person subject to this Code who operates any ve-  
2 hicle while drunk, or in a reckless or wanton manner, shall be punished  
3 as a court-martial may direct.

1 SEC. 107. Any person subject to this Code who is found drunk on  
2 duty or sleeping upon his post, or who leaves his post before he is  
3 regularly relieved, shall be punished as a court-martial may direct.

1 SEC. 108. Any person subject to this Code who fights or promotes,  
2 or is concerned in or connives at fighting a duel, or who, having knowl-  
3 edge of a challenge sent or about to be sent, fails to report the fact  
4 promptly to the proper authority, shall be punished as a court-martial  
5 may direct.

1 SEC. 109. Any person subject to this Code who for the purpose of  
2 avoiding work, duty or service in the state military forces:

3 1. Feigns illness, physical disablement, mental lapse or derange-  
4 ment; or

5 2. Intentionally inflicts self-injury; shall be punished as a court-  
6 martial may direct.

1 SEC. 110. Any person subject to this Code who causes or partici-  
2 pates in any riot or breach of the peace shall be punished as a court-  
3 martial may direct.

1 SEC. 111. Any person subject to this Code who uses provoking or  
2 reproachful words or gestures towards\* any other person subject to

\*According to enrolled Act.



3 this Code shall be punished as a court-martial may direct.

1 SEC. 112. Any person subject to this Code who in a judicial pro-  
2 ceeding or in a court of justice conducted under this Code willfully  
3 and corruptly gives, upon a lawful oath or in any form allowed by law  
4 to be substituted for an oath, any false testimony material to the issue  
5 or matter of inquiry is guilty of perjury and shall be punished as a  
6 court-martial may direct.

1 SEC. 113. Any person subject to this Code:

2 Who, knowing it to be false or fraudulent:

3 1. Makes any claim against the United States, the state, or any  
4 officer thereof; or

5 2. Presents to any person in the civil or military service thereof, for  
6 approval or payment any claim against the United States, the state, or  
7 any officer thereof;

8 Who, for the purpose of obtaining the approval, allowance, or pay-  
9 ment of any claim against the United States, the state, or any officer  
10 thereof:

11 1. Makes or uses any writing or other paper knowing it to contain  
12 any false or fraudulent statements;

13 2. Makes any oath to any fact or to any writing or other paper  
14 knowing the oath to be false; or

15 3. Forges or counterfeits any signature upon any writing or other  
16 paper, or uses any such signature knowing it to be forged or counter-  
17 feited;

18 Who, having charge, possession, custody, or control of any money,  
19 or other property of the United States or the state, furnished or in-  
20 tended for the armed forces of the United States or the state military  
21 forces, knowingly delivers to any person having authority to receive  
22 it, any amount thereof less than that for which he receives a certificate  
23 or receipt; or

24 Who, being authorized to make or deliver any paper certifying the  
25 receipt of any property of the United States or the state, furnished or  
26 intended for the armed forces of the United States or the state military  
27 forces, makes or delivers to any person such writing without having  
28 full knowledge of the truth of the statements therein contained and  
29 with intent to defraud the United States or the state; shall, upon con-  
30 viction, be punished as a court-martial may direct.

1 SEC. 114. Any person subject to this Code who wrongfully takes,  
2 obtains, or withholds, by any means, from the possession of the owner  
3 or of any other person any money, personal property, or article of  
4 value of any kind:

5 1. With intent permanently to deprive or defraud another person of  
6 the use and benefit of property or to appropriate it to his own use or  
7 the use of any person other than the owner, steals that property and  
8 is guilty of larceny; or

9 2. With intent temporarily to deprive or defraud another person of  
10 the use and benefit of property or to appropriate it to his own use or  
11 the use of any person other than the owner, is guilty of wrongful  
12 appropriation.

13 Any person found guilty of larceny or wrongful appropriation shall  
14 be punished as a court-martial may direct.

1 SEC. 115. Any commissioned officer who is convicted of conduct  
2 unbecoming an officer and a gentleman shall be punished as a court-  
3 martial may direct.

