

FILED FEB 16 1982

SENATE FILE 2175

BY COMMITTEE ON STATE  
GOVERNMENT

(FORMERLY SSB 2151) *Approved 2/16 (p. 408)*  
*Sub for H.F. 2392*

Passed Senate, Date 2-26-82 (p. 527) Passed House, Date 3-5-82 (p. 693)

Vote: Ayes 38 Nays 1 Vote: Ayes 97 Nays 0

Approved March 25, 1982 (p. 934)

## A BILL FOR

1 An Act revising the Iowa code of military justice including  
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

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

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

22 29B.6 IMPOSITION OF RESTRAINT. Arrest is the restraint  
23 of a person by an order, not imposed as a punishment for an  
24 offense, directing ~~him~~ the person to remain within certain  
25 specified limits. Confinement is the physical restraint of  
26 a person.

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

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

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

8 This section does not limit the authority of persons au-  
9 thorized to apprehend offenders to secure the custody of an  
10 alleged offender until the proper authority is notified.

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

13 29B.7 PROBABLE CAUSE. ~~No~~ A person may shall not be ordered  
14 apprehended or into arrest or confinement except for probable  
15 cause.

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

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

21 29B.14 COMMANDING OFFICERS NONJUDICIAL PUNISHMENT.

22 1. Under such regulations as the adjutant general may  
23 prescribe limitations may be placed on the powers granted  
24 by this section with respect to the kind and amount of  
25 punishment authorized, the categories of commanding officers  
26 and warrant officers authorized to exercise those powers,  
27 the applicability of this section to an accused who demands  
28 trial by court-martial, and the kinds of courts-martial to  
29 which the case may be referred upon such a demand. However,  
30 punishment shall not be imposed upon any member of the state  
31 military forces under this section if the member demands trial  
32 by court-martial in lieu of punishment before imposition of  
33 the punishment. The adjutant general may adopt rules relating  
34 to the suspension and mitigation of punishments authorized  
35 under this code. The adjutant general, or an officer of a

1 general rank in command may delegate powers under this section  
2 to a principal assistant who is a member of the state military  
3 forces according to rules adopted by the adjutant general.

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

9 1- a. Upon ~~officer-of-his~~ officers under the officer's  
10 command any one or a combination of the following:

11 a- (1) Withholding of privileges for not more than two  
12 consecutive weeks.

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

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

19 2- b. Upon other military personnel ~~of-his~~ under the  
20 officer's command any one or a combination of the following:

21 a- (1) Withholding of privileges for not more than two  
22 consecutive weeks.

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

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

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

34 e- ~~if-imposed-by-an-officer-exercising-special-court-~~  
35 ~~martial-jurisdiction-over-the-offender,~~ a fine or forfeiture

1 ~~of pay and allowances of not more than ten dollars.~~

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

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

7 (2) A fine or forfeiture of pay of not more than ten dol-  
8 lars.

9 d. Maximum allowable punishments of withholding of privi-  
10 leges, restrictions, and extra duties shall not be combined  
11 to run consecutively.

12 3. A person punished under this section who considers  
13 ~~his~~ the punishment unjust or disproportionate to the offense  
14 ~~may, through the proper channel,~~ appeal to the next superior  
15 authority through the proper channel. The authority  
16 considering the appeal may refer a case that has been appealed  
17 to a staff judge advocate or legal officer for consideration  
18 and advice and shall do so before deciding on the appeal when  
19 the punishment is restriction, withholding of privileges,  
20 extra duties, forfeiture of pay, or reduction from the fourth  
21 or higher pay grade. The appeal shall be promptly forwarded  
22 and decided, but the person punished may in the meantime be  
23 required to undergo the punishment adjudged. The officer  
24 who imposes the punishment, ~~his~~ the officer's successor in  
25 command, or superior authority may suspend, set aside, or  
26 remit any part or amount of the punishment and restore all  
27 rights, privileges and property affected. In addition the  
28 officer or authority may at any time place the offender on  
29 probation and suspend a reduction in grade or forfeiture  
30 whether or not executed.

31 4. The imposition and enforcement of disciplinary  
32 punishment under this section for any act or omission is not  
33 a bar to trial by court-martial for a serious crime or offense  
34 growing out of the same act or omission, and not properly  
35 punishable under this section, but the fact that a disciplinary

1 punishment has been enforced may be shown by the accused upon  
2 trial, and when so shown shall be considered in determining  
3 the measure of punishment to be adjudged in the event of a  
4 finding of guilty.

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

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

12 29B.15 ~~COURTS-MARTIAL OF STATE-MILITARY-FORCES-NOT-IN~~  
13 ~~FEDERAL-SERVICE--JURISDICTION--FORMS-AND-PROCEEDINGS~~  
14 CLASSIFIED. In the state military forces ~~not-in-federal~~  
15 ~~service~~, there are general, special, and summary courts-martial  
16 constituted like similar courts of the armed forces of the  
17 United States. They have the jurisdiction and powers, except  
18 as to punishments, and shall follow the forms and procedures  
19 provided for those courts.

20 The three kinds of courts-martial are:

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

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

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

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

31 a. Not less than three members.

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

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

1 paragraph b.

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

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

6 29B.18 JURISDICTION OF SPECIAL OR SUMMARY COURTS-MARTIAL.

