

CHAPTER 1042

IOWA CODE OF MILITARY JUSTICE REVISION

S.F. 2175

AN ACT revising the Iowa code of military justice including providing penalties.

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

Section 1. Section 29B.1, Code 1981, is amended to read as follows:

29B.1 PERSONS SUBJECT TO CODE. This chapter applies to all members of the state military forces ~~who are not in federal service~~. As used in this chapter, unless the context otherwise requires, "state military forces" means the national guard of the state of Iowa as defined in 32 U.S.C. section 101, subsections 3, 4 and 6 (1981) and any other military force organized under state law when the national guard or other military force is not in a status subjecting it to jurisdiction under 10 U.S.C. chapter 47 (1981), and "code" means this chapter, which may be cited as the "Iowa Code of Military Justice".

Sec. 2. Section 29B.4, unnumbered paragraph 2, Code 1981, is amended to read as follows:

~~Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to, and military police may quell quarrels, frays, and disorders among persons subject to this code and to may apprehend persons subject to this code who take part therein.~~

Sec. 3. Section 29B.6, Code 1981, is amended to read as follows:

29B.6 IMPOSITION OF RESTRAINT. Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, ~~directing him the person~~ to remain within certain specified limits. Confinement is the physical restraint of a person.

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

A commanding officer may authorize warrant officers, ~~petty officers~~ or noncommissioned officers to order enlisted members of ~~his the officer's~~ command or subject to his the officer's authority into arrest or confinement.

A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority ~~he the commissioned or warrant officer~~ is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until the proper authority is notified.

Sec. 4. Section 29B.7, Code 1981, is amended to read as follows:

29B.7 PROBABLE CAUSE. ~~No A person may shall not~~ be ordered apprehended or into arrest or confinement except for probable cause.

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

Sec. 5. Section 29B.14, Code 1981, is amended to read as follows:

29B.14 COMMANDING OFFICERS NONJUDICIAL PUNISHMENT.

1. Under such regulations as the adjutant general may prescribe limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers authorized to exercise

those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, punishment shall not be imposed upon any member of the state military forces under this section if the member demands trial by court-martial in lieu of punishment before imposition of the punishment. The adjutant general may adopt rules relating to the suspension and mitigation of punishments authorized under this code. The adjutant general, or an officer of a general rank in command may delegate powers under this section to a principal assistant who is a member of the state military forces according to rules adopted by the adjutant general.

2. Subject to rules of the adjutant general, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial as follows:

1. a. Upon officer of his officers under the officer's command any one or a combination of the following:

a. (1) Withholding of privileges for not more than two consecutive weeks, .

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

e. (3) If imposed by a commanding officer of the state military forces of field grade or above, a fine or forfeiture of pay and allowances of not more than twenty-five dollars.

2. b. Upon other military personnel of his under the officer's command any one or a combination of the following:

a. (1) Withholding of privileges for not more than two consecutive weeks,.

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

e. (3) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included,.

d. (4) Reduction to the lowest or any intermediate grade within his promotion authority, next inferior pay grade if the current grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one imposing the reduction.

e. If imposed by an officer exercising special court-martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than ten dollars.

c. If the commanding officer is of field grade or above:

(1) Any one or a combination of the punishments stated in paragraph b, subparagraph 1, 2, or 3, of this subsection except that an enlisted member in a pay grade above E-4 shall not be reduced more than two pay grades.

(2) A fine or forfeiture of pay of not more than ten dollars.

d. Maximum allowable punishments of withholding of privileges, restrictions, and extra duties shall not be combined to run consecutively.

3. A person punished under this section who considers his the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority through the proper channel. The authority considering the appeal may refer a case that has been appealed to a staff judge advocate or legal officer for consideration and advice and shall do so before deciding on the appeal when the punishment is restriction, withholding of privileges, extra duties, forfeiture of pay, or reduction from the fourth or higher pay grade. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his the officer's successor in command, or superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and

property affected. In addition the officer or authority may at any time place the offender on probation and suspend a reduction in grade or forfeiture whether or not executed.

4. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

Whenever 5. When a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after that punishment is imposed and to any pay and allowances accrued before that date.

Sec. 6. Section 29B.15, Code 1981, is amended to read as follows:

29B.15 COURTS-MARTIAL OF STATE MILITARY FORCES NOT IN FEDERAL SERVICE – JURISDICTION – FORMS AND PROCEEDINGS CLASSIFIED. In the state military forces not in federal service, there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

The three kinds of courts-martial are:

1. General courts-martial, consisting of a law officer and not less than five members; either of the following:

a. A military judge and not less than five members.

b. Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge, and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.

