

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

IN THE SENATE

BY SENATOR BUCKALEW

SENATE BILL NO. 228

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIRST LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act to revise and consolidate the Military Code of Alaska; repealing Ch. 150, SLA 1955."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

ARTICLE I

GENERAL PROVISIONS

Section 1.01. SHORT TITLE. This Act shall be known as the "Military Code of Alaska."

Sec. 1.02. ALASKA MILITIA ESTABLISHED. The militia of the State of Alaska shall consist of all able-bodied male citizens of the United States and all other able-bodied males who shall have declared their intention to become citizens of the United States, residing within the state, whose age shall be as prescribed by federal law and said militia shall be divided into two classes: The Organized Militia, to be known as the Alaska National Guard, and the Unorganized Militia.

Sec. 1.03. EXEMPTION FROM MILITIA SERVICE. The following persons shall be exempt from militia service: Persons exempt by the laws of the United States, judges of the several courts of the state, and members and officers of the Legislature of the State of Alaska.

Sec. 1.04. COMPOSITION OF ALASKA NATIONAL GUARD. The Alaska National Guard shall consist of members of the militia voluntarily enlisted therein, who, upon original enlistment, shall be organized,

1 armed, equipped, and federally recognized according to the laws of
2 the United States, and of commissioned officers and warrant officers
3 who are citizens of the United States (having the qualifications
4 prescribed by federal law and regulations) and who shall be appoint-
5 ed and commissioned or warranted by the governor: (Provided, that
6 former members of the Regular Army, Navy, or Marine Corps under
7 sixty-four years of age may enlist in said Alaska National Guard.)

8 Sec. 1.05. RATIFICATION AND CONFIRMATION OF EXISTING MILITARY
9 FORCES. The terms and provisions of Secs. 473-479 of 48 USC 473-
10 479 pertaining to the National Guard are made applicable to the
11 existing units and individuals of the military forces in the
12 state, heretofore organized and known as the Alaska National Guard
13 and such organization is ratified and confirmed.

14 Sec. 1.06. AUTHORITY FOR ORGANIZATION. The governor as
15 Commander-in-Chief shall have the power to organize units in
16 communities requesting such and specifically to provide for organ-
17 ization of at least two Scout Battalions in the western and north-
18 western coastal areas of Alaska and northern Arctic regions, in
19 accordance with special authority of the Defense Department to
20 organize Scout Battalions.

21 Sec. 1.07. GOVERNOR AS COMMANDER-IN-CHIEF: RULES AND
22 REGULATION.. The Governor of the State of Alaska, as ex officio
23 commander of the militia of the state, shall have like command of
24 the Alaska National Guard while not in active federal service, and
25 is empowered to promulgate all necessary regulations therefor
26 not inconsistent with Secs. 473-479, (48 USC). Except as otherwise
27 prescribed by said sections, the Alaska National Guard and its
28 members shall be subject to all federal laws and regulations
29 relating to the National Guard of the several states and

1 territories, and of the United States.

2 Sec. 1.08. GOVERNOR MAY ORDER ORGANIZED MILITIA INTO ACTIVE
3 SERVICE. The governor may call out the organized militia to
4 execute laws, suppress or prevent insurrection or lawless violence,
5 or repel invasion. Whenever any portion of the militia has been
6 ordered into active service by the governor, it shall become an
7 additional police force, retaining its separate entity and
8 operating at all times as a military organization under military
9 command, with power to cooperate with and not to supersede the
10 existing civilian law enforcement officers whenever possible, for
11 the re-establishment of law and order and for the protection of
12 life and property. The governor shall also have the power to
13 order members of the organized militia to active state service
14 with their consent for the purpose of training or full-time duty
15 with the office of the adjutant general.

16 Sec. 1.09. GOVERNOR'S DECISION FINAL. Whenever any portion
17 of the militia is ordered to duty by the governor, the decision
18 of the governor in this matter shall be final.

19 Sec. 1.10. PROCLAMATION OF MARTIAL LAW. The governor may
20 proclaim martial law when the public safety requires it in case
21 of rebellion or actual or imminent invasion. Martial law shall
22 not continue for longer than 20 days without the approval of a
23 majority of the members of the legislature in joint session.

24 Sec. 1.11. STATE GUARD: WHEN AND HOW ORGANIZED: RULES AND
25 REGULATIONS. During such time as the Alaska National Guard, or
26 any part thereof, is not available to the state by reason of
27 active Federal service, the governor, through voluntary enlistments,
28 may organize a state guard under such regulations as to discipline
29 and training as the secretary of the army may prescribe: Provided,

1 that the secretary of the army, in his discretion and under such
2 regulation as he may prescribe, is authorized to issue for the
3 use of such state guard, upon requisition of the governor, such
4 arms and equipment as may be in possession of and can be spared by
5 the Department of the Army.

6 Sec. 1.12. GOVERNOR MAY ORDER UNORGANIZED MILITIA INTO ACTIVE
7 SERVICE. In the event of imminent invasion by a foreign power
8 and for the same reasons as enumerated in Sec. 1.08, Art. I, if the
9 governor shall have ordered into active service all of the available
10 organized militia or if the organized militia is in active federal
11 service, he may in addition order the unorganized militia or any
12 portion thereof as he may deem necessary, into active state service,
13 and cause them to perform such military duty for the state subject
14 to the provisions of this code, as the circumstances may require.

15 Sec. 1.13. PENALTY FOR FAILURE TO OBEY CALL. Any member of
16 the militia who shall have been ordered into active service and who
17 shall refuse or wilfully or negligently fail to report at the time
18 and place and to the officer designated in the order or his repre-
19 sentative thereof, shall be deemed guilty of desertion and shall
20 suffer such penalty as a general court-martial may direct, unless he
21 shall produce a sworn certificate from a licensed physician of good
22 standing that he was physically unable to appear at the time and
23 place designated, provided that any person chargeable with desertion
24 under this section may be taken by force and compelled to serve.

25 Sec. 1.14. PENALTY FOR PHYSICIAN MAKING FALSE CERTIFICATE.
26 Any physician who shall knowingly make and deliver a false certifi-
27 cate of physical disability concerning any person who shall have
28 been ordered to active service shall be tried in the state courts,
29 and upon conviction, shall forever forfeit his license and right to

1 practive his profession in this state.

2 Sec. 1.15. SUITS AGAINST OFFICERS AND ENLISTED MEN. Members
3 of the militia ordered into active service for the state by order
4 of the governor shall not be liable civilly or criminally for any
5 act or acts done by them in their official capacity while on such
6 service. If a suit is commenced in any court against any officer or
7 enlisted man of the militia as a result of any act done by such
8 officer or enlisted man in his official capacity while in active
9 service the defendant may require the person instituting such suit
10 to give security for the payment of all costs. In case judgment is
11 for the defendant, treble costs shall be assessed against the
12 plaintiff. The defendant in such action shall be defended by the
13 attorney general or any of his assistants at the expense of the state
14 but private counsel may be employed by the defendant.

15 Sec. 1.16. NOT LIABLE FOR EXERCISE OF JUDGMENT. Any command-
16 ing officer of the Alaska militia engaged under proper authority in
17 the suppression of any of those acts listed under Sec. 1.08 supra,
18 may determine the means to be used in controlling or dispersing of
19 any mob or other unlawful assembly and if he exercises such
20 discretion he shall not be liable in either a civil or criminal
21 action for any act done in the line of duty.

22 Sec. 1.17. APPOINTMENT OF ADJUTANT GENERAL: QUALIFICATIONS
23 AND DUTIES. The adjutant general of Alaska shall be appointed by
24 the governor subject to confirmation by a majority of the members
25 of the legislature in joint session and may carry with it the rank
26 of major general. To be eligible for initial appointment he shall
27 be a resident of Alaska and a field grade officer in any unit of the
28 Alaska National Guard, army or air. He shall be charged with carry-
29 ng out the policies of the governor and shall be the commanding

1 officer of the military forces of the state and shall perform any
2 other duties assigned him by law.