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

13 a. A fine not exceeding one hundred dollars.

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

16 c. A reprimand.

17 d. Dismissal or dishonorable discharge.

18 e. Reduction of a noncommissioned officer to the ranks.

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

20 ~~A special court-martial has the same powers of punishment~~

21 ~~as a general court-martial except that a fine imposed by a~~

22 ~~special court-martial may not be more than one hundred dollars~~

23 ~~for a single offense.~~

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

27 b. No A person with respect to whom summary courts-martial  
28 have jurisdiction may shall not be brought to trial before  
29 a summary court-martial if he the person objects thereto,  
30 unless under section 29B.14 he the person has been permitted  
31 and has elected to refuse punishment under that section.

32 If objection to trial by summary court-martial is made by  
33 an accused who has not been permitted to refuse punishment  
34 under section 29B.14, trial shall be ordered by special or  
35 general court-martial, as may be appropriate.

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

4 (1) A fine of not more than twenty-five dollars for a  
5 single offense, ~~to forfeiture~~.

6 (2) Forfeiture of pay and allowances, not to exceed two-  
7 thirds of ~~one-month's pay, and to reduction~~ base pay to be  
8 received for the equivalent of four unit training assemblies.

9 (3) Reduction of a noncommissioned officer to the ranks.

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

12 29B.19 SENTENCES OF DISMISSAL OR DISHONORABLE DISCHARGE  
13 TO BE APPROVED BY THE GOVERNOR. In the ~~organized militia~~  
14 ~~not-in-federal-service, no~~ state military forces a sentence  
15 of dismissal or dishonorable discharge ~~may~~ shall not be  
16 executed until it is approved by the governor.

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

19 29B.20 COMPLETE RECORD. A sentence imposing a dishonorable  
20 discharge, discharge under other than honorable conditions,  
21 dismissal, or confinement shall not be adjudged unless a  
22 complete record of the proceedings and testimony has been  
23 made, counsel having the qualifications prescribed under this  
24 code was detailed to represent the accused, and a military  
25 judge could not be detailed to the trial because of physical  
26 conditions or military exigencies. If a military judge was  
27 not detailed to the trial, the convening authority shall make  
28 a detailed written statement, to be appended to the record,  
29 stating the reason a military judge could not be detailed.

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

32 29B.23 WHO MAY CONVENE GENERAL COURTS-MARTIAL. In the  
33 state military forces ~~not-in-federal-service,~~ general courts-  
34 martial may be convened by the governor, or by the adjutant  
35 general of the state of Iowa.

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

3 29B.24 ~~SPECIAL-COURTS-MARTIAL-OF-STATE-MILITARY-FORCES~~  
4 ~~NOT-IN-FEDERAL-SERVICE--WHO~~ MAY CONVENE SPECIAL COURTS-MARTIAL.

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

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

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

16 29B.25 SUMMARY COURTS-MARTIAL--WHO MAY CONVENE. In the  
17 state military forces ~~not-in-federal-service~~, the commanding  
18 officer of a garrison, fort, post, camp, air base, auxiliary  
19 air base, or other place where ~~troops~~ members of the state  
20 military forces are on duty, or of a division, brigade,  
21 regiment, wing, group, detached battalion, detached squadron,  
22 detached company, or other detachment, may convene a summary  
23 court-martial consisting of ~~an-assistant-state-judge-advocate~~  
24 one commissioned officer. The proceedings shall be informal.

25 When only one commissioned officer is present with a command  
26 or detachment ~~he~~ the officer shall be the summary court officer  
27 of that command or detachment and shall hear and determine  
28 all summary court-martial cases ~~brought-before-him~~.

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

31 29B.26 WHO MAY SERVE ON COURTS-MARTIAL. Any commissioned  
32 officer of or on duty with the state military forces is  
33 eligible to serve on all courts-martial for the trial of any  
34 person who may lawfully be brought before ~~such~~ the courts  
35 for trial.

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

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

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

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

31 When convening a court-martial, the convening authority  
32 shall detail as members ~~thereof-such-members-as,~~ of the courts-  
33 martial persons who in his the convening authority's opinion,  
34 are best qualified for the duty by reason of age, education,  
35 training, experience, length of service, and judicial

1 temperament. ~~No member~~ A person is not eligible to serve  
2 as a member of a general or special court-martial when he  
3 the person is the accuser or a witness for the prosecution  
4 or has acted as investigating officer, staff judge advocate,  
5 or as counsel in the same case. ~~If within the command of~~  
6 ~~the convening authority there is present and not otherwise~~  
7 ~~disqualified~~ If a military judge is not appointed for a special  
8 court-martial and if a commissioned officer who is a member  
9 of the bar of the highest court of the state and of appropriate  
10 rank and grade is present and not otherwise disqualified and  
11 within the command of the convening authority, the convening  
12 authority shall appoint ~~him~~ the commissioned officer as  
13 president of a special court-martial. ~~Although this~~  
14 ~~requirement is binding on the convening authority, failure~~  
15 Failure to meet it in any case this requirement does not  
16 divest a military court of jurisdiction.