2. Special courts-martial, consisting of not less than three members; and any of the following:

a. Not less than three members.

b. A military judge and not less than three members.

c. Only a military judge, if one has been detailed to the court, and the accused requests only a military judge under the same conditions as prescribed in subsection 1, paragraph b.

3. Summary courts-martial, consisting of one commissioned officer.

Sec. 7. Section 29B.18, Code 1981, is amended to read as follows:

29B.18 JURISDICTION OF SPECIAL OR SUMMARY COURTS-MARTIAL.

1. Subject to section 29B.16, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may have been punished under this code and may, under such limitations as the adjutant general may impose by rule, adjudge any one or a combination of the following punishments:

a. A fine not exceeding one hundred dollars.

b. Forfeiture of pay and allowances not exceeding one thousand dollars.

c. A reprimand.

d. Dismissal or dishonorable discharge.

e. Reduction of a noncommissioned officer to the ranks.

A special courts-martial shall not try a commissioned officer. A special court-martial has the same powers of punishment as a general court-martial except that a fine imposed by a special court-martial may not be more than one hundred dollars for a single offense.

2. a. Subject to section 29B.16, summary courts-martial have jurisdiction to try persons subject to this code, except officers, for any offense made punishable by this code.

b. No A person with respect to whom summary courts-martial have jurisdiction may shall

not be brought to trial before a summary court-martial if he the person objects thereto, unless under section 29B.14 he the person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 29B.14, trial shall be ordered by special or general court-martial, as may be appropriate.

c. A summary court-martial may ~~sentenee to a~~, under limitations the adjutant general imposes by rule, adjudge any of the following punishments:

- (1) A fine of not more than twenty-five dollars for a single offense, to forfeiture.
- (2) Forfeiture of pay and allowances, not to exceed two-thirds of one month's pay, and to reduction base pay to be received for the equivalent of four unit training assemblies.
- (3) Reduction of a noncommissioned officer to the ranks.

Sec. 8. Section 29B.19, Code 1981, is amended to read as follows:

29B.19 SENTENCES OF DISMISSAL OR DISHONORABLE DISCHARGE TO BE APPROVED BY THE GOVERNOR. In the organized militia not in federal service, no state military forces a sentence of dismissal or dishonorable discharge may shall not be executed until it is approved by the governor.

Sec. 9. Section 29B.20, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.20 COMPLETE RECORD. A sentence imposing a dishonorable discharge, discharge under other than honorable conditions, dismissal, or confinement shall not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under this code was detailed to represent the accused, and a military judge could not be detailed to the trial because of physical conditions or military exigencies. If a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason a military judge could not be detailed.

Sec. 10. Section 29B.23, Code 1981, is amended to read as follows:

29B.23 WHO MAY CONVENE GENERAL COURTS-MARTIAL. In the state military forces not in federal service, general courts-martial may be convened by the governor, or by the adjutant general of the state of Iowa.

Sec. 11. Section 29B.24, Code 1981, is amended to read as follows:

29B.24 ~~SPECIAL COURTS-MARTIAL OF STATE MILITARY FORCES NOT IN FEDERAL SERVICE~~ - WHO MAY CONVENE SPECIAL COURTS-MARTIAL. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops members of the state military forces are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. When any such officer is an accuser, the court shall be convened by superior competent authority.

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

Sec. 12. Section 29B.25, Code 1981, is amended to read as follows:

29B.25 SUMMARY COURTS-MARTIAL - WHO MAY CONVENE. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops members of the state military forces are on duty, or of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of an assistant state judge advocate one commissioned officer. The proceedings shall be informal.

When only one commissioned officer is present with a command or detachment he the officer shall be the summary court officer of that command or detachment and shall hear and

determine all summary court-martial cases brought before him.

Sec. 13. Section 29B.26, Code 1981, is amended to read as follows:

29B.26 WHO MAY SERVE ON COURTS-MARTIAL. Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before ~~such~~ the courts for trial.