1 SEC. 116. Though not specifically mentioned in this Code, all dis-  
2 orders and neglects to the prejudice of good order and discipline in the  
3 organized militia, of which persons subject to this Code may be guilty,  
4 shall be taken cognizance of by a general, special or summary court-  
5 martial, according to the nature and degree of the offense, and shall be  
6 punished at the discretion of that court. However, cognizance may not  
7 be taken of, and jurisdiction may not be extended to, the crimes of  
8 murder, manslaughter, rape, robbery, maiming, sodomy, arson, extor-  
9 tion, assault, burglary, or housebreaking, jurisdiction of which is re-  
10 served to civil courts.

1 SEC. 117. Courts of inquiry to investigate any matter may be con-  
2 vened by the adjutant general or by any other person designated by  
3 the adjutant general for that purpose, whether or not the persons in-  
4 volved have requested such an inquiry.

5 A court of inquiry consists of three or more commissioned officers.  
6 For each court of inquiry the convening authority shall also appoint  
7 counsel for the court.

8 Any person subject to this Code whose conduct is subject to inquiry  
9 shall be designated as a party. Any person subject to this Code who  
10 has a direct interest in the subject of inquiry has the right to be desig-  
11 nated as a party upon request to the court. Any person designated as  
12 a party shall be given due notice and has the right to be present, to be  
13 represented by counsel, to cross-examine witnesses, and to introduce  
14 evidence.

15 Members of a court of inquiry may be challenged by a party, but  
16 only for cause stated to the court.

17 The members, counsel, the reporter, and interpreters of courts of  
18 inquiry shall take an oath or affirmation to faithfully perform their  
19 duties.

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

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

25 Each court of inquiry shall keep a record of its proceedings, which  
26 shall be authenticated by the signatures of the president and counsel  
27 for the court and forwarded to the convening authority. If the record  
28 cannot be authenticated by the president, it shall be signed by a mem-  
29 ber in lieu of the president. If the record cannot be authenticated by  
30 the counsel for the court, it shall be signed by a member in lieu of the  
31 counsel.

1 SEC. 118. Any member of the state military forces who believes  
2 himself wronged by his commanding officer, and who, upon due appli-  
3 cation to that commanding officer, is refused redress, may complain

4 to any superior commissioned officer, who shall forward the complaint  
5 to the governor or adjutant general.

1 SEC. 119 Whenever complaint is made to any commanding officer  
2 that willful damage has been done to the property of any person or  
3 that his property has been wrongfully taken by members of the state  
4 military forces, he may, subject to such regulations as the adjutant  
5 general may prescribe, convene a board to investigate the complaint.  
6 The board shall consist of from one to three commissioned officers and,  
7 for the purpose of that investigation, it has power to summon wit-  
8 nesses and examine them upon oath or affirmation, to receive deposi-  
9 tions or other documentary evidence, and to assess the damages sus-  
10 tained against the responsible parties. The assessment of damages  
11 made by the board is subject to the approval of the commanding offi-  
12 cer, and in the amount approved by him shall be charged against the  
13 pay of the offenders. The order of the commanding officer directing  
14 charges herein authorized is conclusive, except as provided herein, on  
15 any disbursement officer for the payment by him to the injured parties  
16 of the damages so assessed and approved.

17 Any person subject to this Code who is accused of causing willful  
18 damage to property has the right to be represented by counsel, to sum-  
19 mon witnesses in his behalf, and to cross-examine those appearing  
20 against him. He has the right of appeal to the next higher commander.

1 SEC. 120. Military courts may issue any process or mandate neces-  
2 sary to carry into effect their powers. Such a court may issue sub-  
3 poenas and subpoenas *duces tecum* and enforce by attachment attend-  
4 ance of witnesses and production of books and records, when it is  
5 sitting within the state and the witnesses, books and records sought  
6 are also so located.

7 Process and mandates may be issued by summary courts-martial,  
8 provost courts, or the president of other military courts and may be  
9 directed to and may be executed by the marshals of the military court  
10 or any peace officer and shall be in such form as may be prescribed by  
11 regulations issued under this Code.

12 All officers to whom process or mandates may be so directed shall  
13 execute them and make return of their acts thereunder according to  
14 the requirements of those documents. Except as otherwise specifically  
15 provided in this Code, no such officer may demand or require payment  
16 of any fee or charge for receiving, executing, or returning such a  
17 process or mandate or for any service in connection therewith.

Approved May 4, 1965.