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

19 29B.27 MILITARY JUDGE OF A GENERAL COURT-MARTIAL. The  
20 authority convening a general court-martial shall detail a  
21 military judge to the court-martial. Subject to rules of  
22 the adjutant general, the authority convening a special court-  
23 martial may detail a military judge to the court-martial.

24 A military judge shall preside over each open session of the  
25 court-martial to which the military judge has been detailed.

26 A military judge must be a commissioned officer of the  
27 state armed forces or a retired officer of the reserve compo-  
28 nents of the armed forces of the United States, a member of  
29 the bar of a federal court or a member of the bar of the  
30 highest court of the state, and certified to be qualified  
31 for the duty by the judge advocate of the armed forces or  
32 the state judge advocate. The state judge advocate may  
33 recommend to the adjutant general that the adjutant general  
34 order to active duty retired personnel of the United States  
35 armed forces who are qualified to act as military judges.

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

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

15 29B.28 DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL. For  
16 each general and special court-martial the authority convening  
17 the court shall detail trial counsel and defense counsel and  
18 ~~such~~ assistants ~~as he~~ the authority considers appropriate.  
19 ~~No~~ A person who has acted as investigating officer, ~~law-officer~~  
20 military judge, or court member in any a case may shall not  
21 act later as trial counsel, assistant trial counsel, or,  
22 unless expressly requested by the accused, as defense counsel,  
23 or assistant defense counsel in the same case. ~~No~~ A person  
24 who has acted for the prosecution ~~may shall not~~ act later  
25 in the same case for the defense, nor ~~may-any shall~~ a person  
26 who has acted for the defense act later in the same case for  
27 the prosecution.

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

33 In the case of a special court-martial:

34 1. The accused has the right to be represented at the  
35 trial by counsel having the qualifications stated in this

1 section unless counsel having such qualifications cannot be  
2 provided because of physical conditions or military exigencies.  
3 If such counsel cannot be provided, the court may be convened  
4 and the trial held, but the convening authority shall append  
5 a detailed written statement to the record stating why such  
6 counsel was not provided.

7 ~~1-~~ 2. If the trial counsel is qualified to act as counsel  
8 before a general court-martial, the defense counsel detailed  
9 by the convening authority must be a person similarly  
10 qualified~~;~~-and.

11 ~~2-~~ 3. If the trial counsel is a member of the bar of the  
12 highest court of the state, the defense counsel detailed by  
13 the convening authority must also be a member of the bar of  
14 the highest court of the state.

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

17 29B.30 ABSENT AND ADDITIONAL MEMBERS.

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

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

32 3. If a special court-martial, except a special court-  
33 martial composed of a military judge only, is reduced below  
34 three members, the trial shall not proceed until the convening  
35 authority details new members sufficient in number to provide

1 not less than three members. The trial shall proceed with  
2 the new members present as if no evidence had previously been  
3 introduced at the trial, unless a verbatim record of the  
4 evidence previously introduced before the members of the court  
5 is read to the new members of the court in the presence of  
6 the military judge, if any, the accused, and counsel for both  
7 sides.

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

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

19 29B.33 INVESTIGATION. ~~No~~ A charge or specification ~~may~~  
20 shall not be referred to a general court-martial for trial  
21 until a thorough and impartial investigation of all the matters  
22 set forth ~~therein-has-been~~ in the charge or specification  
23 is made. This investigation shall include inquiry as to the  
24 truth of the matter set forth in the charges, consideration  
25 of the form of charges, and a recommendation as to the  
26 disposition which should be made of the case in the interest  
27 of justice and discipline.

28 The accused shall be advised of the charges ~~against-him~~  
29 and of ~~his~~ the right to be represented at ~~that~~ the  
30 investigation by counsel. Upon ~~his~~ the accused's own request  
31 ~~he~~ the accused shall be represented by civilian counsel ~~if~~  
32 provided-by-him at the expense of the accused, or military  
33 counsel of ~~his~~ the accused's own selection if such counsel  
34 is reasonably available, or by counsel detailed by the ~~officer~~  
35 ~~exercising-general-court-martial-jurisdiction-over-the-command~~

1 convening authority. At that investigation full opportunity  
2 shall be given to the accused to cross-examine prosecution  
3 witnesses ~~against him~~ if they are available and to present  
4 anything he the accused may desire in ~~his~~ the accused's own  
5 behalf, either in defense or mitigation, and the investigating  
6 officer shall examine witnesses requested by the accused.  
7 If the charges are forwarded after the investigation, they  
8 shall be accompanied by a statement of the substance of the  
9 testimony taken on both sides and a copy thereof shall be  
10 given to the accused.

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

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

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

27 29B.34 FORWARDING OF CHARGES. When a person is held for  
28 trial by general court-martial the commanding officer shall,  
29 within eight days after the accused is ordered into arrest  
30 or confinement, if practicable, forward the charges directly  
31 to the ~~adjutant-general-direct~~ person exercising general  
32 court-martial jurisdiction, together with the investigation  
33 and allied papers. If that is not practicable, he the  
34 commanding officer shall report in writing to the adjutant  
35 general the reasons for delay.