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

Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before ~~such~~ the courts for trial, but ~~he~~ the enlisted member shall serve as a member of a court only if, before the end of any pretrial session that is held or if none is held before the convening of the court, the accused personally has requested in writing, that enlisted members serve on it. After such a request, the accused ~~may~~ shall not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

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

When it can be avoided, ~~no~~ a person subject to this code ~~may~~ shall not be tried by a court-martial any member of which is junior to ~~him~~ the person in rank or grade.

When convening a court-martial, the convening authority shall detail as members ~~thereof such members as, of the courts-martial persons who in his the convening authority's opinion,~~ are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. ~~No member~~ A person is not eligible to serve as a member of a general or special court-martial when ~~he~~ the person is the accuser or a witness for the prosecution or has acted as investigating officer, staff judge advocate, or as counsel in the same case. ~~If within the command of the convening authority there is present and not otherwise disqualified~~ If a military judge is not appointed for a special court-martial and if a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade is present and not otherwise disqualified and within the command of the convening authority, the convening authority shall appoint him the commissioned officer as president of a special court-martial. Although this requirement is binding on the convening authority, failure ~~Failure~~ Failure to meet it in any case this requirement does not divest a military court of jurisdiction.

Sec. 14. Section 29B.27, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.27 MILITARY JUDGE OF A GENERAL COURT-MARTIAL. The authority convening a general court-martial shall detail a military judge to the court-martial. Subject to rules of the adjutant general, the authority convening a special court-martial may detail a military judge to the court-martial. A military judge shall preside over each open session of the court-martial to which the military judge has been detailed.

A military judge must be a commissioned officer of the state armed forces or a retired officer of the reserve components of the armed forces of the United States, a member of the bar of a federal court or a member of the bar of the highest court of the state, and certified to be qualified for the duty by the judge advocate of the armed forces or the state judge

advocate. The state judge advocate may recommend to the adjutant general that the adjutant general order to active duty retired personnel of the United States armed forces who are qualified to act as military judges.

Unless the court-martial was convened by the governor neither the convening authority nor any member of the convening authority's staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed to perform the duties of a military judge. A person is not eligible to act as a military judge in a case if the person is the accuser or a witness for the prosecution or has acted as investigating officer or as a counsel in the same case. The military judge of a court-martial shall not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor shall the military judge vote with members of the court.

Sec. 15. Section 29B.28, Code 1981, is amended to read as follows:

29B.28 DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL. For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he the authority considers appropriate. ~~No~~ A person who has acted as investigating officer, ~~law officer~~ military judge, or court member in ~~any~~ a case ~~may~~ shall not act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. ~~No~~ A person who has acted for the prosecution ~~may~~ shall not act later in the same case for the defense, nor ~~may any~~ shall a person who has acted for the defense act later in the same case for the prosecution.

Trial counsel or defense counsel detailed for a general court-martial must be a person who is a member of the bar of the highest court of the state, or a member of the bar of a federal court and certified as competent for the duty by the state judge advocate.

In the case of a special court-martial:

1. The accused has the right to be represented at the trial by counsel having the qualifications stated in this section unless counsel having such qualifications cannot be provided because of physical conditions or military exigencies. If such counsel cannot be provided, the court may be convened and the trial held, but the convening authority shall append a detailed written statement to the record stating why such counsel was not provided.

~~1. 2.~~ If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; ~~and~~.

~~2. 3.~~ If the trial counsel is a member of the bar of the highest court of the state, the defense counsel detailed by the convening authority must also be a member of the bar of the highest court of the state.

Sec. 16. Section 29B.30, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.30 ABSENT AND ADDITIONAL MEMBERS.

1. A member of a general or special court-martial shall not be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

2. If a general court-martial, except a general court-martial composed of a military judge only, is reduced below five members, the trial shall not proceed until the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the new members of the court in the presence of the military judge, the accused, and counsel for both sides.

3. If a special court-martial, except a special court-martial composed of a military judge only, is reduced below three members, the trial shall not proceed until the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court is read to the new members of the court in the presence of the military judge, if any, the accused, and counsel for both sides.

