

March 11, 1965.
Place on Calendar.

House File 560
By JUDICIARY COMMITTEE.

Passed House, Date 3/18 Passed Senate, Date 7/21
Vote: Ayes 102 Nays 1 Vote: Ayes 57 Nays 0
Approved May 4, 1965

passed on file 3/23
judiciary 7/24
"do pass" 6/21

A BILL FOR

An Act to establish a Code of military justice in Iowa.

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

1 Sections twenty-nine point sixty-one (29.61), twenty-nine
2 point sixty-two (29.62), twenty-nine point sixty-three (29.63),
3 twenty-nine point sixty-four (29.64), twenty-nine point sixty-
4 five (29.65), twenty-nine point sixty-six (29.66), twenty-nine
5 point sixty-seven (29.67), twenty-nine point sixty-eight (29.68),
6 twenty-nine point sixty-nine (29.69), twenty-nine point seventy
7 (29.70), twenty-nine point seventy-one (29.71), twenty-nine point
8 seventy-two (29.72), twenty-nine point seventy-three (29.73),
9 twenty-nine point seventy-four (29.74), twenty-nine point seventy-
10 five (29.75), twenty-nine point seventy-six (29.76), twenty-nine
11 point seventy-seven (29.77), and twenty-nine point seventy-nine
12 (29.79) Code 1962, as amended, are hereby repealed and the
13 following enacted in lieu thereof.

1 Section 1. This chapter applies to all members of the state
2 military forces who are not in federal service.

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

7 trial by court-martial for all offenses under this Code committed
8 before the fraudulent discharge.

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

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

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

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

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

1 Sec. 5. Any civil officer having authority to apprehend

2 offenders under the laws of the United States or of a state,
3 territory, commonwealth, or possession, or the District of
4 Columbia may summarily apprehend a deserter from the state
5 military forces and deliver him into the custody of the state
6 military forces. If an offender is apprehended outside the state
7 his return to the area must be in accordance with normal
8 extradition procedures or reciprocal agreement.

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

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

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

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

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

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

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

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

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

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

1 Sec. 12. Subject to section fifty-eight (58), no person, while
2 being held for trial or the result of a trial, may be subjected
3 to punishment or penalty other than arrest or confinement upon
4 the charge pending against him, nor shall the arrest or
5 confinement imposed upon him be any more rigorous than the
6 circumstances require to insure his presence, but he may be
7 subjected to minor punishment during that period for infractions
8 of discipline.

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

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

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

6 1. Upon officer of his command:

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

- 9 b. Restriction to certain specified limits, with or
10 without suspension from duty, for not more than two consecutive
11 weeks; or
- 12 c. If imposed by a commanding officer of the state
13 military forces of field grade or above, a fine or forfeiture
14 of pay and allowances of not more than twenty-five (25) dollars;
- 15 2. Upon other military personnel of his command:
- 16 a. Withholding of privileges for not more than two (2)
17 consecutive weeks,
- 18 b. Restriction to certain specified limits, with or
19 without suspension from duty, for not more than two (2)
20 consecutive weeks,
- 21 c. Extra duties for not more than fourteen (14) days,
22 which need not be consecutive, and for not more than two (2)
23 hours per day, holidays included.
- 24 d. Reduction to the lowest or any intermediate grade
25 within his promotion authority.
- 26 e. If imposed by an officer exercising special court-
27 martial jurisdiction over the offender, a fine or forfeiture
28 of pay and allowances of not more than ten (10) dollars.
- 29 A person punished under this section who considers his
30 punishment unjust or disproportionate to the offense may,
31 through the proper channel, appeal to the next superior
32 authority. The appeal shall be promptly forwarded and decided,
33 but the person punished may in the meantime be required to
34 undergo the punishment adjudged. The officer who imposes the
35 punishment, his successor in command, or superior authority may
36 suspend, set aside, or remit any part or amount of the

37 punishment and restore all rights, privileges and property
38 affected.

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

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

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

7 The three kinds of courts-martial are:

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

1 Sec. 16. Each force of the state military forces has court-

2 martial jurisdiction over all persons subject to this Code.

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

6 1. A fine of not more than two (2) hundred dollars;

7 2. Forfeiture of pay and allowances not to exceed one
8 thousand dollars (\$1,000.00).

9 3. A reprimand;

10 4. Dismissal or dishonorable discharge;

11 5. Reduction of a noncommissioned officer to the ranks; or

12 6. Any combination of these punishments.

