

## CHAPTER 29B

### MILITARY JUSTICE

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## GENERAL JURISDICTION

### 29B.1 Persons subject to code.

This chapter applies to all members of the state military forces, while not in federal service. As used in this chapter, unless the context otherwise requires, “*state military forces*” has the same meaning as in section 29A.6, and “*code*” means this chapter, which may be cited as the “*Iowa Code of Military Justice*”.

[C66, 71, 73, 75, 77, 79, 81, §29B.1; 82 Acts, ch 1042, §1]

2002 Acts, ch 1117, §41, 52

### 29B.2 Jurisdiction to try personnel.

Each person discharged from the state military forces who is later charged with having fraudulently obtained a discharge is, subject to section 29B.44, subject to trial by court-martial on that charge and is after apprehension subject to this code while in the custody of the military for that trial. Upon conviction of that charge the person is subject

to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

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

A member of the state military forces who is charged with having committed an offense against this code may be called or ordered to duty for the purpose of investigation under section 29B.33, trial by court-martial, and nonjudicial punishment under section 29B.14. A member shall be called or ordered to duty within one hundred eighty days of the discovery of the charged offense, and in no event shall a member be called or ordered to duty after the expiration of three years from the termination of a period of duty.

A member of the state military forces who is subject to this code at the time of commission of an offense made punishable by this code is not relieved from amenability to the jurisdiction of this code by virtue of the termination of a period of duty.

[C66, 71, 73, 75, 77, 79, 81, §29B.2]

89 Acts, ch 82, §1

### **29B.3 Territorial applicability of code.**

This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

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

[C66, 71, 73, 75, 77, 79, 81, §29B.3]

## **APPREHENSION AND RESTRAINT**

### **29B.4 Apprehension.**

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

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

[C54, 58, 62, §29.65; C66, 71, 73, 75, 77, 79, 81, §29B.4; 82 Acts, ch 1042, §2]

### **29B.5 Apprehension of deserters.**

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state military forces and deliver the deserter into the custody of the state military forces. If an offender is apprehended outside the state the offender's return to the area must be in accordance with normal extradition procedures or reciprocal agreement.

[C66, 71, 73, 75, 77, 79, 81, §29B.5]

### **29B.6 Imposition of restraint.**

Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing 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 or noncommissioned officers to order enlisted members of the officer's command or subject to 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 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.

[C54, 58, 62, §29.66; C66, 71, 73, 75, 77, 79, 81, §29B.6, 29B.7; 82 Acts, ch 1042, §3]

#### **29B.7 Probable cause.**

A person shall not be ordered apprehended or into arrest or confinement except for probable cause.

[C54, 58, 62, §29.66; C66, 71, 73, 75, 77, 79, 81, §29B.7; 82 Acts, ch 1042, §4]

#### **29B.8 Restraint of persons charged with offenses.**

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, after charges are placed against the person, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and to try the person within sixty days of informing the accused or to dismiss the charges and release the person.

[C35, §467-f35; C39, §467.37; C46, 50, §29.37; C54, 58, 62, §29.67; C66, 71, 73, 75, 77, 79, 81, §29B.8]

#### **29B.9 Posting of bond.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.9]

#### **29B.10 Confinement in jails.**

Persons confined other than in a guardhouse, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons.

[C66, 71, 73, 75, 77, 79, 81, §29B.10]

#### **29B.11 Reports and receiving of prisoners.**

Every commander of a guard, master-at-arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

[C54, 58, 62, §29.68; C66, 71, 73, 75, 77, 79, 81, §29B.11]

#### **29B.12 Punishment prohibited before trial.**

Subject to section 29B.58, no person, while being held for trial or the result of a trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon the person be any more rigorous than the circumstances require to insure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline.

[C66, 71, 73, 75, 77, 79, 81, §29B.12]

**29B.13 Delivery of offenders to civil authorities.**

Under regulations as may be prescribed under this code a person subject to this code who is on state military service or state active duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to military custody for the completion of the sentence.

[C35, §467-f61; C39, §467.63; C46, 50, §29.63; C54, 58, 62, §29.61; C66, 71, 73, 75, 77, 79, 81, §29B.13]

2002 Acts, ch 1117, §42, 52; 2004 Acts, ch 1086, §16

## NONJUDICIAL PUNISHMENT

**29B.14 Commanding officer's nonjudicial punishment.**

1. Under 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 disciplinary punishments for minor offenses without the intervention of a court-martial as follows:

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

- (1) Withholding of privileges for not more than two consecutive weeks.
- (2) Restriction to certain specified limits with or without suspension from duty, for not more than two consecutive weeks.
- (3) If imposed by a commanding officer of the state military forces of field grade or above, a fine of any amount up to a maximum of the equivalent of ten days' pay or the forfeiture of not more than ten days' pay.