4. If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed after the detail of a new military judge as if no evidence had previously been introduced unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

Sec. 17. Section 29B.33, Code 1981, is amended to read as follows:

29B.33 INVESTIGATION. No A charge or specification ~~may shall not~~ be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth ~~therein has been in the charge or specification is~~ made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

The accused shall be advised of the charges ~~against him~~ and of ~~his~~ the right to be represented at ~~that the~~ investigation by counsel. Upon ~~his the~~ accused's own request ~~he the~~ accused shall be represented by civilian counsel if ~~provided by him at the expense of the~~ accused, or military counsel of ~~his the~~ accused's own selection if such counsel is reasonably available, or by counsel detailed by the ~~officer exercising general court-martial jurisdiction over the command convening authority~~. At that investigation full opportunity shall be given to the accused to cross-examine prosecution witnesses ~~against him~~ if they are available and to present anything ~~he the~~ accused may desire in ~~his the~~ accused's own behalf, either in defense or mitigation, and the investigating officer shall examine witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

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

The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction.

Sec. 18. Section 29B.34, Code 1981, is amended to read as follows:

29B.34 FORWARDING OF CHARGES. When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges directly to the adjutant general ~~direct~~ person exercising general court-martial jurisdiction, together with the investigation and allied papers. If that is not practicable, ~~he the~~ commanding officer shall report in writing to the adjutant general the reasons for delay.

Sec. 19. Section 29B.36, Code 1981, is amended to read as follows:

29B.36 SERVICE OF CHARGES. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. ~~In time of peace no person may, against his objection, The accused shall not~~ be brought to trial before a general court-martial or be required to participate in a session before a military judge under section 21 within a period of five days after the service of the charges upon him the accused, or before a special court-martial within a period of three days after the service of the charges upon him the accused, unless the accused consents otherwise.

Sec. 20. Section 29B.37, Code 1981, is amended to read as follows:

29B.37 ADJUTANT GENERAL MAY PRESCRIBE RULES. The procedures, including modes of proof, in cases before military courts and other military tribunals ~~may shall~~ be prescribed by the adjutant general by regulations, which shall, so far as he considers practicable, apply the principles of law and the rule of evidence generally recognized in the trial of criminal cases in the courts of the state rule, but which may shall not be contrary to or inconsistent with this code. This code shall be construed as to effectuate the general purpose of uniformity so far as practical with the uniform code of military justice, U.S.C. 47. All courts and other proceedings shall be conducted under the procedural rules established under 10 U.S.C. 47 unless otherwise provided in this code.

Sec. 21. Section 29B.38, Code 1981, is amended to read as follows:

29B.38 UNLAWFULLY INFLUENCING ACTION OF COURT.

1. ~~No~~ The authority convening a general, special, or summary court-martial ~~nor~~ or any other commanding officer, or officer serving on the staff thereof of the authority, may shall not censure, reprimand, or admonish the court or any member, law officer military judge, or counsel thereof of the court, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his the court or military judge or counsel's functions in the conduct of the proceeding. No A person subject to this code may shall not attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his the authority's judicial acts. Any violation of this section shall be punished as a court-martial may direct.

2. In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used to determine whether a member of the state military force is qualified to be advanced in grade, reassigned, transferred, or retained on active duty, a person shall not do either of the following:

a. Consider or evaluate the performance of duty of the member as a member of a court-martial or military judge.

b. Give a less favorable rating or evaluation of a member of the state military forces because of the zeal with which the member, as counsel, represented an accused before a court-martial.

Sec. 22. Section 29B.39, unnumbered paragraph 2, Code 1981, is amended to read as follows:

The accused has the right to be represented in his the accused's defense before a general or special court-martial by civilian counsel if provided by him at the expense of the accused, or by military counsel of his own selection selected by the accused if reasonably available, or by the defense counsel detailed under section 29B.28. Should If the accused have selects defense counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel for the accused; otherwise they shall be excused by the military judge or by the president of the court court-martial if there is no military judge.

Sec. 23. Section 29B.40, Code 1981, is amended by striking the section and inserting in lieu thereof the following section:

29B.40 SESSIONS. At any time after the service of charges referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to this chapter, call the court into session without the presence of the members for the purpose of any of the following:

1. Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty.
2. Hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court.
3. If permitted by rules of the adjutant general holding the arraignment and receiving the pleas of the accused.
4. Performing any other procedural function which may be performed by the military judge under this code or under rules adopted pursuant to this code and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

Sec. 24. Section 29B.41, Code 1981, is amended to read as follows:

29B.41 CONTINUANCES. A military judge or court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

Sec. 25. Section 29B.42, Code 1981, is amended to read as follows:

29B.42 CHALLENGES. ~~Members~~ The military judge and members of a general or special court-martial ~~and the law officer of a general court-martial~~ may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or the court in the absence of a military judge shall determine the relevancy and validity of challenges for cause, and ~~may shall~~ not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