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

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

11 No person with respect to whom summary courts-martial have
12 jurisdiction may be brought to trial before a summary court-
13 martial if he objects thereto, unless under section fourteen (14)
14 he has been permitted and has elected to refuse punishment under
15 that section. If objection to trial by summary court-martial is

16 made by an accused who has not been permitted to refuse
17 punishment under section fourteen (14), trial shall be ordered by
18 special or general court-martial, as may be appropriate.

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

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

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

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

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

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

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

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

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

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

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

1 Sec. 25. In the state military forces not in federal service,
2 the commanding officer of a garrison, fort, post, camp, air base,
3 auxiliary air base, or other place where troops are on duty, or
4 of a division, brigade, regiment, wing, group, detached battalion,
5 detached squadron, detached company, or other detachment, may

6 convene a summary court-martial consisting of an assistant state
7 judge advocate. The proceedings shall be informal.

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

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

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

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

23 make a detailed written statement, to be appended to the record,
24 stating why they could not be obtained.

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

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

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

1 Sec. 27. The authority convening a general court-martial
2 shall detail as law officer thereof a commissioned officer who is
3 a member of the bar of the highest court of the state, or a
4 member of the bar of a federal court, and who is certified to be
5 qualified for such duty by the state judge advocate. No person

6 is eligible to act as law officer in a case if he is the accuser
7 of a witness or has acted as investigating officer or as counsel
8 in the same case.

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

1 Sec. 28. For each general and special court-martial the
2 authority convening the court shall detail trial counsel and
3 defense counsel and such assistants as he considers appropriate.

4 No person who has acted as investigating officer, law officer, or
5 court member in any case may act later as trial counsel, assistant
6 trial counsel, or, unless expressly requested by the accused, as
7 defense counsel, or assistant defense counsel in the same case.

8 No person who has acted for the prosecution may act later in the
9 same case for the defense, nor may any person who has acted for
10 the defense act later in the same case for the prosecution.

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

15 In the case of a special court-martial:

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

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

22 of the state.

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

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

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

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

- 4 1. That the signer has personal knowledge of, or has
5 investigated, the matters set forth therein; and
- 6 2. That they are true in fact to the best of his knowledge
7 and belief.

8 Upon the preferring of charges, the proper authority shall

9 take immediate steps to determine what disposition should be made
10 thereof in the interest of justice and discipline, and the person
11 accused shall be informed of the charges against him as soon as
12 practicable.

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

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

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

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

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

7 be made of the case in the interest of justice and discipline.

8 The accused shall be advised of the charges against him and of
9 his right to be represented at that investigation by counsel.

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

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

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

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

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

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

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

1 Sec. 37. The procedures, including modes of proof, in cases

2 before military courts and other military tribunals may be
3 prescribed by the adjutant general by regulations, which shall,
4 so far as he considers practicable, apply the principles of law
5 and the rule of evidence generally recognized in the trial of
6 criminal cases in the courts of the state, but which may not be
7 contrary to or inconsistent with this Code.

1 Sec. 38. No authority convening a general, special, or
2 summary court-martial nor any other commanding officer, or
3 officer serving on the staff thereof, may censure, reprimand, or
4 admonish the court or any member, law officer, or counsel thereof,
5 with respect to the findings or sentence adjudged by the court, or
6 with respect to any other exercise of its or his functions in the
7 conduct of the proceeding. No person subject to this Code may
8 attempt to coerce or, by any unauthorized means, influence the
9 action of the court-martial or any other military tribunal or any
10 member thereof, in reaching the findings or sentence in any case,
11 or the action of any convening, approving, or reviewing authority
12 with respect to his judicial acts. Any violation of this section
13 shall be punished as a court-martial may direct.

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

5 The accused has the right to be represented in his defense
6 before a general or special court-martial by civilian counsel if
7 provided by him, or by military counsel of his own selection if
8 reasonably available, or by the defense counsel detailed under
9 section twenty-eight (28). Should the accused have counsel of

10 his own selection, the defense counsel, and assistant defense
11 counsel, if any, who were detailed, shall, if the accused so
12 desires, act as his associate counsel; otherwise they shall be
13 excused by the president of the court.

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

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

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

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

8 law officer, shall be made a part of the record, and shall be in
9 the presence of the accused, the defense counsel, the trial counsel,
10 and in general court-martial cases, the law officer.

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

1 Sec. 42. Members of a general or special court-martial and
2 the law officer of a general court-martial may be challenged by
3 the accused or the trial counsel for cause stated to the court.
4 The court shall determine the relevancy and validity of
5 challenges for cause, and may not receive a challenge to more
6 than one person at a time. Challenges by the trial counsel shall
7 ordinarily be presented and decided before those by the accused
8 are offered.