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

- (1) Withholding of privileges for not more than two consecutive weeks.
- (2) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks.
- (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.
- (4) Reduction to the 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.
- (5) A fine of any amount up to a maximum of the equivalent of four days' pay or the forfeiture of not more than four days' pay.

c. If the commanding officer is of field grade or above, any one or a combination of the following:

- (1) Any of the punishments stated in paragraph "b", subparagraph (1), (2), or (3).

(2) A fine of any amount up to the maximum of the equivalent of ten days' pay or the forfeiture of not more than ten days' pay.

(3) Reduction to the lowest or any intermediate 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, but enlisted members in pay grades above E-4 shall not be reduced more than two pay grades.

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 the punishment unjust or disproportionate to the offense may 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, 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.

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 pay and allowances accrued before that date.

[C54, 58, 62, §29.62; C66, 71, 73, 75, 77, 79, 81, §29B.14; 82 Acts, ch 1042, §5]

89 Acts, ch 82, §2 – 4

## COURTS-MARTIAL

### **29B.15 Courts-martial classified.**

1. In the state military forces 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.

2. The three kinds of courts-martial are:

a. General courts-martial, consisting of either of the following:

(1) A military judge and not less than five members.

(2) 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.

b. Special courts-martial, consisting of any of the following:

(1) Not less than three members.

(2) A military judge and not less than three members.

(3) 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 2, paragraph "a", subparagraph (2).

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

[C35, §467-f33, -f61; C39, §467.35, 467.63; C46, 50, §29.35, 29.63; C54, 58, 62, §29.69; C66, 71, 73, 75, 77, 79, 81, §29B.15; 82 Acts, ch 1042, §6]  
2008 Acts, ch 1032, §201

#### **29B.16 Jurisdiction of courts-martial in general.**

Each force of the state military forces has court-martial jurisdiction over all persons subject to this code.

[C35, §467-f33, -f61; C39, §467.35, 467.63; C46, 50, §29.35, 29.63; C54, 58, 62, §29.69; C66, 71, 73, 75, 77, 79, 81, §29B.16]

#### **29B.17 Jurisdiction of general courts-martial.**

Subject to section 29B.16, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the adjutant general may prescribe, adjudge any one or a combination of the following punishments:

1. A fine of not more than five thousand dollars.
2. Forfeiture of not more than twenty days' pay and allowances.
3. A reprimand.
4. Dismissal or dishonorable discharge.
5. Reduction of a noncommissioned officer to the ranks.

[C39, §467.33; C46, 50, §29.33; C54, 58, 62, §29.71; C66, 71, 73, 75, 77, 79, 81, §29B.17]  
2008 Acts, ch 1026, §1; 2009 Acts, ch 41, §23

#### **29B.18 Jurisdiction of special or summary courts-martial.**

1. a. 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:

- (1) A fine not exceeding two thousand five hundred dollars.
- (2) Forfeiture of not more than twenty days' pay and allowances.
- (3) A reprimand.
- (4) Dismissal or dishonorable discharge.
- (5) Reduction of a noncommissioned officer to the ranks.

b. A special courts-martial shall not try a commissioned officer.

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

b. A person with respect to whom summary courts-martial have jurisdiction shall not be brought to trial before a summary court-martial if the person objects, unless under section 29B.14 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 appropriate.

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

- (1) A fine of not more than one thousand dollars for a single offense.
- (2) Forfeiture of not more than twenty days' pay and allowances.
- (3) Reduction of a noncommissioned officer to the ranks.

[C54, 58, 62, §29.72, 29.73; C66, 71, 73, 75, 77, 79, 81, §29B.18, 29B.24; 82 Acts, ch 1042, §7]  
89 Acts, ch 82, §5; 2007 Acts, ch 22, §13; 2008 Acts, ch 1026, §2, 3

#### **29B.19 Sentences of dismissal or dishonorable discharge to be approved by the governor.**

In the state military forces a sentence of dismissal or dishonorable discharge shall not be executed until it is approved by the governor.

[C54, 58, 62, §29.75; C66, 71, 73, 75, 77, 79, 81, §29B.19; 82 Acts, ch 1042, §8]

**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 was detailed to the trial, except in any case in which 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.20; 82 Acts, ch 1042, §9]

2000 Acts, ch 1154, §5

**29B.21 Confinement instead of fine.**

In the state military forces, not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each three dollars of the authorized fine.

[C35, §467-f35; C39, §467.37; C46, 50, §29.37; C54, 58, 62, §29.74; C66, 71, 73, 75, 77, 79, 81, §29B.21]

**29B.22 Judge advocates and legal officers.**

A judge advocate in the state military forces shall be a commissioned officer who is a member of the bar of the state. However, a judge advocate serving in the military forces of the state on April 22, 2002, who is not a member of the bar of the state shall not be required to become a member of the bar of the state to maintain military membership as a judge advocate. A judge advocate shall be either a federally recognized judge advocate or appointed as a judge advocate in the state military forces by the adjutant general.