3 Sec. 1.18. GOVERNOR'S INSTRUCTIONS EXERCISED THROUGH THE
4 ADJUTANT GENERAL. The governor's command is exercised through the
5 adjutant general, who is charged with carrying out the policies of
6 the governor in military affairs. He directly represents the
7 governor and is bound always to act in conformity to the governor's
8 instructions. He shall exercise control over the Department of
9 Military Affairs.

10 Sec. 1.19. HEADQUARTERS STAFF OF ALASKA NATIONAL GUARD. The
11 adjutant general shall have a headquarters staff consisting of not
12 more than two assistant adjutants general and such other necessary
13 officers, clerks and employees as may be required to conduct proper-
14 ly the operation of the Department of Military Affairs. They shall
15 be appointed and subject to be removed by the adjutant general.
16 Their salaries shall be payable out of state funds. There shall
17 also be appointed such staff officers of the Alaska National Guard
18 as shall be prescribed by the laws of the United States and the
19 regulations of the Defense Department to complete the organization
20 of the headquarters. Assistant adjutants general for the Army
21 National Guard of Alaska and the Air National Guard shall be
22 appointed by the adjutant general with such rank and qualifications
23 as he may prescribe, provided, however, the appointments may carry
24 with them the rank of brigadier general and in such cases the appoint-
25 ment shall be subject to conformation by the joint session of the
26 legislature.

27 Sec. 1.20. ADMINISTRATION: FUNCTIONS. The adjutant general
28 shall make and publish such orders and regulations not contrary
29 to law, as in his judgment, are necessary to bring the organizations,

1 armament, equipment, and discipline of the organized militia to
2 a high degree of efficiency. He shall perform all the adminis-
3 trative functions incident to the operation of the Alaska National
4 Guard. It shall in addition be the duty of the adjutant general
5 to cause an inventory to be taken at least once each year of all
6 state military stores, property, and funds under his jurisdiction.

7 The adjutant general may require a bidder to whom a contract
8 is awarded to give bond running to the state in such sums and with
9 such surety as he shall direct, conditioned upon the faithful
10 performance of such contract; in case of breach of the conditions
11 of any such bond, action shall be brought thereon under super-
12 vision of the attorney general. All stores, supplies, or property
13 purchased under contract shall be rigidly inspected by an officer
14 detailed for that purpose by the adjutant general, and compared
15 with standard supplies and stores of like character, before the
16 same shall be accepted and paid for.

17 Sec. 1.21. OFFICERS' QUALIFICATIONS, APPOINTMENT AND
18 TENURE. No person shall be commissioned or warranted in any
19 office of the National Guard of Alaska unless he is a citizen
20 of the United States, 19 years of age or over, who shall have been
21 examined and adjudged qualified therefor by an examining board,
22 appointed by the commander-in-chief, provided that at the dis-
23 cretion of the adjutant general, the proceedings of federal examin-
24 ing boards may be accepted in lieu of above board. The composi-
25 tion, appointment and procedure of examining boards and the nature
26 and scope of examination shall be as prescribed by the military
27 laws or regulations of the United States or of this state.

28 Sec. 1.22. REMOVAL OF OFFICERS. At any time, the moral
29 character, capacity, and general fitness of any National Guard

1 officer may be determined by an efficiency board of not less than
2 three commissioned officers appointed by the commander-in-chief,
3 one of whom shall be medical officer or physician. The officers
4 of the board shall be equal to or senior in rank (except the
5 medical officer or physician) to the officer whose fitness shall
6 be under investigation. If the findings of the board are unfavor-
7 able and approved by the governor, such officer shall be discharged.
8 Commissions of officers may be vacated upon resignation, for
9 absence without leave for three months or more, upon recommendation
10 of an efficiency board, pursuant to court-martial sentence for
11 failure to meet federal recognition requirements, or for permanent
12 removal from the State of Alaska. Officers rendered surplus by the
13 disbandment of their organizations shall be placed in an inactive
14 status, pending a position vacancy in an active organization of
15 the Alaska National Guard. The governor may order inactive
16 National Guard officers to active service and when the situation
17 demands it in addition, the governor may relieve them from active
18 service and transfer them to the Inactive National Guard. Resig-
19 nations of officers must be in writing, addressed through National
20 Guard channels to the adjutant general, and shall state the
21 reasons for the resignation. Resignations shall take effect when
22 accepted by the adjutant general and announced in orders.

23 Sec. 1.23. RETIRED LIST. Every commissioned officer and
24 enlisted man upon reaching the maximum age prescribed for active
25 duty by appropriate regulations and any commissioned officer or
26 enlisted man who has become disabled or incapacitated for active
27 duty through no fault or dereliction of his own, and every
28 commissioned officer or enlisted man who has served honorably
29 with the Alaska National Guard in any capacity and is unable to

1 perform further active duty due to limitations imposed by appro-
2 priate regulations may be placed upon the retired list upon recom-
3 mendation by the adjutant general and approval of the governor.

4 Sec. 1.24. BONDS. Any person may be designated by the
5 governor to execute bond for the faithful performance of his duties
6 and when so ordered shall execute proper funds to the state in
7 such sums as he shall prescribe.

8 Sec. 1.25. ARMORIES AND RIFLE RANGES. a. Buildings and
9 sites for armory purposes may be leased or constructed, based
10 upon location and size of units to be organized, and shall be
11 financed out of the Military-Facilities Operations Fund, it being
12 understood that such facilities may be made available by local
13 communities or by the cooperative arrangement between the state
14 and the federal government and any local community.

15 b. The armory of each battalion, company, or other unit shall
16 be subject to the order of the adjutant general and be under the
17 charge of its commanding officer, who shall keep therein all
18 property furnished by the state. Excepting Scout Battalions
19 organized under special authority of the secretary of the army,
20 no unit shall be furnished with arms or equipment until a suitable
21 armory shall be provided for their deposit. Subject to such
22 regulations as may be promulgated by the adjutant general, the use
23 of armories may be permitted for any reasonable and legitimate
24 civilian activities so long as such activities do not interfere
25 with their use for military purposes. Proceeds received as rental
26 or otherwise at any armory from such non-military use shall be
27 deposited in the Military-Facilities Operations Fund.

28 c. All target ranges belonging to or leased by the state shall
29 be administered by the adjutant general. Gallery ranges may be

1 maintained at all armories occupied by state troops and every com-
2 mand shall be given suitable instruction in marksmanship under
3 direction of its commander, and regulations as authorized by the
4 adjutant general.

5 Sec. 1.26. ENLISTED MEN. Any able-bodied man of good charac-
6 ter who is a citizen of the United States or has declared his inten-
7 tion of becoming such, shall be eligible for enlistment in the Na-
8 tional Guard at such ages and for such periods of time as are pre-
9 scribed in federal or state regulations in effect at time of
10 enlistment.

11 Sec. 1.27. DISCHARGES. An enlisted man discharged from ser-
12 vice in the organized militia of Alaska shall receive a notice of
13 discharge in writing in such form and classification as shall be
14 prescribed by state law or regulations, and in time of peace or
15 when there is no declaration of national emergency, discharge may
16 be given prior to the expiration of terms of enlistment under such
17 regulations as may be prescribed by competent authority.

18 Sec. 1.28. PAY AND ALLOWANCES. a. The adjutant general is
19 charged with all disbursements of pay and allowances for service
20 of the troops.

21 b. The adjutant general shall receive compensation for state
22 service equal to the base pay provided by federal law for an
23 officer of equal grade of the United States Army or Air Force.

24 c. Commissioned and warrant officers of the Army and Air Na-
25 tional Guard while on active duty of the state shall receive the pay
26 and allowances of commissioned and warrant officers of similar grades
27 of the United States Army and Air Force respectively; provided that
28 no pay or allowances shall be made to commissioned or warrant
29 officers for any service for which they receive from the United

1 States the pay and allowances made to commissioned or warrant
2 officers for any service for which they receive from the United
3 States the pay and allowances made to commissioned and warrant offi-
4 cers of similar grade in the United States Army or Air Force.