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

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

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

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

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

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

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

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

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

8 A proceeding which, after the introduction of evidence but
9 before a finding, is dismissed or terminated by the convening

10 authority or on motion of the prosecution for failure of
11 available evidence or witnesses without any fault of the accused
12 is a trial in the sense of this section.

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

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

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

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

11 2. Issue subpoenas duces tecum and other subpoenas;

12 3. Enforce by attachment the attendance of witnesses and
13 the production of books and papers; and

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

16 Process issued in court-martial cases to compel witnesses to
17 appear and testify and to compel the production of other
18 evidence shall run to any part of the state and shall be

19 executed by civil officers as prescribed by laws of the state.

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

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

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

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

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

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

1 Sec. 51. In any case not extending to the dismissal of a
2 commissioned officer, the sworn testimony, contained in the duly
3 authenticated record of proceedings of a court of inquiry, of a

4 person whose oral testimony cannot be obtained, may, if otherwise
5 admissible under the rules of evidence, be read in evidence by
6 any party before a court-martial if the accused was a party
7 before the court of inquiry, and if the same issue was involved
8 or if the accused consents to the introduction of such evidence.

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

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

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

7 The law officer of a general court-martial and the president
8 of a special court-martial shall rule upon interlocutory questions,
9 other than challenge, arising during the proceedings. Any such
10 ruling made by the law officer of a general court-martial or by
11 the president of a special court-martial upon any interlocutory
12 question other than a motion for a finding of not guilty, or the
13 question of the accused's sanity, is final and constitutes the
14 ruling of the court. However, the law officer or president may
15 change the ruling at any time during the trial except a ruling on
16 a motion for a finding of not guilty that was granted.

17 Unless a ruling is final, if any member objects thereto, the
18 court shall be cleared and closed and the question decided by a
19 voice vote as provided in section fifty-three (53) beginning

20 with the junior in rank.

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

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

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

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

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

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

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

7 All other questions to be decided by the members of a general
8 or special court-martial shall be determined by a majority vote.

9 A tie vote on a challenge disqualifies the member challenged. A
10 tie vote on a motion for a finding of not guilty or on a motion
11 relating to the question of the accused's sanity is a

12 determination against the accused. A tie vote on any other
13 question is a determination in favor of the accused.

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

1 Sec. 55 Each court-martial shall keep a separate record of
2 the proceedings of the trial of each case brought before it and
3 the record shall be authenticated by the signatures of the
4 president and the law officer. If the record cannot be
5 authenticated by either the president or the law officer, by
6 reason of his death, disability or absence, it shall be signed by
7 a member in lieu of him. If both the president and the law
8 officer are unavailable, the record shall be authenticated by two
9 members. A record of the proceedings of a trial in which the
10 sentence adjudged includes a bad-conduct discharge or is more
11 than that which could be adjudged by a special court-martial
12 shall contain a verbatim account of the proceedings and testimony
13 before the court. All other records of trial shall contain such
14 matter and be authenticated in such manner as the adjutant general
15 may by regulation prescribe.

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

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

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

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

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

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

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

10 penitentiary or prison by the courts of the state or of any
11 political subdivision thereof.

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

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

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

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

1 Sec. 62. The convening authority shall refer the record of
2 each general court-martial to the state judge advocate, who shall
3 submit his written opinion thereon to the convening authority. If
4 the final action of the court has resulted in an acquittal of all

5 charges and specifications, the opinion shall be limited to
6 questions of jurisdiction.

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

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

- 13 1. For reconsideration of a finding of not guilty, or a
14 ruling which amounts to a finding of not guilty;
- 15 2. For reconsideration of a finding of not guilty of any
16 charge, unless the record shows a finding of guilty under a
17 specification laid under that charge, which sufficiently alleges
18 a violation of some section of this Code; or
- 19 3. For increasing the severity of the sentence unless the
20 sentence prescribed for the offense is mandatory.

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

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

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

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

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

18 The state judge advocate shall review the record of trial in
19 each case sent to him for review as provided under this section.

20 If the final action of the court-martial has resulted in an
21 acquittal of all charges and specifications, the opinion of the
22 state judge advocate is limited to questions of jurisdiction.