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

3     29B.36 SERVICE OF CHARGES. The trial counsel to whom  
4 court-martial charges are referred for trial shall cause to  
5 be served upon the accused a copy of the charges upon which  
6 trial is to be had. ~~In-time-of-peace-no-person-may,-against~~  
7 ~~his-objection,~~ The accused shall not be brought to trial  
8 before a general court-martial or be required to participate  
9 in a session before a military judge under section 21 within  
10 a period of five days after the service of the charges upon  
11 him the accused, or before a special court-martial within  
12 a period of three days after the service of the charges upon  
13 him the accused, unless the accused consents otherwise.

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

16     29B.37 ADJUTANT GENERAL MAY PRESCRIBE RULES. The pro-  
17 cedures, including modes of proof, in cases before military  
18 courts and other military tribunals ~~may~~ shall be prescribed  
19 by the adjutant general by ~~regulations,-which-shall,-so-far~~  
20 ~~as-he-considers-practicable,-apply-the-principles-of-law-and~~  
21 ~~the-rule-of-evidence-generally-recognized-in-the-trial-of~~  
22 ~~criminal-cases-in-the-courts-of-the-state~~ rule, but which  
23 may shall not be contrary to or inconsistent with this code.  
24 This code shall be construed as to effectuate the general  
25 purpose of uniformity so far as practical with the uniform  
26 code of military justice, U.S.C. 47. All courts and other  
27 proceedings shall be conducted under the procedural rules  
28 established under 10 U.S.C. 47 unless otherwise provided in  
29 this code.

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

32     29B.38 UNLAWFULLY INFLUENCING ACTION OF COURT.

33     1. No ~~The~~ authority convening a general, special, or  
34 summary court-martial ~~nor~~ or any other commanding officer,  
35 or officer serving on the staff ~~thereof~~ of the authority,

1 ~~may~~ shall not censure, reprimand, or admonish the court or  
2 any member, ~~law-officer~~ military judge, or counsel thereof  
3 of the court, with respect to the findings or sentence adjudged  
4 by the court, or with respect to any other exercise of its  
5 or ~~his~~ the court or military judge or counsel's functions  
6 in the conduct of the proceeding. ~~No~~ A person subject to  
7 this code ~~may~~ shall not attempt to coerce or, by any  
8 unauthorized means, influence the action of the court-martial  
9 or any other military tribunal or any member thereof, in  
10 reaching the findings or sentence in any case, or the action  
11 of any convening, approving, or reviewing authority with  
12 respect to ~~his~~ the authority's judicial acts. Any violation  
13 of this section shall be punished as a court-martial may  
14 direct.

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

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

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

27 Sec. 22. Section 29B.39, unnumbered paragraph 2, Code  
28 1981, is amended to read as follows:

29 The accused has the right to be represented in ~~his~~ the  
30 accused's defense before a general or special court-martial  
31 by civilian counsel if provided ~~by him~~ at the expense of the  
32 accused, or by military counsel ~~of his own selection~~ selected  
33 by the accused if reasonably available, or by the defense  
34 counsel detailed under section 29B.28. ~~Should~~ If the accused  
35 have selects defense counsel of his own selection, the defense

1 counsel, and assistant defense counsel, if any, who were  
2 detailed, shall, if the accused so desires, act as his  
3 associate counsel for the accused; otherwise they shall be  
4 excused by the military judge or by the president of the court  
5 court-martial if there is no military judge.

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

9 29B.40 SESSIONS. At any time after the service of charges  
10 referred for trial to a court-martial composed of a military  
11 judge and members, the military judge may, subject to this  
12 chapter, call the court into session without the presence  
13 of the members for the purpose of any of the following:

14 1. Hearing and determining motions raising defenses or  
15 objections which are capable of determination without trial  
16 of the issues raised by a plea of not guilty.

17 2. Hearing and ruling upon any matter which may be ruled  
18 upon by the military judge under this code, whether or not  
19 the matter is appropriate for later consideration or decision  
20 by the members of the court.

21 3. If permitted by rules of the adjutant general holding  
22 the arraignment and receiving the pleas of the accused.

23 4. Performing any other procedural function which may  
24 be performed by the military judge under this code or under  
25 rules adopted pursuant to this code and which does not require  
26 the presence of the members of the court.

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

30 When the members of a court-martial deliberate or vote,  
31 only the members may be present. All other proceedings, in-  
32 cluding any other consultation of the members of the court  
33 with counsel or the military judge, shall be made a part of  
34 the record and shall be in the presence of the accused, the  
35 defense counsel, the trial counsel, and in cases in which

1 a military judge has been detailed to the court, the military  
2 judge.

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

5 29B.41 CONTINUANCES. A military judge or court-martial  
6 without a military judge may, for reasonable cause, grant  
7 a continuance to any party for such time, and as often, as  
8 may appear to be just.

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

11 29B.42 CHALLENGES. ~~Members~~ The military judge and members  
12 of a general or special court-martial and the law-officer  
13 ~~of a general court-martial~~ may be challenged by the accused  
14 or the trial counsel for cause stated to the court. The  
15 military judge or the court in the absence of a military judge  
16 shall determine the relevancy and validity of challenges for  
17 cause, and ~~may~~ shall not receive a challenge to more than  
18 one person at a time. Challenges by the trial counsel shall  
19 ordinarily be presented and decided before those by the accused  
20 are offered.