The adjutant general shall designate a staff judge advocate for the army national guard and the air national guard. The adjutant general may appoint the number of judge advocates of the state military forces as the adjutant general considers necessary to perform state active duty to supplement or replace national guard judge advocates in emergencies or when the national guard judge advocates are in federal service.

Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command may communicate directly with the staff judge advocate of any command.

No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

[C66, 71, 73, 75, 77, 79, 81, §29B.22]

2002 Acts, ch 1117, §43, 52; 2003 Acts, ch 44, §20

## APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

**29B.23 Who may convene general courts-martial.**

In the state military forces general courts-martial may be convened by the governor, or by the adjutant general of the state of Iowa.

[C39, §467.33; C46, 50, §29.33; C54, 58, 62, §29.71; C66, 71, 73, 75, 77, 79, 81, §29B.23; 82 Acts, ch 1042, §10]

**29B.24 Who may convene special courts-martial.**

In the state military forces, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where 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.

[C54, 58, 62, §29.72; C66, 71, 73, 75, 77, 79, 81, §29B.24; 82 Acts, ch 1042, §11]

#### **29B.25 Summary courts-martial — who may convene.**

In the state military forces, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where 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 one commissioned officer. The proceedings shall be informal.

When only one commissioned officer is present with a command or detachment the officer shall be the summary court officer of that command or detachment and shall hear and determine all summary court-martial cases.

[C54, 58, 62, §29.73; C66, 71, 73, 75, 77, 79, 81, §29B.25; 82 Acts, ch 1042, §12]

#### **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 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 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 the courts for trial, but 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 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.

When it can be avoided, a person subject to this code shall not be tried by a court-martial any member of which is junior to the person in rank or grade.

When convening a court-martial, the convening authority shall detail as members of the courts-martial persons who in the convening authority’s opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. A person is not eligible to serve as a member of a general or special court-martial when 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 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 the commissioned officer as president of a special court-martial. Failure to meet this requirement does not divest a military court of jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §29B.26; 82 Acts, ch 1042, §13]

#### **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 appropriate staff judge advocate of the state force concerned. The judge advocate responsible for certifying the military judge may recommend to the adjutant general that the adjutant general order to active duty retired personnel of the national guard or 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.

[C35, §467-f38; C39, §467.40; C46, 50, §29.40; C54, 58, 62, §29.79; C66, 71, 73, 75, 77, 79, 81, §29B.27; 82 Acts, ch 1042, §14]

2002 Acts, ch 1117, §44, 52

#### **29B.28 Detail of trial counsel and defense counsel.**

1. For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel and assistants the authority considers appropriate. A person who has acted as investigating officer, military judge, or court member in a case 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. A person who has acted for the prosecution shall not act later in the same case for the defense, nor shall a person who has acted for the defense act later in the same case for the prosecution.

2. 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 and certified as competent for the duty by the staff judge advocate.

3. In the case of a special court-martial:

a. 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.

b. 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.

c. 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.28; 82 Acts, ch 1042, §15]

2002 Acts, ch 1117, §45, 52; 2008 Acts, ch 1032, §201

#### **29B.29 Detail or employment of reporters and interpreters.**

Under such regulations as the adjutant general may prescribe, the convening authority of a general or special court-martial or court of inquiry shall detail or employ certified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations, the convening authority of a military court may detail or employ interpreters who shall interpret for the court.

[C66, 71, 73, 75, 77, 79, 81, §29B.29]

#### **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.

[C66, 71, 73, 75, 77, 79, 81, §29B.30; 82 Acts, ch 1042, §16]

## PRETRIAL PROCEDURES

### **29B.31 Charges and specifications.**

1. Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

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

b. That they are true in fact to the best of the signer's knowledge and belief.

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

[C54, 58, 62, §29.64; C66, 71, 73, 75, 77, 79, 81, §29B.31]

2008 Acts, ch 1032, §201

### **29B.32 Compulsory self-incrimination prohibited.**

No person subject to this code may compel any person to make a self-incriminating statement or to answer any question the answer to which may tend to incriminate the person.

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

No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade the person.

No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

[C66, 71, 73, 75, 77, 79, 81, §29B.32]

**29B.33 Investigation.**

A charge or specification shall not be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth 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 and of the right to be represented at the investigation by counsel. Upon the accused's own request the accused shall be represented by civilian counsel at the expense of the accused, or military counsel of the accused's own selection if such counsel is reasonably available, or by counsel detailed by the convening authority. At that investigation full opportunity shall be given to the accused to cross-examine prosecution witnesses if they are available and to present anything the accused may desire in 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 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 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.33; 82 Acts, ch 1042, §17]

**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 person exercising general court-martial jurisdiction, together with the investigation and allied papers. If that is not practicable, the commanding officer shall report in writing to the adjutant general the reasons for delay.