5 d. Enlisted men of the Alaska Army and Air National Guard
6 while on active duty in the service of the state, except during
7 periods of encampments, maneuvers, drills, and other exercises,
8 including outdoor target practice, shall receive the same pay
9 and allowances as enlisted men of similar grade in the United
10 States Army or Air Force, respectively.

11 e. Commissioned and warrant officers and enlisted men while
12 in the active service of the state shall receive \$10.00 per diem
13 in addition to pay and allowances unless the state furnishes both
14 subsistence and quarters, in which case no per diem will be paid.

15 f. Any officer or enlisted man of the National Guard who may
16 be wounded or disabled in any way, while on active duty for the
17 state and lawfully performing the duties of the same, so as to
18 prevent his working at his profession, trade, or other occupation
19 from which he gains his living, shall be entitled to be treated
20 by an officer of the Medical Department detailed by the state
21 surgeon general, or if said medical officer is not available, by
22 any duly licensed civilian physician, and to draw one-half of
23 his active service pay, as specified in subsections d. and e. of
24 this section, for not to exceed thirty days of such disability
25 on the certificate of the attending medical officer or physician;
26 if still disabled at the end of thirty days, he shall be entitled
27 to draw pay at the same rate for such period as a board of three
28 medical officers or civilian physicians duly convened by order of
29 the commander-in-chief may determine to be right and just, but

1 not to exceed six months.

2 g. In every case where an officer or enlisted man of the
3 National Guard shall suffer permanent total disability or death
4 while performing his duty as an officer or enlisted man in pursu-
5 ance of orders from the commander-in-chief, said officer or en-
6 listed man, or his duty as an officer or enlisted man in pursuance
7 of orders from the commander-in-chief, said officer or enlisted
8 man, or his heirs or dependents, shall have a claim against the
9 state for financial help or assistance, on such terms and in such
10 amount, not exceeding \$7,500 as may be determined by a board of
11 three medical officers or three civilian physicians, to be right
12 and just, said board to be convened for this purpose by order of
13 the commander-in-chief.

14 h. Officers of the Medical Department and civilian physicians
15 who attend cases of injury or illness incurred in the line of duty
16 under subsection f. of this section shall be entitled to such
17 reasonable compensation in each case as the circumstances may
18 warrant, as approved by the adjutant general.

19 Sec. 1.29. PAYMENT OF MILITARY CLAIMS. All bills, claims,
20 and demands for military purposes shall be certified and audited
21 in the manner prescribed by the law and shall be paid from the
22 general fund in the normal manner upon submission of proper vouch-
23 ers by the adjutant general.

24 Sec. 1.30. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
25 There shall be provided by the state, transportation and subsis-
26 tence for all officers and enlisted men who shall be ordered into
27 active service by the state for encampment, field duty, or other
28 duty. Necessary transportation, stores and subsistence for
29 troops when ordered on duty shall be contracted by the proper

1 (8) "Duty status other than active state duty" means
2 service at encampments, armory drills, parades, and other author-
3 ized duties as a member of the National Guard, and includes going
4 to and returning from such duty.

5 (9) "Military court" means a court-martial, a court of
6 inquiry, or a provost court.

7 (10) "Law officer" means an official of a general court-
8 martial detailed in accordance with Sec. 5, Article V, Title II
9 of this Act.

10 (11) "State judge advocate" or similar term means the
11 commissioned officer responsible for supervising the administration
12 of the military justice in the organized militia.

13 (12) "Accuser" means a person who signs and swears to
14 charges, any person who directs that charges nominally be signed
15 and sworn by another, and any other person who has an interest
16 other than an official interest in the prosecution of the accused.

17 (13) "Convening authority" includes, in addition to
18 the person who convened the court, a commissioned officer command-
19 ing for the time being, or a successor in command.

20 (14) "Code" means this Act.

21 Sec. 2. PERSONS SUBJECT TO THIS CODE. The following persons
22 who are not in Federal service are subject to this code:

23 (1) Members of the organized militia;

24 (2) All other persons lawfully ordered to duty in or
25 with the organized or unorganized militia, from the dates they are
26 required by the terms of the order or other directive to obey the
27 same.

28 Sec. 3. JURISDICTION TO TRY CERTAIN PERSONNEL. a. All
29 persons discharged from the organized militia subsequently charged

1 with having fraudulently obtained said discharge shall, subject to
2 the provisions of Sec. 8, Article VII, Title II, be subject to
3 trial by court-martial on said charge and, after apprehension,
4 shall be subject to this code. Upon conviction of said charge they
5 shall be subject to trial by court-martial for all offenses under
6 this code committed prior to the fraudulent discharge.

7 b. Any person who has deserted from the organized militia
8 shall not be relieved from amenability to the jurisdiction of this
9 code by virtue of a separation from any subsequent period of
10 service.

11 Sec. 4. DISMISSAL OF COMMISSIONED OFFICER. a. If any
12 commissioned officer, dismissed by order of the governor for
13 absence without leave for a period of six months or more, makes a
14 written application for trial by court-martial, setting forth
15 under oath that he has been wrongfully dismissed, the governor, as
16 soon as practicable, shall convene a general court-martial to try
17 such commissioned officer on the charges on which he was dismissed.
18 A court-martial so convened shall have jurisdiction to try the
19 dismissed commissioned officer on such charges, and he shall be
20 held to have waived the right to plead any statute of limitations
21 applicable to the offense with which he is charged. The court-
22 martial may, as part of its sentence, adjudge the affirmance of
23 the dismissal, but if the court-martial acquits the accused or if
24 the sentence adjudged, as finally approved or affirmed, does not
25 include dismissal, the adjutant general shall substitute for the
26 dismissal orders by the governor a form of discharge authorized
27 for administrative issuance.

28 b. If the governor fails to convene a general court-martial
29 within six months from the presentation of an application for

1 trial under this code, the adjutant general shall substitute for
2 the dismissal ordered by the governor a form of discharge author-
3 ized for administrative issuance.

4 c. If a discharge is substituted for a dismissal under the
5 authority of this code, the governor alone may reappoint the
6 officer to such commissioned rank and precedence as, in the
7 opinion of the governor, such former commissioned officer would
8 have attained had he not been dismissed. The reappointment of
9 such a former officer may be made only if a vacancy is available
10 under applicable tables of organization. All time between the
11 dismissal and the reappointment shall be considered as service for
12 all purposes.

13 d. If an officer is discharged from the organized militia
14 by administrative action or by board proceedings pursuant to law,
15 or is dropped from the rolls by order of the governor, there shall
16 not be a right to trial under this section.

17 Sec. 5. TERRITORIAL APPLICABILITY OF THE CODE. a. This
18 code shall be applicable in all places within the state. It shall
19 also apply to all persons subject to this code while serving out-
20 side the state and while going to and returning from such service
21 outside the state in the same manner and to the same extent as if
22 they were serving within the state.

23 b. Courts-martial and courts of inquiry may be convened and
24 held in units of the organized militia while those units are serv-
25 ing outside the state with the same jurisdiction and powers as if
26 held inside the state, and offenses committed outside the state
27 may be tried and punished either inside or outside the state.

28 Sec. 6. JUDGE ADVOCATES AND LEGAL OFFICERS. a. The
29 adjutant general shall appoint an officer of the organized militia

1 as state judge advocate. To be eligible for appointment, an
2 officer must be a member of the bar of the supreme court of the
3 state and must have been a member of the bar of the state for a
4 period of not less than five years.

5 b. The adjutant general may appoint as many assistant judge
6 advocates as he shall deem necessary, which assistant state judge
7 advocates shall be officers of the organized militia and members of
8 the bar of any state.

9 c. The state judge advocate or his assistants shall make
10 frequent inspections in the field and shall supervise the adminis-
11 tration of military justice in the organized militia.

12 d. Convening authorities shall at all times communicate
13 directly with their staff judge advocates or legal officers in
14 matters relating to the administration of military justice; and
15 the staff judge advocate or legal officer of any command is author-
16 ized to communicate directly with the staff judge advocate or
17 legal officer of a superior or subordinate command, or with the
18 state judge advocate.