21 Each accused and the trial counsel is entitled to one  
22 peremptory challenge, but the ~~law-officer may~~ military judge  
23 shall not be challenged except for cause, ~~as outlined in rules~~  
24 ~~of civil procedure 187-4f and stated to the court.~~

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

27 29B.43 OATHS. Before performing their official duties,  
28 military judges, members of a general and special courts-  
29 martial, trial counsel, assistant trial counsel, defense coun-  
30 sel, assistant defense counsel, reporters and interpreters  
31 shall take an oath to perform their duties faithfully. The  
32 adjutant general shall adopt rules prescribing the form of  
33 the oath, the time and place of the taking of the oath, the  
34 manner of recording, and whether the oath must be taken for  
35 all cases in which official duties must be performed or for

1 a particular case. The rules may provide that an oath to  
2 perform duties faithfully as a military judge, trial counsel,  
3 assistant trial counsel, defense counsel, or assistant defense  
4 counsel may be taken at any time by any judge advocate or  
5 legal officer, or other person certified to be qualified or  
6 competent for the duty, and that once taken the oath need  
7 not be taken again each time the person is detailed to that  
8 duty.

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

11 29B.46 PLEAS OF THE ACCUSED.

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

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

30 Sec. 28. Section 29B.47, unnumbered paragraph 2, Code  
31 1981, is amended to read as follows:

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

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

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

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

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

15 29B.49 CONTEMPTS.

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

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

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

30 29B.50 DEPOSITIONS. At any time after charges have been  
31 signed, as provided in section 29B.31 any party may take oral  
32 or written depositions unless the military judge or court-  
33 martial without a military judge hearing the case, or if the  
34 case is not being heard, an authority competent to convene  
35 a court-martial for the trial of those charges forbids it

1 for good cause. If a deposition is to be taken before charges  
2 are referred for trial, the authority may designate  
3 commissioned officers to represent the prosecution and the  
4 defense and may authorize those officers to take the deposition  
5 of any witness.

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

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

13 A duly authenticated deposition taken upon reasonable no-  
14 tice to the other parties, so far as otherwise admissible  
15 under the rules of evidence, may be read in evidence before  
16 any court-martial or in any proceeding before a court of  
17 inquiry, if any of the following are apparent:

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

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

26 3. That the party offering the deposition has been un-  
27 able to procure the attendance of the witness by subpoena  
28 or other process and the present whereabouts of the witness  
29 is unknown.

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

32 29B.52 VOTING AND RULINGS.

33 1. Voting by members of a general or special court-martial  
34 on the findings and on the sentence, and by members of a  
35 court-martial without a military judge upon questions of chal-

1 lence shall be by secret written ballot. The junior member  
2 of the court shall count the votes. The count shall be checked  
3 by the president, who shall immediately announce the result  
4 of the ballot to the members of the court.

5 2. The military judge and, except for questions of chal-  
6 lenge, the president of a court-martial without a military  
7 judge, shall rule upon all questions of law and all inter-  
8 locutory questions arising during the proceedings. A ruling  
9 made by the military judge upon a question of law or an inter-  
10 locutory question other than the factual issue of mental re-  
11 sponsibility of the accused, or by the president of a court-  
12 martial without a military judge upon a question of law other  
13 than a motion for a finding of not guilty is final and con-  
14 stitutes the ruling of the court. However, the military judge  
15 may change a ruling at any time during the trial. Unless  
16 the ruling is final, if a member objects to the ruling, the  
17 court shall be cleared and closed and the question decided  
18 by a voice vote as provided in this code beginning with the  
19 junior in rank.

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

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

28 b. That in the case being considered, if there is a rea-  
29 sonable doubt as to the guilt of the accused, the doubt must  
30 be resolved in favor of the accused and the accused must be  
31 acquitted.

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

35 d. That the burden of proof for establishing the guilt

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

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

14 29B.53 NUMBER OF VOTES REQUIRED. ~~No~~ A person may shall  
15 not be convicted of an offense, except as provided in this  
16 code by the concurrence of two-thirds of the members present  
17 at the time the vote is taken.

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

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

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

35 29B.55 RECORD OF TRIAL. Each general court-martial shall

1 keep a separate record of the proceedings in each case brought  
2 before it, and the record shall be authenticated by the signa-  
3 ture of the military judge. If the record cannot be authen-  
4 ticated by the military judge by reason of death, disability,  
5 or absence of the military judge, it shall be authenticated  
6 by the signature of the trial counsel or by the signature  
7 of a member if the trial counsel is unable to authenticate  
8 it by reason of death, disability, or absence. In a court-  
9 martial consisting of only a military judge the record shall  
10 be authenticated by the court reporter under the same  
11 conditions which would impose such a duty on a member under  
12 this subsection. If the proceedings have resulted in an  
13 acquittal of all charges and specifications or, if not  
14 affecting a general officer, in a sentence not including  
15 discharge, dismissal, or confinement and not in excess of  
16 that which may otherwise be adjudged by a special court-  
17 martial, the record shall contain matters prescribed by rules  
18 of the adjutant general.

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

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

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

31 29B.58 EFFECTIVE DATE OF SENTENCES.

32 1. Whenever When a sentence of a court-martial as lawfully  
33 adjudged and approved includes a forfeiture of pay or  
34 allowances in addition to confinement not suspended or  
35 deferred, the forfeiture may shall apply only to pay or

1 allowances becoming due on or after the date the sentence  
2 is approved by the convening authority. ~~No~~ A forfeiture ~~may~~  
3 shall not extend to any pay or allowances accrued before that  
4 date.