[C66, 71, 73, 75, 77, 79, 81, §29B.34; 82 Acts, ch 1042, §18]

**29B.35 Advice of staff judge advocate and reference for trial.**

Before directing the trial of any charge by general court-martial, the convening authority shall refer the charge to the appropriate staff judge advocate of the state force concerned for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless the authority has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

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

[C66, 71, 73, 75, 77, 79, 81, §29B.35]

2002 Acts, ch 1117, §46, 52

**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. 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 29B.40 within a period of five days after the service of the charges upon the accused, or before a special court-martial within a period of

three days after the service of the charges upon the accused, unless the accused consents otherwise.

[C66, 71, 73, 75, 77, 79, 81, §29B.36; 82 Acts, ch 1042, §19]

## TRIAL PROCEDURE

### **29B.37 Adjutant general may prescribe rules.**

The procedures, including modes of proof, in cases before military courts and other military tribunals shall be prescribed by the adjutant general by rule, but shall not be contrary to or inconsistent with this code. All courts and other proceedings shall be conducted under the procedural rules established under 10 U.S.C. ch. 47 unless otherwise provided in this code.

[C66, 71, 73, 75, 77, 79, 81, §29B.37; 82 Acts, ch 1042, §20]

2010 Acts, ch 1087, §2

[T] Section amended

### **29B.38 Unlawfully influencing action of court.**

1. The authority convening a general, special, or summary court-martial or any other commanding officer, or officer serving on the staff of the authority, shall not censure, reprimand, or admonish the court or any member, military judge, or counsel of the court, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or the court or military judge or counsel's functions in the conduct of the proceeding. A person subject to this code 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 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.38; 82 Acts, ch 1042, §21]

### **29B.39 Duties of trial counsel and defense counsel.**

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

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

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

An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when the assistant is qualified to be a trial counsel as required by section 29B.28, perform any duty imposed by law, regulation, or the custom of the service upon the trial

counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when the assistant is qualified to be the defense counsel as required by section 29B.28, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

[C66, 71, 73, 75, 77, 79, 81, §29B.39; 82 Acts, ch 1042, §22]

#### **29B.40 Sessions.**

1. 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:

a. 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.

b. 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.

c. If permitted by rules of the adjutant general holding the arraignment and receiving the pleas of the accused.

d. 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.

2. a. 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.

b. 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.40; 82 Acts, ch 1042, §23]

2008 Acts, ch 1032, §201

#### **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.

[C66, 71, 73, 75, 77, 79, 81, §29B.41; 82 Acts, ch 1042, §24]

#### **29B.42 Challenges.**

The military judge and members of a general or special 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 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 military judge shall not be challenged except for cause.

[C66, 71, 73, 75, 77, 79, 81, §29B.42; 82 Acts, ch 1042, §25]

#### **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.

[C66, 71, 73, 75, 77, 79, 81, §29B.43; 82 Acts, ch 1042, §26]

#### **29B.44 Statute of limitations.**

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

Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under section 29B.112 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under section 29B.14 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 29B.14.

Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

[C66, 71, 73, 75, 77, 79, 81, §29B.44]

#### **29B.45 Former jeopardy.**

No person may, without the person's consent, be tried a second time in any military court of the state for the same offense.

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

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

[C66, 71, 73, 75, 77, 79, 81, §29B.45]

#### **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.

[C66, 71, 73, 75, 77, 79, 81, §29B.46; 82 Acts, ch 1042, §27]

#### **29B.47 Opportunity to obtain witnesses and other evidence.**

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

2. The military judge or the president of a court-martial without a military judge may:

a. Issue a warrant for the arrest of any accused person who having been served with a

warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

- b. Issue subpoenas duces tecum and other subpoenas;
- c. Enforce by attachment the attendance of witnesses and the production of books and papers; and
- d. Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

3. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the United States and shall be executed by civil officers as prescribed by laws of the United States or the place where the witness or evidence is located.

[C35, §467-f37; C39, §467.39; C46, 50, §29.39; C54, 58, 62, §29.76; C66, 71, 73, 75, 77, 79, 81, §29B.47; 82 Acts, ch 1042, §28]

2008 Acts, ch 1032, §201; 2010 Acts, ch 1087, §3

[T] Subsection 3 amended

#### **29B.48 Refusal to appear or testify.**

1. Any person not subject to this code is guilty of a simple misdemeanor if the person does all of the following:

- a. Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer and designated to take a deposition to be read in evidence before such a court.
- b. Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the state.
- c. Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person has been legally subpoenaed to produce.

2. 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.48; 82 Acts, ch 1042, §29]

2006 Acts, ch 1010, §19

#### **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 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.49; 82 Acts, ch 1042, §30]

#### **29B.50 Depositions.**

1. 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.

2. 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.

3. 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.

4. 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:

a. 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.

b. 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.

c. 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.50; 82 Acts, ch 1042, §31]

2008 Acts, ch 1032, §201

#### **29B.51 Admissibility of records of courts of inquiry.**

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

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

3. Such testimony may also be read in evidence before a court of inquiry or a military board.

[C66, 71, 73, 75, 77, 79, 81, §29B.51]

2008 Acts, ch 1032, §201

#### **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.

[C66, 71, 73, 75, 77, 79, 81, §29B.52; 82 Acts, ch 1042, §32]

#### **29B.53 Number of votes required.**

1. A person 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.

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

3. 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.53; 82 Acts, ch 1042, §33]

2008 Acts, ch 1032, §201

#### **29B.54 Court to announce action.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.54]

#### **29B.55 Record of trial.**

1. 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.