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

25 ARTICLE II -- APPREHENSION AND RESTRAINT

26 Section 1. APPREHENSION. a. Apprehension is the taking of
27 a person into custody.

28 b. Any person authorized by this code or by regulations
29 issued pursuant thereto, to apprehend persons subject to this code.

1 any marshal of a court-martial appointed pursuant to the provisions
2 of this code, and any peace officer authorized to do so by law may
3 apprehend within the state persons subject to this code upon
4 reasonable belief that an offense has been committed and that the
5 person apprehended committed it.

6 c. All commissioned officers, warrant officers, and non-
7 commissioned officers have authority to quell quarrels, frays, and
8 disorders among persons subject to this code and to apprehend
9 persons subject to this code who take part therein.

10 Sec. 2. APPREHENSION OF DESERTERS. Any civil officer having
11 authority to apprehend offenders under the laws of the United
12 States or of a state, commonwealth, territory or possession of the
13 United States, or the District of Columbia may summarily apprehend
14 a deserter from the organized militia and deliver him into the
15 custody of the organized militia. If an offender is apprehended
16 outside such an area, his return to the area must be in accordance
17 with normal extradition procedures, or reciprocal agreement.

18 Sec. 3. IMPOSITION OF RESTRAINT. a. Arrest is the restraint
19 of a person by an order not imposed as a punishment for an offense,
20 directing him to remain within certain specified limits. Confine-
21 ment is the physical restraint of a person.

22 b. An enlisted person may be ordered apprehended or into
23 arrest or confinement by any commissioned officer by an order, oral
24 or written, delivered in person or through other persons subject to
25 this code or through any person authorized by this code to appre-
26 hend persons. A commanding officer may authorize warrant officers,
27 or noncommissioned officers to order enlisted persons of his
28 command or subject to his authority apprehended or into arrest or
29 confinement.

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

7 d. No person may be ordered apprehended or into arrest or con-
8 finement except for probable cause.

9 e. Nothing in this section shall be construed to limit the
10 authority of persons authorized to apprehend offenders to secure
11 the custody of an alleged offender until proper authority may be
12 notified.

13 Sec. 4. RESTRAINT OF PERSONS CHARGED WITH OFFENSES. Any
14 person subject to this code charged with an offense under this code
15 shall be ordered apprehended or into arrest or confinement, as
16 circumstances may require; but when charged only with an offense
17 normally tried by a summary court-martial, such person shall not
18 ordinarily be placed in confinement. When any person subject to
19 this code is apprehended or placed in arrest or confinement prior
20 to trial, immediate steps shall be taken to inform him of the
21 specific wrong of which he is accused and to try him or to dismiss
22 the charges and release him.

23 Sec. 5. CONFINEMENT AND IMPRISONMENT IN CIVIL JAILS. Con-
24 finement and imprisonment other than in a guard house, whether
25 prior to, during, or after trial by a military court, shall be
26 executed in civil jails, penitentiaries or prisons designated by
27 the governor or by such person as he may authorize to act.

28 Sec. 6. REPORTS AND RECEIVING OF PRISONERS. a. No provost
29 marshal, commander of a guard, warden, keeper, or officer of a city

1 or borough jail or any other jail, penitentiary or prison designat-
2 ed under Sec. 5, Article II, Title II, of this code, may refuse to
3 receive or keep any prisoner committed to his charge when the com-
4 mitting person furnishes a statement, signed by him, of the offense
5 charged against the prisoner.

6 b. Every commander of a guard, warden, keeper, or officer of
7 a city or borough jail or of any other jail, penitentiary or
8 prison designated under Sec. 5, Article II, Title II, of this code,
9 to whose charge a prisoner is committed shall, within twenty-four
10 hours after such commitment or as soon as he is relieved from
11 guard, report to the commanding officer of the prisoner the name of
12 the prisoner, the offense charged against him, and the name of the
13 person who ordered or authorized the commitment.

14 Sec. 7. PUNISHMENT PROHIBITED BEFORE TRIAL. Subject to the
15 provisions of Sec. 3, Article VIII, Title II, no person, while
16 being held for trial or the result of trial, may be subjected to
17 punishment or penalty other than arrest or confinement upon the
18 charges pending against him, nor shall the arrest or confinement
19 imposed upon him be any more rigorous than the circumstances re-
20 quire to insure his presence, but he may be subjected to minor
21 punishment during such period for infractions of discipline, and
22 may be required to perform such labor as may be necessary for the
23 policing and sanitation of his living quarters and messing facili-
24 ties and the area immediately adjacent thereto.

25 Sec. 8. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES. a. Under
26 such regulations as may be issued pursuant to this code, a person
27 on active state duty subject to this code accused of an offense
28 against civil authority may be delivered, upon request, to the
29 civil authority for trial.

1 b. When delivery under this code is made to any civil author-
2 ity of a person undergoing sentence of a court-martial, such
3 delivery, if followed by conviction in a civil tribunal, shall be
4 held to interrupt the execution of the sentence of the court-
5 martial, and the offender after having answered to the civil author-
6 ities for his offense shall, upon the request of competent author-
7 ity, be returned to military custody for the completion of his
8 sentence.

9 ARTICLE III -- NON-JUDICIAL PUNISHMENT

10 Section 1. COMMANDING OFFICER'S NON-JUDICIAL PUNISHMENT.

11 a. Under such regulations as may be issued pursuant to this code,
12 any commanding officer may, in addition to or in lieu of admonition
13 or reprimand, impose one of the following disciplinary punishments
14 for minor offenses without the intervention of a court-martial:

15 (1) upon commissioned officers and warrant officers
16 of his command:

17 (a) withholding of privileges for a period not to
18 exceed two consecutive weeks;

19 (b) restriction to certain specified limits, with
20 or without suspension from duty, for a period not to exceed
21 two consecutive weeks; or

22 (c) if imposed by the governor, the commanding
23 officer of a force of the organized militia or the commanding
24 general of a division, a fine or forfeiture of pay and allow-
25 ances of not more than seventy-five dollars;

26 (2) upon other military personnel of his command:

27 (a) withholding of privileges for a period not to
28 exceed two consecutive weeks;

29 (b) restriction to certain specified limits with

1 or without suspension from duty, for a period not to exceed
2 two consecutive weeks;

3 (c) extra duties for a period not to exceed two
4 consecutive weeks, and not to exceed two hours per day,
5 holidays included;

6 (d) reduction to next inferior grade if the grade
7 from which demoted was established by the command or an
8 equivalent or lower command;

9 (e) if imposed by an officer exercising special
10 court-martial jurisdiction over the offender, a fine or for-
11 feiture of pay and allowances of not more than ten dollars.

12 b. Under such regulations as may be issued pursuant to this
13 code, limitations may be placed on the powers granted by this
14 section with respect to the kind and amount of punishment author-
15 ized and the categories of commanding officers authorized to
16 exercise such powers.

17 c. An officer in charge may, for minor offenses, impose on
18 enlisted persons assigned to the unit of which he is in charge,
19 such of the punishments authorized to be imposed by commanding
20 officers as may be specifically prescribed by regulations issued
21 pursuant to this code.

22 d. A person punished under this section who considers his
23 punishment unjust or disproportionate to the offense may, through
24 the proper channel, appeal to the next superior authority. The
25 appeal shall be promptly forwarded and decided, but the person
26 punished may in the meantime be required to undergo the punish-
27 ment adjudged. The officer who imposes the punishment, his
28 successor in command, and superior authority shall have power to
29 suspend, set aside, or remit any part or amount of the punishment

1 and to restore all rights, privileges and property affected.

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

10 f. Whenever a punishment of forfeiture of pay and allowances
11 is imposed under this section, the forfeiture may apply to pay or
12 allowances becoming due on or after the date such punishment is im-
13 posed and to any pay and allowances accrued before such date.