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

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

17 4. On application by an accused who is under sentence  
18 to confinement that has not been ordered executed, the  
19 convening authority, or if the accused is no longer under  
20 the jurisdiction of the convening authority, the person  
21 exercising general court-martial jurisdiction, may in the  
22 person's discretion defer service of the sentence to  
23 confinement. The deferral terminates when the sentence is  
24 ordered executed. The deferral may be rescinded at any time  
25 by the officer who granted it, or, if the accused is no longer  
26 under jurisdiction of that officer, by the person exercising  
27 general court-martial jurisdiction.

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

34 6. If the sentence of a member who is reduced in pay grade  
35 under subsection 5 is set aside or disapproved, or, as finally

1 approved, does not include a punishment named in subsection  
2 5, the rights and privileges of which the member was deprived  
3 because of the reduction shall be restored and the member  
4 is entitled to the pay and allowances lost during the period  
5 the reduction was in effect.

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

8 29B.60 EXECUTION OF SENTENCE--SUSPENSION OF SENTENCE.

9 Except as provided in sections 29B.20 and 29B.65, a court-  
10 martial sentence, unless suspended or deferred, may be ordered  
11 executed by the convening authority when approved by ~~him-~~  
12 He the convening authority. The convening authority shall  
13 approve the sentence or ~~such~~ the part, amount, or commuted  
14 form of the sentence as ~~he~~ the convening authority sees fit,  
15 and may suspend or defer the execution of the sentence as  
16 ~~approved-by-him.~~

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

19 29B.61 INITIAL ACTION OF RECORD. After a trial by court-  
20 martial the record shall be forwarded to the convening  
21 authority, as reviewing authority, and action ~~thereon~~ may  
22 be taken by the person who convened the court, a commissioned  
23 officer commanding for the time being, a successor in command,  
24 or by the adjutant general.

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

32 Sec. 38. Section 29B.65, unnumbered paragraphs 2, 3, and  
33 8, Code 1981, are amended to read as follows:

34 In all other cases not covered by unnumbered paragraph  
35 1 of this section, if the sentence of a special court-martial

1 as approved by the convening authority includes a bad-conduct  
2 discharge, dishonorable discharge, dismissal, or confinement,  
3 whether or not suspended, the entire record shall be sent  
4 to the appropriate staff judge advocate of the state force  
5 concerned to be reviewed in the same manner as a record of  
6 trial by general court-martial. The record and the opinion  
7 of the staff judge advocate or legal officer shall then be  
8 sent to the state judge advocate for review.

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

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

25 Sec. 39. Section 29B.67, unnumbered paragraph 1, Code  
26 1981, is amended to read as follows:

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

33 Sec. 40. Section 29B.68, unnumbered paragraph 1, Code  
34 1981, is amended to read as follows:

35 Before the vacation of the suspension of a special court-

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

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

10 29B.69 PETITION FOR A NEW TRIAL. At any time within two  
11 years after approval by the convening authority of a court-  
12 martial sentence which extends to dismissal, dishonorable  
13 or bad-conduct discharge, the accused may petition the governor  
14 for a new trial on ground of newly discovered evidence ~~of~~  
15 or fraud on the court-martial.

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

18 29B.73 PERSONS TO BE TRIED OR PUNISHED. ~~No~~ A person may  
19 shall not be tried or punished for any offense provided for  
20 in this code unless it was committed while ~~he~~ the person was  
21 in a duty status or during a time when the person was under  
22 lawful orders to be in a duty status.

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

25 29B.97 SUBORDINATE COMPELLING SURRENDER. ~~Any~~ A person  
26 subject to this code who compels or attempts to compel the  
27 commander of any place, vessel, aircraft, or other military  
28 property or any body of the state military forces of the  
29 state, or of any other state, to give-it-up surrender the  
30 place, property, or forces to an enemy or to abandon ~~it~~ the  
31 place, property, or forces, or who strikes the colors or flag  
32 to an enemy without proper authority, shall be punished as  
33 a court-martial may direct.

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

1 29B.103 FALSE OFFICIAL STATEMENTS--FORGERY.

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

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

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

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

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

18 29B.104 ~~PROPERTY OTHER-THAN-MILITARY-PROPERTY--WASTE,~~  
19 ~~SPOILAGE-OR-DESTRUCTION~~ CRIMES.

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

25 2. A person subject to this code who without proper  
26 authority sells or otherwise disposes of or who willfully  
27 or through neglect damages, destroys, or loses or who causes  
28 willfully or through neglect the damage, destruction, sale,  
29 or wrongful disposition of military property of the United  
30 States or the state shall be punished as a court-martial may  
31 direct.

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

34 29B.116 GENERAL ARTICLE. Though not specifically mentioned  
35 in this code, all disorders and neglects to the prejudice

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

11 Sec. 47. Section 29B.117, unnumbered paragraph 1, Code  
12 1981, is amended to read as follows:

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

18 Sec. 48. Section 29B.120, unnumbered paragraph 2, Code  
19 1981, is amended to read as follows:

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

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

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

1 execution of any process or mandate of a military court or  
2 board convened under this code.