2. 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.

3. 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.55; 82 Acts, ch 1042, §34]

2008 Acts, ch 1032, §201

## SENTENCES

**29B.56 Cruel and unusual punishments prohibited.**

Punishment by cruel or unusual punishment may not be adjudged by any court-martial or inflicted upon any person subject to this code.

[C66, 71, 73, 75, 77, 79, 81, §29B.56]

**29B.57 Maximum fines.**

The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this code.

[C66, 71, 73, 75, 77, 79, 81, §29B.57]

**29B.58 Effective date of sentences.**

1. 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 shall apply only to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. A forfeiture shall not extend to any pay or allowances accrued before that date.

2. 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 that credit be given for confinement served prior to trial. Rules prescribed by the adjutant general may provide that sentences of confinement 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.58; 82 Acts, ch 1042, §35]

**29B.59 Execution of confinement.**

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

The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

The keepers, officer, and wardens of city or county jails and of other jails, penitentiaries, or

prisons shall receive persons ordered into confinement before trial and persons committed to such confinement by a military court and shall confine them according to law. No such keeper, officer or warden may require payment of any fee or charge for so receiving or confining a person.

[C66, 71, 73, 75, 77, 79, 81, §29B.59]

## REVIEW BY COURT-MARTIAL

### **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 the convening authority. The convening authority shall approve the sentence or the part, amount, or commuted form of the sentence as the convening authority sees fit, and may suspend or defer the execution of the sentence.

[C66, 71, 73, 75, 77, 79, 81, §29B.60; 82 Acts, ch 1042, §36]

### **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 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.61; 82 Acts, ch 1042, §37]

### **29B.62 General court-martial records.**

The convening authority shall refer the record of each general court-martial to the appropriate staff judge advocate of the state force concerned, who shall submit a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §29B.62]

2002 Acts, ch 1117, §47, 52

### **29B.63 Reconsideration and revision.**

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

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

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

b. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

c. For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

[C66, 71, 73, 75, 77, 79, 81, §29B.63]

2008 Acts, ch 1032, §201

**29B.64 Rehearings.**

If the convening authority disapproves the findings and sentence of a court-martial the convening authority may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such case the convening authority shall state the reasons for disapproval. If the convening authority disapproves the findings and sentence and does not order a rehearing, the convening authority shall dismiss the charges.

Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which the accused was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

[C66, 71, 73, 75, 77, 79, 81, §29B.64]

**29B.65 Review of records — disposition.**

1. If the convening authority is the governor or adjutant general, the convening authority's action on the review of any record of trial is final.

2. In all other cases not covered by subsection 1, 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.

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

4. *a.* The staff judge advocate of the state force concerned shall review the record of trial in each case sent for review as provided under this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the staff judge advocate is limited to questions of jurisdiction.

*b.* The staff judge advocate shall take final action in any case reviewable by the staff judge advocate.

5. In a case reviewable by the appropriate staff judge advocate under this section, the staff judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The staff judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the staff judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In consideration of the record, the staff judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the staff judge advocate sets aside the findings and sentence, the staff judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the staff judge advocate sets aside the findings and sentence and does not order a rehearing, the staff judge advocate shall order that the charges be dismissed.

6. In a case reviewable by the staff judge advocate under this section, the staff judge advocate shall instruct the convening authority to act in accordance with the decision on the review. If the staff judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the staff judge advocate may dismiss the charges.

7. The staff 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 court-martial including a sentence to a dishonorable discharge, dismissal or confinement, referred to it by the staff judge advocate. Boards of review have the same authority on review as the staff judge advocate has under this section.

[C66, 71, 73, 75, 77, 79, 81, §29B.65; 82 Acts, ch 1042, §38]

2002 Acts, ch 1117, §48, 52; 2008 Acts, ch 1032, §201

**29B.66 Error of law — lesser included offenses.**

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

Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense.

[C66, 71, 73, 75, 77, 79, 81, §29B.66]

**29B.67 Review counsel.**

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

Upon the request of an accused entitled to be so represented, the appropriate staff judge advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section 29B.28, if available, to represent the accused before the reviewing authority and before the appropriate staff judge advocate, in the review of cases specified in this section.

If provided by the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority and before the appropriate staff judge advocate.

[C66, 71, 73, 75, 77, 79, 81, §29B.67; 82 Acts, ch 1042, §39]

2002 Acts, ch 1117, §49, 52

**29B.68 Vacation of suspension.**

Before the vacation of the suspension of a special court-martial sentence which as approved includes a 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 the probationer so desires.