14 ARTICLE IV -- COURTS-MARTIAL JURISDICTION

15 Section 1. COURTS-MARTIAL CLASSIFIED. There shall be three
16 kinds of courts-martial in each of the forces of the organized
17 militia not in Federal service, namely:

18 (1) general courts-martial, which shall consist of a
19 law officer and any number of members (see section 504), but not
20 less than five;

21 (2) special courts-martial, which shall consist of any
22 number of members (see section 504), but not less than three; or
23 only of a law officer who has the qualifications set forth in
24 section 505 of this act and who is certified to be qualified for
25 duty as a single-officer special court-martial by the state judge
26 advocate if, before the court is convened, the accused, knowing the
27 identity of the law officer, and upon advice of counsel, requests
28 in writing a court composed only of a law officer and the convening
29 authority has consented thereto; and

1 (3) summary courts-martial, which shall consist of
2 one commissioned officer.

3 Sec. 2. JURISDICTION OF COURTS-MARTIAL IN GENERAL. Each
4 force of the organized militia shall have court-martial juris-
5 diction over all persons subject to this code. The exercise of
6 jurisdiction by one force over personnel of another force shall be
7 in accordance with regulations issued pursuant to law.

8 Sec. 3. JURISDICTION OF GENERAL COURTS-MARTIAL. Subject to
9 Sec. 2, Article IV, Title II, general courts-martial shall have
10 jurisdiction to try persons subject to this code for any offense
11 for which they may be punished under this code and may adjudge
12 any of the following punishments: confinement with hard labor
13 for not more than two hundred days; a fine of not more than two
14 hundred dollars or forfeiture of pay and allowances of not more
15 than two hundred dollars; dishonorable discharge, bad conduct
16 discharge or dismissal; reprimand; reduction of enlisted persons
17 to a lower grade; and any combination of these punishments. A
18 dishonorable discharge, bad conduct discharge or dismissal shall
19 not be adjudged by any court-martial unless a complete record of
20 the proceedings and testimony before the court has been made.

21 Sec. 4. JURISDICTION OF SPECIAL COURTS-MARTIAL. Subject
22 to Sec. 2, Article IV, Title II, special courts-martial shall
23 have jurisdiction to try persons subject to this code for any
24 offense for which they may be punished under this code. A
25 special court-martial may adjudge any punishment; a general
26 court-martial may adjudge, except dishonorable discharge, dis-
27 missal or confinement with hard labor for more than one hundred
28 days, forfeiture of pay and allowances of more than one hundred
29 dollars or a fine of more than one hundred dollars. A bad

SB #228

1 conduct discharge shall not be adjudged by any court-martial un-
2 less a complete record of the proceedings and testimony before
3 the court has been made.

4 Sec. 5. JURISDICTION OF SUMMARY COURTS-MARTIAL. a. Subject
5 to Sec. 2, Article IV, Title II, summary courts-martial shall have
6 jurisdiction to try persons subject to this code, except officers
7 and warrant officers, for any offense for which they may be
8 punished under this code.

9 b. No persons with respect to whom courts-martial have
10 jurisdiction shall be brought to trial before a summary court-
11 martial if he objects thereto, unless under Sec. 1, Article III,
12 Title II, he has been permitted and has elected to refuse punish-
13 ment under such section. If objection to trial by summary court-
14 martial is made by an accused who has not been permitted to refuse
15 punishment under Sec. 3, Article III, Title II, trial shall be
16 ordered by special or general court-martial, as may be appropriate.

17 c. Summary courts-martial may adjudge any of the following
18 punishments: confinement with hard labor for not exceeding
19 twenty-five days; a fine of not more than twenty-five dollars or
20 forfeiture of pay and allowances of not more than twenty-five
21 dollars; reprimand, reduction of enlisted persons to a lower
22 grade; and any combination of these punishments.

23 Sec. 6. CERTAIN SENTENCES TO BE APPROVED BY GOVERNOR. No
24 sentence of dismissal or dishonorable discharge may be executed
25 until it is approved by the governor.

26 Sec. 7. GENERAL OR SPECIAL COURT-MARTIAL, AUTHORIZED SEN-
27 TENCE OF AFTER DECLARATION OF WAR PRIOR TO JURISDICTION OF UNITED
28 STATES CODE OF MILITARY JUSTICE. A general or special court-
29 martial convened for the trial of a person charged with committing

1 an offense after the declaration of war or national emergency and
2 prior to the time when such person is brought under the juris-
3 diction of the United States Uniform Code of Military Justice,
4 (Chapter 47, Title 10, United States Code), may, upon conviction,
5 adjudge such punishment as may be appropriate, except that it may
6 not exceed that authorized for a similar offense by the United
7 States Uniform Code of Military Justice.

8 ARTICLE V -- APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

9 Section 1. WHO MAY CONVENE GENERAL COURTS-MARTIAL. General
10 courts-martial may be convened by the adjutant general.

11 Sec. 2. WHO MAY CONVENE SPECIAL COURTS-MARTIAL. a. Special
12 courts-martial may be convened by:

13 (1) any person who may convene a general court-martial;

14 (2) the commanding officer of a force of the organized
15 militia, or of a garrison, fort, camp, station, air base or other
16 place where members of the organized militia are on duty;

17 (3) the commanding officer of a division, brigade,
18 regiment, battle group, detached or separate battalion, or corres-
19 ponding unit of the army national guard.

20 (4) the commanding officer of a wing, group, detached
21 or separate squadron or corresponding unit of the air national
22 guard;

23 (5) the commanding officer of any separate or detached
24 command or group of detached units of any of the forces of the
25 organized militia placed under a single commander; or

26 (6) the commanding officer or officer in charge of any
27 other command when empowered by the adjutant general.

28 b. If any such officer is an accuser, the court shall be
29 convened by superior competent authority, and may in any case be

1 convened by superior competent authority.

2 Sec. 3. WHO MAY CONVENE SUMMARY COURTS-MARTIAL. a. Summary
3 courts-martial may be convened by:

4 (1) any person who may convene a general or special
5 court-martial;

6 (2) the commanding officer of a detached or separate
7 company or corresponding unit or other detachment of a force of
8 the organized militia;

9 (3) the commanding officer or officer in charge of any
10 other command when empowered by the adjutant general.

11 b. When only one commissioned officer is present with a
12 command or detachment he shall be the summary court-martial of
13 that command or detachment and shall hear and determine all
14 summary court-martial cases brought before him. Summary courts-
15 martial may, however, be convened in any case by superior
16 competent authority when deemed desirable by him.

17 Sec. 4. WHO MAY SERVE ON COURTS-MARTIAL. a. Any commis-
18 sioned officer of or on duty with the organized militia is
19 eligible to serve on all courts-martial for the trial of any
20 person who may lawfully be brought before such courts for trial.
21 Provided, however, to be eligible for appointment as a single-
22 officer special court-martial, the officer must have the quali-
23 fications specified for a law officer in Sec. 5, Article V, Title
24 II, of this Act and must be certified to be qualified for duty as
25 a single-officer special court-martial by the state judge
26 advocate.

27 b. Any warrant officer of or on duty with the organized
28 militia is eligible to serve on general and special courts-martial
29 for the trial of any person, other than a commissioned officer,

1 who may lawfully be brought before such courts for trial.

2 c. (1) Any enlisted member of the organized militia who is
3 not a member of the same unit as the accused is eligible to serve
4 on general and special courts-martial for the trial of any en-
5 listed person who may lawfully be brought before such courts for
6 trial, but he shall serve as a member of a court only if, prior to
7 the convening of such court, the accused personally has requested
8 in writing that enlisted members serve on it. After such a re-
9 quest, the accused shall not be tried by a general or special
10 court-martial the membership of which does not include enlisted
11 persons in a number comprising at least one-third of the total
12 membership of the court, unless eligible enlisted persons cannot
13 be obtained on account of physical conditions or military exig-
14 encies. If such members cannot be obtained, the court may be
15 convened and the trial held without them, but the convening
16 authority shall make a detailed written statement, to be appended
17 to the record, stating why they could not be obtained.