23 The state judge advocate shall take final action in any case
24 reviewable by him.

25 In a case reviewable by the appropriate state judge advocate
26 under this section, the state judge advocate may act only with
27 respect to the findings and sentence as approved by the convening
28 authority. He may affirm only such findings of guilty, and the
29 sentence or such part or amount of the sentence, as he finds
30 correct in law and fact and determines, on the basis of the
31 entire record, should be approved. In consideration of the
32 record, he may weigh the evidence, judge the credibility of
33 witnesses, and determine controverted questions of fact,
34 recognizing that the trial court saw and heard the witnesses.

35 If the state judge advocate sets aside the findings and sentence,
36 he may, except where the setting aside is based on lack of
37 sufficient evidence in the record to support the findings, order
38 a rehearing. If he sets aside the findings and sentence and does
39 not order a rehearing, he shall order that the charges be dismissed.

40 In a case reviewable by the state judge advocate under this
41 section, he shall instruct the convening authority to act in
42 accordance with his decision on the review. If he has ordered
43 a rehearing but the convening authority finds a rehearing
44 impracticable, he may dismiss the charges.

45 The state judge advocate may order one or more boards of
46 review each composed of not less than three (3) commissioned
47 officers of the state military forces, each of whom must be a

48 member of the bar of the highest court of the state. Each board
49 of review shall review the record of any trial by special court-
50 martial including a sentence to a bad-conduct discharge,
51 referred to it by the state judge advocate. Boards of review
52 have the same authority on review as the state judge advocate
53 has under this section.

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

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

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

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

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

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

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

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

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

1 Sec. 70. A convening authority may remit or suspend any
2 part or amount of the unexecuted part of any sentence, including
3 all uncollected forfeitures.

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

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

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

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

1 Sec. 72. The proceedings, findings, and sentences of court-
2 martial as reviewed and approved, as required by this Code, and

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

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

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

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

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

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

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

1 Sec. 77. 1. An act, done with specific intent to commit an
2 offense under this Code, amounting to more than mere preparation
3 and tending, even though failing, to effect its commission, is

4 an attempt to commit that offense.

5 Any person subject to this Code who attempts to commit any

6 offense punishable by this Code shall be punished as a court-

7 martial may direct, unless otherwise specifically prescribed.

8 Any person subject to this Code may be convicted of an attempt

9 to commit an offense although it appears on the trial that the

10 offense was consummated.

1 Sec. 78. Any person subject to this Code who conspires with

2 any other person to commit an offense under this Code shall, if

3 one or more of the conspirators does an act to effect the object

4 of the conspiracy, be punished as a court-martial may direct.

1 Sec. 79. Any person subject to this Code who solicits or

2 advises another or others to desert in violation of section

3 eighty-two (82) of this Code or mutiny in violation of section

4 ninety-one (91) of this Code shall, if the offense solicited or

5 advised is attempted or committed, be punished with the

6 punishment provided for the commission of the offense, but, if

7 the offense solicited or advised is not committed or attempted,

8 he shall be punished as a court-martial may direct.

9 Any person subject to this Code who solicits or advises another

10 or others to commit an act of misbehavior before the enemy in

11 violation of section ninety-six (96) of this Code or sedition in

12 violation of section ninety-one (91) of this Code shall, if the

13 offense solicited or advised is committed, be punished with the

14 punishment provided for the commission of the offense, but, if

15 the offense solicited or advised is not committed, he shall be

16 punished as a court-martial may direct.

1 Sec. 80. Any person who:

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

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

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

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

2 1. Without authority goes or remains absent from his unit,
3 organization, or place of duty with intent to remain away
4 therefrom permanently;

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

7 3. Without being regularly separated from one of the state
8 military forces enlists or accepts an appointment in the same or
9 another one of the state military forces, or in one of the armed
10 forces of the United States, without duly disclosing the fact
11 that he has not been regularly separated;
12 is guilty of desertion.

13 Any commissioned officer of the state military forces who,
14 after tender of his resignation and before notice of its

15 acceptance, quits his post or proper duties without leave and
16 with intent to remain away therefrom permanently is guilty of
17 desertion.

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

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

3 1. Fails to go to his appointed place of duty at the time
4 prescribed:

5 2. Goes from that place; or

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

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

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

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

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

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

2 1. Strikes his superior commissioned officer or draws or

3 lifts up any weapon or offers any violence against him while he
4 is in the execution of his office; or

5 2. Willfully disobeys a lawful command of his superior
6 commissioned officer;
7 shall be punished as a court-martial may direct.