Each accused and the trial counsel is entitled to one peremptory challenge, but the ~~law officer may~~ military judge shall not be challenged except for cause, ~~as outlined in rules of civil procedure 187 "f" and stated to the court.~~

Sec. 26. Section 29B.43, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.43 OATHS. Before performing their official duties, military judges, members of a general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters and interpreters shall take an oath to perform their duties faithfully. The adjutant general shall adopt rules prescribing the form of the oath, the time and place of the taking of the oath, the manner of recording, and whether the oath must be taken for all cases in which official duties must be performed or for a particular case. The rules may provide that an oath to perform duties faithfully as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate or legal officer, or other person certified to be qualified or competent for the duty, and that once taken the oath need not be taken again each time the person is detailed to that duty.

Sec. 27. Section 29B.46, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.46 PLEAS OF THE ACCUSED.

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

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

Sec. 28. Section 29B.47, unnumbered paragraph 2, Code 1981, is amended to read as follows:

The military judge or the president of a court-martial or a summary court officer without a military judge may:

Sec. 29. Section 29B.48, subsection 3, Code 1981, is amended to read as follows:

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

Upon certification of the facts in a case under this section by the military judge, president of courts-martial without a military judge, or summary courts-martial officer, the county attorney of the county where the offense occurred shall prosecute the offense as if it were included in the Iowa criminal code.

Sec. 30. Section 29B.49, Code 1981, is amended to read as follows:

29B.49 CONTEMPTS.

1. A military court may punish for contempt any person subject to this code who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment ~~may~~ shall not exceed confinement for thirty days or a fine of one hundred dollars, or both.

2. A person who is not subject to this code who engages in conduct described in subsection 1 is guilty of a simple misdemeanor. The facts shall be certified to the county attorney of the county in which the offense occurred who shall prosecute the case as if the offense were included in the Iowa criminal code.

Sec. 31. Section 29B.50, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.50 DEPOSITIONS. At any time after charges have been signed, as provided in section 29B.31 any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, the authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

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

Depositions may be taken before and authenticated by any military or civil officer authorized to administer oaths by the laws of the United States or by the laws of the place where the deposition is taken.

A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any court-martial or in any proceeding before a court of inquiry, if any of the following are apparent:

1. That the witness resides or is out of the state of Iowa and the witness' appearance cannot be obtained, unless it appears that the absence of the witness was procured by the party offering the deposition.

2. That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing.

3. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena or other process and the present whereabouts of the witness is unknown.

Sec. 32. Section 29B.52, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.52 VOTING AND RULINGS.

1. Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall immediately announce the result of the ballot to the members of the court.

2. The military judge and, except for questions of challenge, the president of a court-martial without a military judge, shall rule upon all questions of law and all interlocutory questions arising during the proceedings. A ruling made by the military judge upon a question of law or an interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon a question of law other than a motion for a finding of not guilty is final and constitutes the ruling of the court. However, the military judge may change a ruling at any time during the trial. Unless the ruling is final, if a member objects to the ruling, the court shall be cleared and closed and the question decided by a voice vote as provided in this code beginning with the junior in rank.

3. Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them as follows:

a. That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt.

b. That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted.

c. That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt.

d. That the burden of proof for establishing the guilt of the accused beyond reasonable doubt is upon the state.

4. Subsection 3 does not apply to a court-martial composed of a military judge only. The military judge of a court-martial composed only of a military judge shall determine all questions of law and fact arising during the proceedings, and, if the accused is convicted, adjudge an appropriate sentence. The military judge shall make a general finding and shall find the facts specifically on request. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear in the opinion or memorandum of decision.

Sec. 33. Section 29B.53, Code 1981, is amended to read as follows:

29B.53 NUMBER OF VOTES REQUIRED. ~~No A person may shall not~~ be convicted of an offense, except as provided in this code by the concurrence of two-thirds of the members present at the time the vote is taken.

All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused but a determination to reconsider a finding of guilty or to reconsider a sentence for the purpose of possible reduction may be made by any lesser vote if the determination to reconsider is not opposed by two thirds of the members present.

Sec. 34. Section 29B.55, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

29B.55 RECORD OF TRIAL. Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence of the military judge, it shall be authenticated by the signature of the trial counsel or by the signature of a member if the trial counsel is unable to authenticate it by reason of death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general officer, in a sentence not including discharge, dismissal, or confinement and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain matters prescribed by rules of the adjutant general.

Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by rules of the adjutant general.

A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as the record is authenticated. If a verbatim record of trial by general court-martial is not required, but is made, the accused may buy the record as prescribed in rules of the adjutant general.

Sec. 35. Section 29B.58, Code 1981, is amended to read as follows:

29B.58 EFFECTIVE DATE OF SENTENCES.

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

2. ~~Any A~~ Any A period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement, provided, ~~however,~~ that credit be given for confinement served prior to trial. ~~Regulations~~ Rules prescribed by the adjutant general may provide that sentences of confinement ~~may shall~~ not be executed until approved by designated officers.

3. All other sentences of courts-martial are effective on the date ordered executed.

4. On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority, or if the accused is no longer under the jurisdiction of the convening authority, the person exercising general court-martial jurisdiction, may in the person's discretion defer service of the sentence to confinement. The deferral terminates

when the sentence is ordered executed. The deferral may be rescinded at any time by the officer who granted it, or, if the accused is no longer under jurisdiction of that officer, by the person exercising general court-martial jurisdiction.

5. Unless otherwise provided in rules of the adjutant general, a court-martial sentence of an enlisted member in pay grade above E-1, that includes a discharge under other than honorable conditions or confinement and that is approved by the convening authority reduces the member to pay-grade E-1, effective on the date of the approval.

6. If the sentence of a member who is reduced in pay grade under subsection 5 is set aside or disapproved, or, as finally approved, does not include a punishment named in subsection 5, the rights and privileges of which the member was deprived because of the reduction shall be restored and the member is entitled to the pay and allowances lost during the period the reduction was in effect.

Sec. 36. Section 29B.60, Code 1981, is amended to read as follows:

29B.60 EXECUTION OF SENTENCE—SUSPENSION OF SENTENCE. Except as provided in sections 29B.20 and 29B.65, a court-martial sentence, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. He the convening authority. The convening authority shall approve the sentence or such the part, amount, or commuted form of the sentence as he the convening authority sees fit, and may suspend or defer the execution of the sentence as approved by him.

Sec. 37. Section 29B.61, Code 1981, is amended to read as follows:

29B.61 INITIAL ACTION OF RECORD. After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the adjutant general.

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or part or amount of the sentence as the convening authority finds correct in law and fact and as in the convening authority's discretion should be approved. Unless the convening authority indicates otherwise, approval of the sentence includes approval of the findings.

Sec. 38. Section 29B.65, unnumbered paragraphs 2, 3, and 8, Code 1981, are amended to read as follows:

In all other cases not covered by unnumbered paragraph 1 of this section, if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, dishonorable discharge, dismissal, or confinement, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate or legal officer shall then be sent to the state judge advocate for review.

All other special and summary court-martial records shall be sent to the appropriate staff judge advocate of the appropriate force of the state military forces force concerned and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by rules of the adjutant general.

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

Sec. 39. Section 29B.67, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Upon the final review of a sentence of a general court-martial or of a sentence to a ~~bad-conduct~~ dishonorable discharge, dismissal, or confinement, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, and before the appropriate state judge advocate.

Sec. 40. Section 29B.68, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Before the vacation of the suspension of a special court-martial sentence which as approved includes a ~~bad-conduct~~ discharge under other than honorable conditions, a dismissal, or a confinement, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if ~~he~~ the probationer so desires.

Sec. 41. Section 29B.69, Code 1981, is amended to read as follows:

29B.69 PETITION FOR A NEW TRIAL. At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal, dishonorable or bad-conduct discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence ~~of~~ or fraud on the court-martial.

Sec. 42. Section 29B.73, Code 1981, is amended to read as follows:

29B.73 PERSONS TO BE TRIED OR PUNISHED. ~~No~~ A person may shall not be tried or punished for any offense provided for in this code unless it was committed while he the person was in a duty status or during a time when the person was under lawful orders to be in a duty status.

Sec. 43. Section 29B.97, Code 1981, is amended to read as follows:

29B.97 SUBORDINATE COMPELLING SURRENDER. ~~Any~~ A person subject to this code who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property or any body of the state military forces of the state, or of any other state, to give it up surrender the place, property, or forces to an enemy or to abandon it the place, property, or forces, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Sec. 44. Section 29B.103, Code 1981, is amended to read as follows:

29B.103 FALSE OFFICIAL STATEMENTS—FORGERY.