18 (2) For the purposes of this section, the word "unit"
19 means any regularly organized body of the organized militia not
20 larger than a company, a squadron, or a body corresponding to one
21 of them.

22 d. (1) When it can be avoided, no person subject to this
23 code shall be tried by a court-martial any member of which is
24 junior to him in rank or grade.

25 (2) When convening a court-martial, the convening
26 authority shall appoint as members thereof such members as, in
27 his opinion, are best qualified for the duty by reason of age,
28 education, training, experience, length of service, and judicial
29 temperament. No member shall be eligible to serve as a member

1 of general or special court-martial when he is the accuser or a
2 witness for the prosecution or has acted as investigating officer
3 or as counsel in the same case. If within the command of the
4 convening authority there is present and not otherwise disquali-
5 fied a commissioned officer who is a member of the bar of the
6 state and of appropriate rank, the convening authority shall
7 appoint him as president of a special court-martial. Although
8 this requirement is binding on the convening authority, failure to
9 meet it in any case does not divest a military court of jurisdiction.

10 Sec. 5. LAW OFFICER OF A GENERAL COURT-MARTIAL. a. The
11 authority convening a general court-martial shall appoint as law
12 officer thereof an officer who is a member of the bar of a state,
13 or a member of the bar of a federal court. No person shall be
14 eligible to act as law officer in a case when he is the accuser or
15 a witness for the prosecution or has acted as investigating officer
16 or as counsel in the same case.

17 b. The law officer shall not consult with the members of the
18 court, other than on the form of the findings as provided in Sec.
19 4, Article VII, Title II, except in the presence of the accused,
20 trial counsel and defense counsel, nor may he vote with the members
21 of the court.

22 Sec. 6. APPOINTMENT OF TRIAL COUNSEL AND DEFENSE COUNSEL.

23 a. For each general and special court-martial the authority con-
24 vening the court shall appoint a trial counsel and a defense
25 counsel, and such assistants as he deems necessary or appropriate.
26 No person who has acted as investigating officer, law officer, or
27 court member in any case shall act subsequently as trial counsel,
28 assistant trial counsel, or, unless expressly requested by the
29 accused, as defense counsel or assistant defense counsel in the

1 same case. No person who has acted for the prosecution may act
2 later in the same case for the defense, nor may any person who has
3 acted for the defense act later in the same case for the prosecu-
4 tion.

5 b. Any person who is appointed as trial counsel or defense
6 counsel in the case of a general court-martial must be a person
7 who is a member of the bar of one of the several states, or a
8 member of the bar of a federal court.

9 c. In the case of a special court-martial:

10 (1) if the trial counsel is qualified to act as counsel
11 before a general court-martial, the defense counsel appointed by
12 the convening authority must be a person similarly qualified; and

13 (2) if the trial counsel is a judge advocate, or a
14 member of the bar of one of the several states, the defense counsel
15 appointed by the convening authority must be one of the foregoing,

16 Sec. 7. APPOINTMENT OR EMPLOYMENT OF REPORTERS AND INTER-
17 PRETERS. Under such regulations as the adjutant general may pre-
18 scribe, the convening authority of a general or special court-
19 martial shall appoint or employ qualified court reporters, who
20 shall record the proceedings of and testimony taken before such
21 court. Under like regulations the convening authority of a
22 military court may appoint or employ an interpreter who shall
23 interpret for the court.

24 Sec. 8. ABSENT AND ADDITIONAL MEMBERS. a. No member of a
25 general or special court-martial shall be absent or excused after
26 the accused has been arraigned except for physical disability or
27 as a result of a challenge or by order of the convening authority
28 for good cause.

29 b. Whenever a general court-martial is reduced below five

1 members, the trial shall not proceed unless the convening author-
2 ity appoints new members sufficient in number to provide not less
3 than five members. When such new members have been sworn, the
4 trial may proceed after the recorded testimony of each witness
5 previously examined has been read to the court in the presence of
6 the law officer, the accused, and counsel.

7 c. Whenever a special court-martial is reduced below three
8 members, the trial shall not proceed unless the convening author-
9 ity appoints new members sufficient in number to provide not less
10 than three members. When such new members have been sworn, the
11 trial shall proceed as if no evidence had previously been intro-
12 duced, unless a verbatim record of the testimony of previously
13 examined witnesses or a stipulation thereof is read to the court
14 in the presence of the accused and counsel.

15 ARTICLE VI -- PRE-TRIAL PROCEDURE

16 Section 1. CHARGES AND SPECIFICATIONS. a. Charges and
17 specifications shall be signed by a person subject to this code
18 under oath before a person authorized by this code to administer
19 oaths and shall state:

20 (1) that the signer has personal knowledge of, or has
21 investigated, the matters set forth therein; and

22 (2) that they are true in fact to the best of his
23 knowledge and belief.

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

29 Sec. 2. COMPULSORY SELF-INCRIMINATION PROHIBITED. a. No

1 person subject to this code may compel any person to incriminate
2 himself or to answer any question the answer to which may tend to
3 incriminate him.

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

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

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

19 Sec. 3. INVESTIGATION. a. No charge or specification shall
20 be referred to a general court-martial for trial until a thorough
21 and impartial investigation of all the matters set forth therein
22 has been made. This investigation shall include inquiry as to
23 the truth of the matter set forth in the charges, consideration
24 of the form of charges, and a recommendation as to the disposition
25 which should be made of the case in the interest of justice and
26 discipline.

27 b. The accused shall be advised of the charges against him
28 and of his right to be represented at such investigation by
29 counsel. Upon his own request he shall be represented by civilian

1 counsel if provided by him, or military counsel of his own selec-
2 tion if such counsel is reasonably available, or by counsel
3 appointed by the officer exercising general court-martial juris-
4 diction over the command. At such investigation full opportunity
5 shall be given to the accused to cross-examine witnesses against
6 him if they are available and to present anything he may desire
7 in his own behalf, either in defense or mitigation, and the in-
8 vestigating officer shall examine available witnesses requested
9 by the accused. If the charges are forwarded after such inves-
10 tigation, they shall be accompanied by a statement of the sub-
11 stance of the testimony taken on both sides and a copy thereof
12 shall be given to the accused.

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

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

26 Sec. 4. FORWARDING OF CHARGES. When a person is held for
27 trial by general court martial the commanding officer shall, within
28 eight days after the accused is ordered into arrest or confinement,
29 if practicable, forward through channels the charges, together

1 with the investigation and allied papers, to the adjutant general.
2 If that is not practicable, he shall report in writing to the
3 adjutant general the reasons for delay.

4 Sec. 5. ADVICE OF STATE JUDGE ADVOCATE AND REFERENCE FOR
5 TRIAL. a. Before directing the trial of any charge by general
6 court-martial, the convening authority shall refer it to the state
7 judge advocate for consideration and advice. The convening author-
8 ity may not refer a charge to a general court-martial for trial
9 unless he has found that the charge alleges an offense under this
10 code and is warranted by evidence indicated in the report of
11 investigation.

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

18 Sec. 6. SERVICE OF CHARGES. The trial counsel to
19 whom court-martial charges are referred for trial shall
20 cause to be served upon the accused a copy of the
21 charges upon which trial is to be had. In time of
22 peace no person may, against his objection, be
23 brought to trial before a general court-martial within
24 a period of five days after the service of the charges
25 upon him, or before a special court-martial within a
26 period of three days subsequent to the service of the
27 charges upon him.

28 ARTICLE VII -- TRIAL PROCEDURE

29 Section 1. ADJUTANT GENERAL MAY PRESCRIBE RULES. The

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

8 Sec. 2. UNLAWFULLY INFLUENCING ACTION OF COURT. No authority
9 convening a general, special, or summary court-martial nor any
10 other commanding officer, or officer serving on the staff thereof,
11 may censure, reprimand, or admonish the court or any member, law
12 officer, or counsel thereof, with respect to the findings or
13 sentence adjudged by the court, or with respect to any other
14 exercise of its or his functions in the conduct of the proceeding.
15 No person subject to this code may attempt to coerce or, by any
16 unauthorized means, influence the action of a court-martial or any
17 other military tribunal or any member thereof, in reaching the
18 findings or sentence in any case, or the action of any convening,
19 approving, or reviewing authority with respect to his judicial
20 acts.