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

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

[C66, 71, 73, 75, 77, 79, 81, §29B.68; 82 Acts, ch 1042, §40]

**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 or fraud on the court-martial.

[C66, 71, 73, 75, 77, 79, 81, §29B.69; 82 Acts, ch 1042, §41]

**29B.70 Remission or suspension.**

A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

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

[C66, 71, 73, 75, 77, 79, 81, §29B.70]

**29B.71 Restoration.**

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

If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

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

[C66, 71, 73, 75, 77, 79, 81, §29B.71]

**29B.72 Finality of proceedings — findings and sentences.**

The proceedings, findings, and sentences of court-martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this code, are final and conclusive. Orders publishing the proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in section 29B.69.

[C66, 71, 73, 75, 77, 79, 81, §29B.72]

## PUNITIVE ARTICLES

**29B.73 Persons to be tried or punished.**

A person shall not be tried or punished for any offense provided for in this code unless it was committed while the person was in a duty status or during a time when the person was under lawful orders to be in a duty status.

[C66, 71, 73, 75, 77, 79, 81, §29B.73; 82 Acts, ch 1042, §42]

**29B.74 Principals.**

Any person subject to this code is a principal if the person does any of the following:

1. Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission.
2. Causes an act to be done which if directly performed by the person would be punishable by this code.

[C66, 71, 73, 75, 77, 79, 81, §29B.74]

2006 Acts, ch 1010, §20

**29B.75 Accessory after the fact.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.75]

**29B.76 Conviction of lesser included offenses.**

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.  
[C66, 71, 73, 75, 77, 79, 81, §29B.76]

**29B.77 Attempts.**

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

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

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

[C66, 71, 73, 75, 77, 79, 81, §29B.77]

**29B.78 Conspiracy.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.78]

**29B.79 Solicitation.**

Any person subject to this code who solicits or advises another or others to desert in violation of section 29B.82 or mutiny in violation of section 29B.91 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 29B.96 or sedition in violation of section 29B.91 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.79]

**29B.80 Fraudulent enlistment — appointment or separation.**

Any person shall be punished as a court-martial may direct if the person does any of the following:

1. Procures the person's own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to the person's qualifications for that enlistment or appointment and receives pay or allowances thereunder.

2. Procures the person's own separation from the state military forces by knowingly false representation or deliberate concealment as to the person's eligibility for that separation.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(1); C66, 71, 73, 75, 77, 79, 81, §29B.80]

2006 Acts, ch 1010, §21

**29B.81 Unlawful enlistment — appointment or separation.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.81]

**29B.82 Desertion.**

1. Any member of the state military forces who does any of the following is guilty of desertion:

a. Without authority goes or remains absent from the member's unit, organization, or place of duty with intent to remain away therefrom permanently.

b. Quits the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important services.

c. Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without duly disclosing the fact that the member has not been regularly separated.

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

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

[C66, 71, 73, 75, 77, 79, 81, §29B.82]

2006 Acts, ch 3, §17

#### **29B.83 Absence without leave.**

Any person subject to this code shall be punished as a court-martial may direct if the person without authority does any of the following:

1. Fails to go to the person's appointed place of duty at the time prescribed.

2. Goes from that place.

3. Leaves or remains absent from the unit, organization, or place of duty at which the person is required to be at the time prescribed.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(3); C66, 71, 73, 75, 77, 79, 81, §29B.83]

2006 Acts, ch 1010, §22

#### **29B.84 Missing movement.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.84]

#### **29B.85 Contempt toward officials.**

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

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(4); C66, 71, 73, 75, 77, 79, 81, §29B.85]

#### **29B.86 Disrespect toward superior commissioned officer.**

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

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(5); C66, 71, 73, 75, 77, 79, 81, §29B.86]

#### **29B.87 Assaulting or willfully disobeying superior commissioned officer.**

Any person subject to this code shall be punished as a court-martial may direct if the person does any of the following:

1. Strikes the person's superior commissioned officer or draws or lifts up any weapon or offers any violence against the superior commissioned officer while the superior commissioned officer is in the execution of the officer's office.

2. Willfully disobeys a lawful command of the person's superior commissioned officer.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(6); C66, 71, 73, 75, 77, 79, 81, §29B.87]

2006 Acts, ch 1010, §23

**29B.88 Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.**

Any warrant officer or enlisted member shall be punished as a court-martial may direct if the person does any of the following:

1. Strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of the officer's office.
2. Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer.
3. Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of the officer's office.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(7); C66, 71, 73, 75, 77, 79, 81, §29B.88]

2006 Acts, ch 1010, §24

**29B.89 Failure to obey order or regulation.**

Any person subject to this code shall be punished as a court-martial may direct if the person does any of the following:

1. Violates or fails to obey any lawful general order or regulation.
2. Having knowledge of any other lawful order issued by a member of the state military forces which it is the person's duty to obey, fails to obey the order.
3. Is derelict in the performance of the person's duties.