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

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

5 2. Willfully disobeys the lawful order of a warrant officer,
6 noncommissioned officer, or petty officer; or

7 3. Treats with contempt or is disrespectful in language or
8 deportment toward a warrant officer, noncommissioned officer, or
9 petty officer, while that officer is in the execution of his
10 office;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Sec. 94. Any person subject to this Code who, except as

2 provided by law or regulation, apprehends, arrests, or confines
3 any person shall be punished as a court-martial may direct.

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

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

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

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

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

3 1. Runs away;

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

7 3. Through disobedience, neglect, or intentional misconduct
8 endangers the safety of any such command, unit, place, or
9 military property;

10 4. Casts away his arms or ammunition;

11 5. Is guilty of cowardly conduct;

12 6. Quits his place of duty to plunder or pillage;

13 7. Causes false alarms in any command, unit, or place under
14 control of the armed forces of the United States or the state
15 military forces;

16 8. Willfully fails to do his utmost to encounter, engage,
17 capture, or destroy any enemy troops, combatants, vessels,
18 aircraft, or any other thing, which it is his duty so to
19 encounter, engage, capture or destroy; or

20 9. Does not afford all practicable relief and assistance to
21 any troops, combatants, vessels, or aircraft of the armed forces
22 belonging to the United States or their allies, to the state, or
23 to any other state, when engaged in battle;
24 shall be punishable as a court-martial may direct.

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

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

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

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

6 Any person subject to this Code who:

- 7 1. Fails to carry out the duties prescribed herein:
- 8 2. Buys, sells, trades, or in any way deals in or disposes

9 of captured or abandoned property, whereby he receives or expects
10 any profit, benefit or advantage to himself or another directly
11 or indirectly connected with himself; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 1. Feigns illness, physical disablement, mental lapse or

4 derangement; or

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

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

1 Sec. 111. Any person subject to this Code who uses provoking
2 or reproachful words or gestures towards any other person subject
3 to this Code shall be punished as a court-martial may direct.

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

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

2 Who, knowing it to be false or fraudulent:

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

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

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

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

13 2. Makes any oath to any fact or to any writing or other

14 paper knowing the oath to be false; or

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

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

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

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

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

9 2. With intent temporarily to deprive or defraud another
10 person of the use and benefit of property or to appropriate it to

11 his own use or the use of any person other than the owner, is
12 guilty of wrongful appropriation.

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

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

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

1 Sec. 117. Courts of inquiry to investigate any matter may be
2 convened by the adjutant general or by any other person
3 designated by the adjutant general for that purpose, whether or
4 not the persons involved have requested such an inquiry.

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

8 Any person subject to this Code whose conduct is subject to
9 inquiry shall be designated as a party. Any person subject to
10 this Code who has a direct interest in the subject of inquiry has

11 the right to be designated as a party upon request to the court.

12 Any person designated as a party shall be given due notice and

13 has the right to be present, to be represented by counsel, to

14 cross-examine witnesses, and to introduce evidence.

15 Members of a court of inquiry may be challenged by a party,

16 but only for cause stated to the court.

17 The members, counsel, the reporter, and interpreters of courts

18 of inquiry shall take an oath or affirmation to faithfully

19 perform their duties.

20 Witnesses may be summoned to appear and testify and be

21 examined before courts of inquiry, as provided for courts-martial.

22 Courts of inquiry shall make findings of fact but may not

23 express opinions or make recommendations unless required to do so

24 by the convening authority.

25 Each court of inquiry shall keep a record of its proceedings,

26 which shall be authenticated by the signatures of the president

27 and counsel for the court and forwarded to the convening

28 authority. If the record cannot be authenticated by the

29 president, it shall be signed by a member in lieu of the

30 president. If the record cannot be authenticated by the counsel

31 for the court, it shall be signed by a member in lieu of the

32 counsel.

1 Sec. 118. Any member of the state military forces who

2 believes himself wronged by his commanding officer, and who,

3 upon due application to that commanding officer, is refused redress,

4 may complain to any superior commissioned officer, who shall forward

5 the complaint to the governor or adjutant general.

1 Sec. 119. Whenever complaint is made to any commanding

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

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

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

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

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

EXPLANATION OF HOUSE FILE 560

This amendment provides for the administration of military justice in the National Guard not in Federal service. It is based directly on a uniform Code of military justice, drafted by the National Conference of Commissioners on uniform State laws, approved by the American Bar Association at its meeting at St. Louis, Missouri, August 10, 1961, and which in turn, is based on the United States Code of military justice. It is designed to facilitate the transition of the national guard into federal service and to familiarize it with the principles of the administration of military justice under which it will be required to operate when federalized, and greatly broadens the rights, in this connection, of personnel serving in the nation guard not in federal service.