21 Sec. 3. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL.

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

26 b. The accused shall have the right to be represented in his
27 defense before a general or special court-martial by civilian
28 counsel if provided by him, or by military counsel of his own
29 selection if reasonably available, or by the defense counsel duly

1 appointed pursuant to Sec. 6, Article V, Title II. Should the
2 accused have counsel of his own selection, the duly appointed
3 defense counsel, and the assistant defense counsel, if any, shall,
4 if the accused so desires, act as his associate counsel; otherwise
5 they shall be excused by the president of the court.

6 c. In every court-martial proceeding, the defense counsel
7 may, in the event of conviction, forward for attachment to the
8 record of proceedings a brief of such matters as he feels should be
9 considered in behalf of the accused on review, including any
10 objection to the contents of the record which he may deem appropri-
11 ate.

12 d. An assistant trial counsel of a general court-martial may,
13 under the direction of the trial counsel or when he is qualified
14 to be a trial counsel as required by Sec. 6, Article V, Title II,
15 perform any duty imposed by law, regulation, or the custom of the
16 service upon the trial counsel of the court. An assistant trial
17 counsel of a special court-martial may perform any duty of the
18 trial counsel.

19 e. An assistant defense counsel of a general or special court-
20 martial may, under the direction of the defense counsel or when he
21 is qualified to be the defense counsel as required by Sec. 6, Article
22 V, Title II, perform any duty imposed by law, regulation, or the
23 custom of the service upon counsel for the accused.

24 Sec. 4. SESSIONS. Whenever a general or special court-martial
25 deliberates or votes, only the members of the court may be present.
26 After a general court-martial has finally voted on the findings,
27 the court may request the law officer and the reporter to appear
28 before the court to put the findings in proper form and such
29 proceedings shall be on the record. All other proceedings, includ-

1 ing any other consultation of the court with counsel or the law
2 officer, shall be made a part of the record and shall be in the
3 presence of the accused, the defense counsel, the trial counsel,
4 and, in general court-martial cases, the law officer.

5 Sec. 5. CONTINUANCES. A court-martial may, for reasonable
6 cause, grant a continuance to any party for such time, and as often,
7 as may appear to be just.

8 Sec. 6. CHALLENGES. a. Members of a general or special
9 court-martial and the law officer of a general court-martial may
10 be challenged by the accused or the trial counsel for cause stated
11 to the court. The court shall determine the relevancy and validity
12 of challenges for cause, and may not receive a challenge to more
13 than one person at a time. Challenges by the trial counsel shall
14 ordinarily be presented and decided before those by the accused
15 are offered.

16 b. Each accused and the trial counsel is entitled to one
17 peremptory challenge, but the law officer and an officer appointed
18 as a single-officer special court-martial may not be challenged
19 except for cause, and if the president of a special court-martial
20 is a member of the bar of the state, he may not be challenged
21 except for cause.

22 Sec. 7. OATHS. a. The law officer, interpreters, and, in
23 general and special courts-martial, members, trial counsel,
24 assistant trial counsel, defense counsel, assistant defense counsel
25 and reporters, shall take an oath or affirmation in the presence of
26 the accused to perform their duties faithfully.

27 b. Each witness before a military court shall be examined
28 on oath or affirmation.

29 Sec. 8. STATUTE OF LIMITATIONS. a. A person charged with

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

4 b. Except as otherwise provided in this section, a person
5 charged with desertion in time of peace or any of the offenses
6 punishable under sections 1040 and 1041 shall not be liable to be
7 tried by court-martial if the offense was committed more than
8 three years before the receipt of sworn charges and specifications
9 by an officer exercising summary court-martial jurisdiction over
10 the command.

11 c. Except as otherwise provided in this section, a person
12 charged with any offense shall not be liable to be tried by court-
13 martial or punished under section 301 if the offense was committed
14 more than two years before the receipt of sworn charges and
15 specifications by an officer exercising summary court-martial
16 jurisdiction over the command or before the imposition of punish-
17 ment under section 301.

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

23 Sec. 9. FORMER JEOPARDY. a. No person may, without his
24 consent, be tried a second time in any military court of the state
25 for the same offense.

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

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

6 Sec. 10. PLEAS OF THE ACCUSED. If an accused arraigned
7 before a court-martial makes any irregular pleading, or after a
8 plea of guilty sets up matter inconsistent with the plea, or if it
9 appears that he has entered the plea of guilty improvidently or
10 through lack of understanding of its meaning and effect, or if he
11 fails or refuses to plead, a plea of not guilty shall be entered
12 in the record and the court shall proceed as though he had pleaded
13 not guilty.

14 Sec. 11. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.
15 The trial counsel, the defense counsel, and the court-martial
16 shall have equal opportunity to obtain witnesses and other evidence
17 in accordance with such regulations as the adjutant general may
18 prescribe. Process issued in court-martial cases to compel
19 witnesses to appear and testify and to compel the production of
20 other evidence shall run to any part of the state.

21 Sec. 12. REFUSAL TO APPEAR OR TESTIFY. a. Any person not
22 subject to this code who

23 (1) has been duly subpoenaed to appear as a witness or
24 to produce books and records before a military court or before any
25 military or civil officer designated to take a deposition to be
26 read in evidence before such a court; and

27 (2) has been duly paid or tendered the fees and mileage
28 of a witness at the rates allowed to witnesses attending the
29 supreme court [circuit court, etc.] of the state; and

1 (3) wilfully neglects or refuses to appear, or refuses
2 to qualify as a witness or to testify or to produce any evidence
3 which that person may have been legally subpoenaed to produce, as
4 provided with respect to actions or proceedings in the supreme
5 court [circuit court, etc.] of the state shall be punished as a
6 court-martial may direct.

7 Sec. 13. CONTEMPTS. A military court may punish for
8 contempt any person who uses any menacing word, sign, or gesture
9 in its presence, or who disturbs its proceeding by any riot or
10 disorder. The punishment may not exceed confinement for thirty
11 days or a fine of one hundred dollars, or both.

12 Sec. 14. DEPOSITIONS. a. At any time after charges have
13 been signed, as provided in Sec. 1, Article VI, Title II, any
14 party may take oral or written depositions unless an authority
15 competent to convene a court-martial for the trial of those
16 charges forbids it for a good cause. If a deposition is to be
17 taken before charges are referred for trial, such an authority may
18 designate commissioned officers to represent the prosecution and
19 the defense and may authorize such officers to take the deposition
20 of any witness.

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

24 c. Depositions may be taken before and authenticated by any
25 military or civil officer authorized by the laws of the state or
26 by the laws of the place where the deposition is taken to administer
27 oaths.

28 d. A duly authenticated deposition taken upon reasonable
29 notice to the other party, so far as otherwise admissible under

1 the rules of evidence, may be read in evidence before any court-
2 martial or in any proceeding before a court of inquiry, if it
3 appears

4 (1) that the witness resides or is beyond the state in
5 which the court-martial or court of inquiry is ordered to sit,
6 or beyond the distance of one hundred miles from the place of
7 trial or hearing;

8 (2) that the witness by reason of death, age, sickness,
9 bodily infirmity, imprisonment, military necessity, non-
10 amenability to process, or other reasonable cause, is unable or
11 refuses to appear and testify in person at the place of trial or
12 hearing; or

13 (3) that the present whereabouts of the witness is
14 unknown.

15 Sec. 15. VOTING AND RULINGS. a. Voting by members of a
16 general or special court-martial upon questions of challenge,
17 on the findings, and on the sentence shall be by secret written
18 ballot. The junior member of the court shall in each case count
19 the votes. The count shall be checked by the president, who
20 shall forthwith announce the result of the ballot to the members
21 of the court.