[C66, 71, 73, 75, 77, 79, 81, §29B.89]

2006 Acts, ch 1010, §25

**29B.90 Cruelty and maltreatment.**

Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to orders of the person subject to this code shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.90]

**29B.91 Mutiny or sedition.**

1. Any person subject to this code who:
  - a. With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do the person's duty or creates any violence or disturbance against that authority is guilty of mutiny;
  - b. With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;
  - c. Fails to do the person's utmost to prevent and suppress a mutiny or sedition being committed in the person's presence, or fails to take all reasonable means to inform the person's superior commissioned officer or commanding officer of a mutiny or sedition which the person knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.
2. A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(8); C66, 71, 73, 75, 77, 79, 81, §29B.91]

2008 Acts, ch 1032, §201

**29B.92 Resistance, breach of arrest and escape.**

Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.92]

**29B.93 Releasing prisoner without proper authority.**

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

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(9); C66, 71, 73, 75, 77, 79, 81, §29B.93]

**29B.94 Unlawful detention of another.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.94]

**29B.95 Noncompliance with procedural rules.**

Any person subject to this code shall be punished as a court-martial may direct if the person does any of the following:

1. Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code.
2. Knowingly and intentionally fails to enforce or comply with any provisions of this code regulating the proceedings before, during, or after trial of an accused.

[C66, 71, 73, 75, 77, 79, 81, §29B.95]

2006 Acts, ch 1010, §26

**29B.96 Misbehavior before the enemy.**

Any person subject to this code shall be punished as a court-martial may direct if the person, before or in the presence of the enemy, does any of the following:

1. Runs away.
2. Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is the person's duty to defend.
3. Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property.
4. Casts away the person's arms or ammunition.
5. Is guilty of cowardly conduct.
6. Quits the person's place of duty to plunder or pillage.
7. Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces.
8. Willfully fails to do the person's utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is the person's duty so to encounter, engage, capture or destroy.
9. Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle.

[C66, 71, 73, 75, 77, 79, 81, §29B.96]

2006 Acts, ch 1010, §27

**29B.97 Subordinate compelling surrender.**

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, or of any other state, to surrender the place, property, or forces to an enemy or to abandon 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.97; 82 Acts, ch 1042, §43]

**29B.98 Improper use of countersign.**

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive

and use the parole or countersign a different parole or countersign from that which, to the person's knowledge, the person was authorized and required to give, shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.98]

**29B.99 Forcing a safeguard.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.99]

**29B.100 Captured or abandoned property.**

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

2. Any person subject to this code shall be punished as a court-martial may direct if the person does any of the following:

a. Fails to carry out the duties prescribed herein.

b. Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby the person receives or expects any profit, benefit, or advantage to the person or another directly or indirectly connected with the person.

c. Engages in looting or pillaging.

[C66, 71, 73, 75, 77, 79, 81, §29B.100]

2006 Acts, ch 1030, §9

**29B.101 Aiding the enemy.**

Any person subject to this code shall be punished as a court-martial may direct if the person does any of the following:

1. Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things.

2. Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly.

[C66, 71, 73, 75, 77, 79, 81, §29B.101]

2006 Acts, ch 1010, §28

**29B.102 Misconduct of a prisoner.**

Any person subject to this code shall be punished as a court-martial may direct if the person, while in the hands of the enemy in time of war, does any of the following:

1. For the purpose of securing favorable treatment by the captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners.

2. While in a position of authority over such persons maltreats them without justifiable cause.

[C66, 71, 73, 75, 77, 79, 81, §29B.102]

2006 Acts, ch 1010, §29

**29B.103 False official statements — forgery.**

1. 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.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(2); C66, 71, 73, 75, 77, 79, 81, §29B.103; 82 Acts, ch 1042, §44]

#### **29B.104 Property crimes.**

1. 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 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.

[C66, 71, 73, 75, 77, 79, 81, §29B.104; 82 Acts, ch 1042, §45]

#### **29B.105 Improper hazarding of vessel.**

Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

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

[C66, 71, 73, 75, 77, 79, 81, §29B.105]

#### **29B.106 Drunken or reckless driving.**

Any person subject to this code who operates any vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.106]

[P] For operating while intoxicated provisions, see chapter 321J

#### **29B.107 Drunk on duty — sleeping on post — leaving post before relief.**

Any person subject to this code who is found drunk on duty or sleeping upon the person's post, or who leaves the person's post before the person is regularly relieved, shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(10); C66, 71, 73, 75, 77, 79, 81, §29B.107]

#### **29B.107A Wrongful use or possession of controlled substances.**

1. Any person subject to this code who wrongfully uses, possesses, manufactures, distributes, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States or of the state military forces, a controlled substance shall be punished as a court-martial may direct.

2. For purposes of this section, “*controlled substance*” includes but is not limited to any of the following:

*a.* Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

*b.* Any substance listed on a schedule of controlled substances prescribed by the president of the United States for the purposes of the uniform code of military justice, 10 U.S.C. ch. 47.

*c.* Any substance listed in schedules I through V of section 202 of the federal Controlled Substances Act, 21 U.S.C. § 812.