3 Sec. 51. NEW SECTION. PAYMENT AND DISPOSITION OF FINES.

4 Fines imposed by a military court may be paid to the court  
5 or to an officer executing its process. The amount of the  
6 fine may be noted upon any state payroll or pay account and  
7 fines may be deducted from any pay or allowance due or  
8 thereafter to become due to the offender, until the fine is  
9 collected. Any sum so deducted shall be turned into the  
10 military court that imposed the fine. An officer collecting  
11 a fine or penalty imposed by a military court upon an officer  
12 or enlisted person shall pay the fine within thirty days to  
13 the judge advocate, who shall transmit the fine to the adjutant  
14 general. The adjutant general shall monthly, deposit all  
15 fines and penalties so received with the state treasurer,  
16 to be credited to the general fund of the state. Forfeited  
17 bonds shall be processed in the same manner.

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

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

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

34 1. The state judge advocate and assistant state judge  
35 advocate.



SENATE FILE 2175

AN ACT

REVISING THE IOWA CODE OF MILITARY JUSTICE INCLUDING PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29B.14 COMMANDING OFFICERS NONJUDICIAL PUNISHMENT.

1. Under ~~such~~ regulations as the adjutant general may prescribe limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to

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

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

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

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

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

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

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

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

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

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

d- (4) Reduction to the lowest-or-any-intermediate-grade within-his-promotion-authority, next inferior pay grade if

the current grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one imposing the reduction.

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

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

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

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

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

3. A person punished under this section who considers his the punishment unjust or disproportionate to the offense may,-through-the-proper-channel, appeal to the next superior authority through the proper channel. The authority considering the appeal may refer a case that has been appealed to a staff judge advocate or legal officer for consideration and advice and shall do so before deciding on the appeal when the punishment is restriction, withholding of privileges, extra duties, forfeiture of pay, or reduction from the fourth or higher pay grade. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his the officer's successor in command, or superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected. In addition the officer or authority may at any time place the offender on probation and suspend a reduction in grade or forfeiture whether or not executed.

4. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not

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

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

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

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

The three kinds of courts-martial are:

1. General courts-martial, consisting of ~~a-law-officer and-not-less-than-five-members~~, either of the following:
  - a. A military judge and not less than five members.
  - b. Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge, and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.
2. Special courts-martial, consisting of ~~not-less-than-three-members~~, and any of the following:
  - a. Not less than three members.
  - b. A military judge and not less than three members.
  - c. Only a military judge, if one has been detailed to the court, and the accused requests only a military judge

under the same conditions as prescribed in subsection 1, paragraph b.

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

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

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

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

- a. A fine not exceeding one hundred dollars.
  - b. Forfeiture of pay and allowances not exceeding one thousand dollars.
  - c. A reprimand.
  - d. Dismissal or dishonorable discharge.
  - e. Reduction of a noncommissioned officer to the ranks.
- A special courts-martial shall not try a commissioned officer. ~~A special court-martial has the same powers of punishment as a general court-martial except that a fine imposed by a special court-martial may not be more than one hundred dollars for a single offense.~~

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

b. ~~No~~ A person with respect to whom summary courts-martial have jurisdiction ~~may~~ shall not be brought to trial before a summary court-martial if he ~~the person~~ objects thereto, unless under section 29B.14 he ~~the person~~ has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 29B.14, trial shall be ordered by special or general court-martial, as ~~may-be~~ appropriate.

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

(1) A fine of not more than twenty-five dollars for a single offense, ~~to-forfeiture.~~

(2) Forfeiture of pay and allowances, not to exceed two-thirds of ~~one-month's-pay, and-to-reduction base pay to be received for the equivalent of four unit training assemblies.~~

(3) Reduction of a noncommissioned officer to the ranks.

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

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

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

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

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

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

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

29B.24 ~~SPECIAL COURTS-MARTIAL-OF-STATE-MILITARY-FORCES NOT-IN-FEDERAL-SERVICE--WHO MAY CONVENE SPECIAL COURTS-MARTIAL.~~

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

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

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

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

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

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

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

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

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

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

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

When convening a court-martial, the convening authority shall detail as members ~~thereof-such-members-as,~~ of the courts-martial persons who in his the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. ~~No-member~~ A person is not eligible to serve as a member of a general or special court-martial when ~~he the person~~ is the accuser or a witness for the prosecution or has acted as investigating officer, staff judge advocate, or as counsel in the same case. ~~if-within-the-command-of the-convening-authority-there-is-present-and-not-otherwise disqualified~~ If a military judge is not appointed for a special

court-martial and if a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade is present and not otherwise disqualified and within the command of the convening authority, the convening authority shall appoint ~~him the commissioned officer~~ as president of a special court-martial. ~~Although-this requirement-is-binding-on-the-convening-authority,-failure~~ Failure to meet ~~it-in-any-case~~ this requirement does not divest a military court of jurisdiction.

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

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

A military judge must be a commissioned officer of the state armed forces or a retired officer of the reserve components of the armed forces of the United States, a member of the bar of a federal court or a member of the bar of the highest court of the state, and certified to be qualified for the duty by the judge advocate of the armed forces or the state judge advocate. The state judge advocate may recommend to the adjutant general that the adjutant general order to active duty retired personnel of the United States armed forces who are qualified to act as military judges.