1. ~~Any~~ A person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

2. A person subject to this code who with intent to defraud does either or both of the following is guilty of forgery and shall be punished as a court-martial may direct:

a. Falsely makes or alters a signature to, or a part of, a writing which would if genuine apparently impose a legal liability on another or change the person's legal right or prejudice the person's liability.

b. Utters, offers, issues, or transfers written material the person knows is falsely made or altered.

Sec. 45. Section 29B.104, Code 1981, is amended to read as follows:

29B.104 PROPERTY OTHER THAN MILITARY PROPERTY—WASTE, SPOILAGE OR DESTRUCTION CRIMES.

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

2. A person subject to this code who without proper authority sells or otherwise disposes of

or who willfully or through neglect damages, destroys, or loses or who causes willfully or through neglect the damage, destruction, sale, or wrongful disposition of military property of the United States or the state shall be punished as a court-martial may direct.

Sec. 46. Section 29B.116, Code 1981, is amended to read as follows:

29B.116 GENERAL ARTICLE. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may shall not be taken of, and jurisdiction may shall not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

Sec. 47. Section 29B.117, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Courts of inquiry to investigate any matter may be convened by the adjutant general, the governor, or by any other person designated by the adjutant general or authorized to convene a general court-martial for that purpose, whether or not the persons involved have requested such an the inquiry.

Sec. 48. Section 29B.120, unnumbered paragraph 2, Code 1981, is amended to read as follows:

Process and mandates may be issued by summary courts-martial, provost courts, a military judge, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such. Process and mandates shall be in a form as may be prescribed by regulations rules issued under this code.

Sec. 49. Chapter 29B, Code 1981, is amended by adding sections 50 through 54 of this Act.

Sec. 50. NEW SECTION. IMMUNITY FOR ACTION OF MILITARY COURTS. An accused shall not bring an action or proceeding against the convening authority or a member of a military court or board convened under this code or a person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court or board convened under this code.

Sec. 51. NEW SECTION. PAYMENT AND DISPOSITION OF FINES. Fines imposed by a military court may be paid to the court or to an officer executing its process. The amount of the fine may be noted upon any state payroll or pay account and fines may be deducted from any pay or allowance due or thereafter to become due to the offender, until the fine is collected. Any sum so deducted shall be turned into the military court that imposed the fine. An officer collecting a fine or penalty imposed by a military court upon an officer or enlisted person shall pay the fine within thirty days to the judge advocate, who shall transmit the fine to the adjutant general. The adjutant general shall monthly, deposit all fines and penalties so received with the state treasurer, to be credited to the general fund of the state. Forfeited bonds shall be processed in the same manner.

Sec. 52. NEW SECTION. PRESUMPTION OF JURISDICTION. The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to deny those courts or boards jurisdiction in any action or proceeding.

Sec. 53. NEW SECTION. DELEGATION OF AUTHORITY BY THE GOVERNOR. The governor may delegate any authority vested in the governor under this code, and may provide for the subdelegation of any such authority, except the power given to the governor by sections 29B.19 and 29B.23.

Sec. 54. NEW SECTION. AUTHORITY TO ADMINISTER OATHS. The following members of the state military forces may administer oaths for the purposes of military administration including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

1. The state judge advocate and assistant state judge advocate.
2. All summary courts-martial.
3. Adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
4. Commanding officers.
5. Staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
6. The president, military judge, trial counsel, and assistant trial counsel for general and special courts-martial.
7. The president and the counsel for the court of any court of inquiry.
8. Officers designated to take a deposition.
9. Persons detailed to conduct an investigation.
10. Other persons designated by state law or by rules of the governor.

Approved March 25, 1982

CHAPTER 1043
OPHTHALMIC DISPENSER CERTIFICATION
S.F. 2155

AN ACT relating to the requirements for certification as an ophthalmic dispenser.

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

Section 1. Section 153A.2, subsection 2, unnumbered paragraph 1, Code 1981, is amended to read as follows:

~~Either~~ Any of the following:

Sec. 2. Section 153A.2, subsection 2, Code 1981, is amended by adding the following new paragraph:

NEW PARAGRAPH. Six years experience as an ophthalmic dispenser as defined in section 153A.1, accompanied by a reference from a physician and surgeon, osteopath, osteopathic physician and surgeon, or optometrist licensed to practice in this state.

Approved March 26, 1982