2010 Acts, ch 1087, §4

[T] NEW section

**29B.108 Dueling.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.108]

**29B.109 Malingering.**

Any person subject to this code shall be punished as a court-martial may direct if the person for the purpose of avoiding work, duty, or service in the state military forces does any of the following:

1. Feigns illness, physical disablement, mental lapse, or derangement.
2. Intentionally inflicts self-injury.

[C66, 71, 73, 75, 77, 79, 81, §29B.109]

2006 Acts, ch 1010, §30

**29B.110 Riot or breach of peace.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.110]

**29B.111 Provoking speeches or gestures.**

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

[C66, 71, 73, 75, 77, 79, 81, §29B.111]

**29B.112 Perjury.**

Any person subject to this code who in a judicial proceeding or in a court of justice conducted under this code willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.112]

**29B.113 Frauds against the government.**

Any person subject to this code shall, upon conviction of any of the following, be punished as a court-martial may direct:

1. The person, knowing it to be false or fraudulent, does any of the following:
  - a. Makes any claim against the United States, the state, or any officer thereof.
  - b. Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof.
2. The person, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof, does any of the following:
  - a. Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements.
  - b. Makes any oath to any fact or to any writing or other paper knowing the oath to be false.
  - c. Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited.
3. The person, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt.
4. The person, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing

without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(13); C66, 71, 73, 75, 77, 79, 81, §29B.113]

2006 Acts, ch 1010, §31

#### **29B.114 Larceny and wrongful appropriation.**

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

a. With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to the person's own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

b. With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to the person's own use or the use of any person other than the owner, is guilty of wrongful appropriation.

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

[C66, 71, 73, 75, 77, 79, 81, §29B.114]

2006 Acts, ch 1010, §32

#### **29B.115 Conduct unbecoming an officer.**

A commissioned officer who is convicted of conduct unbecoming an officer shall be punished as a court-martial directs.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(11); C66, 71, 73, 75, 77, 79, 81, §29B.115]

85 Acts, ch 67, §7

#### **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 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 shall not be taken of, and jurisdiction shall not be extended to, the crimes of murder, manslaughter, sexual abuse, robbery, maiming, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §467.61; C46, 50, §29.61; C54, 58, 62, §29.63(12); C66, 71, 73, 75, 77, 79, 81, §29B.116; 82 Acts, ch 1042, §46]

2000 Acts, ch 1154, §45; 2002 Acts, ch 1117, §50, 52

### **MISCELLANEOUS PROVISIONS**

#### **29B.117 Courts of inquiry.**

1. a. 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 the inquiry.

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

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

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

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

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

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

e. Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

[C97, §2196 – 2198; SS15, §2215-f36; C24, 27, 31, §464; C35, §467-f32; C39, §467.34; C46, 50, §29.34; C54, 58, 62, §29.70; C66, 71, 73, 75, 77, 79, 81, §29B.117; 82 Acts, ch 1042, §47]  
2008 Acts, ch 1032, §142

#### **29B.118 Complaints or wrongs.**

Any member of the state military forces who feels wronged by the member's commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general.

[C66, 71, 73, 75, 77, 79, 81, §29B.118]

#### **29B.119 Redress of injuries to property.**

Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, the person may, subject to such regulations as the adjutant general may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided herein, on any disbursement officer for the payment by the officer to the injured parties of the damages so assessed and approved.

Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in the person's behalf, and to cross-examine those appearing against the person. The person has the right of appeal to the next higher commander.

[C66, 71, 73, 75, 77, 79, 81, §29B.119]

#### **29B.120 Process of military courts.**

Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

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 executed by the marshals of the military court or any peace officer. Process and mandates shall be in a form prescribed by rules issued under this code.

All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment

of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

[C35, §467-f34; C39, §467.36; C46, 50, §29.36; C54, 58, 62, §29.77; C66, 71, 73, 75, 77, 79, 81, §29B.120; 82 Acts, ch 1042, §48]

**29B.121 through 29B.124** Reserved.

**29B.125 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.

[82 Acts, ch 1042, §50]

**29B.126 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.

[82 Acts, ch 1042, §51]

**29B.127 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.

[82 Acts, ch 1042, §52]

**29B.128 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.

[82 Acts, ch 1042, §53]

**29B.129 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. All summary courts-martial.
2. Adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
3. Commanding officers.
4. Staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
5. The president, military judge, trial counsel, and assistant trial counsel for general and special courts-martial.
6. The president and the counsel for the court of any court of inquiry.
7. Officers designated to take a deposition.
8. Persons detailed to conduct an investigation.
9. Other persons designated by state law or by rules of the governor.

[82 Acts, ch 1042, §54]

2002 Acts, ch 1117, §51, 52

**29B.130 Uniformity of interpretation.**

This code shall be construed as to effectuate the general purpose of uniformity, so far as practical, with the uniform code of military justice, 10 U.S.C. ch. 47.

2010 Acts, ch 1087, §5

[T] NEW section