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

consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor shall the military judge vote with members of the court.

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

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

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

In the case of a special court-martial:

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

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

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

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

29B.30 ABSENT AND ADDITIONAL MEMBERS.

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

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

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

4. If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed after the detail of a new military judge as if no evidence had previously

been introduced unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

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

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

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

If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-

examination, and presentation prescribed above, no further investigation of that charge is necessary under this section unless it is demanded by the accused after ~~he~~ the accused is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in ~~his~~ the accused's own behalf.

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

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

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

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

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

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

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

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

29B.38 UNLAWFULLY INFLUENCING ACTION OF COURT.

1. No the authority convening a general, special, or summary court-martial ~~may~~ or any other commanding officer, or officer serving on the staff thereof of the authority, may shall not censure, reprimand, or admonish the court or any member, ~~law-officer~~ military judge, or counsel thereof of the court, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or ~~his~~ the court or military judge or counsel's functions in the conduct of the proceeding. No A person subject to this code may shall not attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to ~~his~~ the authority's judicial acts. Any violation of this section shall be punished as a court-martial may direct.

2. In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used to determine whether a member of the state military force is

qualified to be advanced in grade, reassigned, transferred, or retained on active duty, a person shall not do either of the following:

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

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

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

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

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

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

1. Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty.

2. Hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court.

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

4. Performing any other procedural function which may be performed by the military judge under this code or under rules adopted pursuant to this code and which does not require the presence of the members of the court.

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

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

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

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

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

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

Each accused and the trial counsel is entitled to one peremptory challenge, but the ~~law officer may~~ military judge

~~shall not be challenged except for cause, as outlined in rules of civil procedure 107-114 and stated to the court.~~

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

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

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

29B.46 PLEAS OF THE ACCUSED.

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

2. With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by rules of the adjutant general be entered

immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which case the proceedings shall continue as though the accused had pleaded not guilty.

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

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

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

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

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

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

29B.49 CONTEMPTS.

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

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

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

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

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

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

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

1. That the witness resides or is out of the state of Iowa and the witness' appearance cannot be obtained, unless it appears that the absence of the witness was procured by the party offering the deposition.
2. That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing.
3. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena or other process and the present whereabouts of the witness is unknown.

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

29B.52 VOTING AND RULINGS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29B.58 EFFECTIVE DATE OF SENTENCES.

1. Whenever When a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or

deferred, the forfeiture may shall apply only to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No A forfeiture may shall not extend to any pay or allowances accrued before that date.

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

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

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

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

6. If the sentence of a member who is reduced in pay grade under subsection 5 is set aside or disapproved, or, as finally approved, does not include a punishment named in subsection

5, the rights and privileges of which the member was deprived because of the reduction shall be restored and the member is entitled to the pay and allowances lost during the period the reduction was in effect.

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

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

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

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

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

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

In all other cases not covered by unnumbered paragraph 1 of this section, if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, dishonorable discharge, dismissal, or confinement, whether or not suspended, the entire record shall be sent

to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate or legal officer shall then be sent to the state judge advocate for review.

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

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

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

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

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

Before the vacation of the suspension of a special court-martial sentence which as approved includes a ~~bad-conduct~~ discharge under other than honorable conditions, a dismissal, or a confinement, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation

of probation. The probationer shall be represented at the hearing by counsel if he the probationer so desires.

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

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

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

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

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

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

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

29B.103 FALSE OFFICIAL STATEMENTS--FORGERY.

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

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

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

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

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

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

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

2. A person subject to this code who without proper authority sells or otherwise disposes of or who willfully or through neglect damages, destroys, or loses or who causes willfully or through neglect the damage, destruction, sale, or wrongful disposition of military property of the United States or the state shall be punished as a court-martial may direct.

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

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

arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

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

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

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

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

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

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

Sec. 51. NEW SECTION. PAYMENT AND DISPOSITION OF FINES. Fines imposed by a military court may be paid to the court or to an officer executing its process. The amount of the fine may be noted upon any state payroll or pay account and fines may be deducted from any pay or allowance due or thereafter to become due to the offender, until the fine is collected. Any sum so deducted shall be turned into the military court that imposed the fine. An officer collecting

a fine or penalty imposed by a military court upon an officer or enlisted person shall pay the fine within thirty days to the judge advocate, who shall transmit the fine to the adjutant general. The adjutant general shall monthly, deposit all fines and penalties so received with the state treasurer, to be credited to the general fund of the state. Forfeited bonds shall be processed in the same manner.

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

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

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

1. The state judge advocate and assistant state judge advocate.
2. All summary courts-martial.
3. Adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
4. Commanding officers.
5. Staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
6. The president, military judge, trial counsel, and assistant trial counsel for general and special courts-martial.
7. The president and the counsel for the court of any court of inquiry.
8. Officers designated to take a deposition.

9. Persons detailed to conduct an investigation.
10. Other persons designated by state law or by rules of the governor.

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TERRY E. BRANSTAD  
President of the Senate

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DELWYN STROMER  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2175, Sixty-ninth General Assembly.

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K. MARIE THAYER  
Secretary of the Senate

Approved March 25, 1982

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ROBERT D. RAY  
Governor