22 b. The law officer of a general court-martial and the
23 president of a special court-martial shall rule upon interlocutory
24 questions, other than challenge, arising during the proceedings.
25 Any such ruling made by the law officer of a general court-martial
26 or by the president of a special court-martial who is a member of
27 the bar of the state upon any interlocutory question other than
28 the question of accused's sanity, is final and constitutes the
29 ruling of the court. However, the law officer or president may

1 change the ruling at any time during the trial except a ruling on
2 a motion for a finding of not guilty that was granted. Unless the
3 ruling is final, if any member objects thereto, the court shall be
4 cleared and closed and the question decided by a voice vote as
5 provided in Sec. 6, Article VII, Title II, beginning with the
6 junior in rank.

7 c. Before a vote is taken on the findings, the law officer of
8 a general court-martial and the president of a special court-martial
9 shall, in the presence of the accused and counsel, instruct the
10 court as to the elements of the offense and charge the court

11 (1) that the accused must be presumed to be innocent
12 until his guilt is established by legal and competent evidence
13 beyond reasonable doubt;

14 (2) that in the case being considered, if there is a
15 reasonable doubt as to the guilt of the accused, the doubt must be
16 resolved in favor of the accused and he must be acquitted;

17 (3) that if there is a reasonable doubt as to the
18 degree of guilt, the finding must be in a lower degree as to which
19 there is no reasonable doubt; and

20 (4) that the burden of proof to establish the guilt of
21 the accused beyond reasonable doubt is upon the state.

22 d. Subsections a., b., and c. of this section do not apply
23 to a single-officer special court-martial. An officer who is
24 appointed as a single-officer special court-martial shall determine
25 all questions of law and fact arising during the trial and, if the
26 accused is convicted, adjudge an appropriate sentence.

27 Sec. 16. NUMBER OF VOTES REQUIRED. a. No person may be
28 convicted of any offense, except by the concurrence of two-thirds
29 of the members present at the time the vote is taken.

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

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

11 Sec. 17. COURT TO ANNOUNCE ACTION. A court-martial shall
12 announce its findings and sentence to the parties as soon as
13 determined.

14 Sec. 18. RECORD OF TRIAL. a. Each court-martial shall make
15 a separate record of the proceedings of the trial of each case
16 brought before it and the record shall be authenticated by the
17 signature of the president and the law officer. In case the record
18 cannot be authenticated by either the president or the law officer,
19 it shall be signed by a member in lieu of him. If both the
20 president and the law officer are unavailable, the record shall be
21 authenticated by two members. A record of the proceedings of a
22 trial in which the sentence adjudged includes a bad-conduct dis-
23 charge or is more than that which could be adjudged by a special
24 court-martial shall contain a complete verbatim account of the
25 proceedings and testimony before the court. All other records of
26 trial shall contain such matter and be authenticated in such
27 manner as the adjutant general may, by regulation, prescribe.

28 b. A copy of the record of the proceedings of each general
29 and special court-martial shall be given to the accused as soon as

1 it is authenticated. If a verbatim record of trial by general
2 court-martial is not required by subsection a., the accused may
3 buy such a record under such regulations as the adjutant general
4 may prescribe.

5 ARTICLE VIII-SENTENCES

6 Section 1. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED.
7 Punishment by flogging, or by branding, marking or tatooing on the
8 body, or any other cruel or unusual punishment, may not be adjudged
9 by any court-martial or inflicted upon any person subject to this
10 code. The use of irons, single or double, except for the purpose
11 of safe custody, is prohibited.

12 Sec. 2. MAXIMUM LIMITS. The punishment which a court-martial
13 may direct for an offense may not exceed the limits prescribed by
14 this code.

15 Sec. 3. EFFECTIVE DATE OF SENTENCES. a. Whenever a sentence
16 of a court-martial as lawfully adjudged and approved includes a
17 forfeiture of pay or allowances in addition to confinement not
18 suspended, the forfeiture may apply to pay or allowances becoming
19 due on or after the date the sentence is approved by the convening
20 authority.

21 b. Any period of confinement included in a sentence of a
22 court-martial shall begin to run from the date the sentence is
23 adjudged by the court-martial but periods during which the
24 sentence to confinement is suspended shall be excluded in computing
25 the service of the term of confinement. Regulations adopted under
26 this code may provide that sentences of confinement may not be
27 executed until approved by officers designated in such regulations.

28 c. All other sentences of court-martial are effective on the
29 date order executed.

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

12 ARTICLE IX -- REVIEW OF COURTS-MARTIAL

13 Section 1. EXECUTION OF SENTENCE; SUSPENSION OF SENTENCE.

14 Except as provided in Sec. 7, Article IV, and Sec. 7, Article IX,
15 Title II, this code, a court-martial sentence, unless suspended,
16 may be ordered executed by the convening authority when approved
17 by him. He shall approve the sentence or such part, amount, or
18 commuted form of the sentence as he sees fit, and may suspend the
19 execution of the sentence as approved by him.

20 Sec. 2. INITIAL ACTION ON THE RECORD. After a trial by
21 court-martial the record shall be forwarded to the convening auth-
22 ority, as reviewing authority, and action thereon may be taken by
23 the person who convened the court, a commissioned officer command-
24 ing for the time being, a successor in command, or by the
25 governor.

26 Sec. 3. SAME -- GENERAL COURT-MARTIAL RECORDS. The conven-
27 ing authority shall refer the record of each general court-martial
28 to the state judge advocate, who shall submit his written opinion
29 thereon to the convening authority. If the final action of the
SB # 228

1 court has resulted in an acquittal of all charges and specifica-
2 tions, the opinion shall be limited to questions of jurisdiction.

3 Sec. 4. RECONSIDERATION AND REVISION. a. If a specifica-
4 tion before a court-martial has been dismissed on motion and the
5 ruling does not amount to a finding of not guilty, the convening
6 authority may return the record to the court for reconsideration
7 of the ruling and any further appropriate action.

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

15 (1) for reconsideration of a finding of not guilty of
16 any specification, or a ruling which amounts to a finding of not
17 guilty; or

18 (2) for reconsideration of a finding of not guilty of
19 any charge, unless the record shows a finding of guilty under a
20 specification laid under that charge, which sufficiently alleges
21 a violation of some section of this code; or

22 (3) for increasing the severity of the sentence unless
23 the sentence prescribed for the offense is mandatory.

24 Sec. 5. REHEARINGS. a. If the convening authority dis-
25 approves the findings and sentence of a court-martial he may, ex-
26 cept where there is a lack of sufficient evidence in the record to
27 support the findings, order a rehearing. In such a case he shall
28 state the reasons for disapproval. If he disapproves the findings
29 and sentence and does not order a rehearing, he shall dismiss the

1 charges.

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

11 Sec. 6. APPROVAL BY THE CONVENING AUTHORITY. In acting on
12 the findings and sentence of a court-martial, the convening author-
13 ity may approve only such findings of guilty, and the sentence or
14 such part or amount of the sentence, as he finds correct in law
15 and fact and as he in his discretion determines should be approved.
16 Unless he indicates otherwise, approval of the sentence is
17 approval of the findings and sentence.

18 Sec. 7. REVIEW OF RECORDS; DISPOSITION. a. If the conven-
19 ing authority is the adjutant general, his action on the review
20 of any record of trial is final.

21 b. In all other cases not covered by subsection a., if the
22 sentence of a special court-martial as approved by the convening
23 authority includes a bad conduct discharge, whether or not sus-
24 pended, the entire record shall be sent to the appropriate staff
25 judge advocate or legal officer of the state force concerned to be
26 reviewed in the same manner as a record of trial by general court-
27 martial. The record and the opinion of the staff judge advocate
28 or legal officer shall then be sent to the state judge advocate
29 for review.

1 c. All other special and summary court-martial records shall
2 be sent to the appropriate staff judge advocate or legal officer
3 of the appropriate force of the organized militia and shall be
4 acted upon, transmitted, and disposed of as may be prescribed by
5 regulations issued under this code.

6 d. The state judge advocate shall review the record of trial
7 in each case sent to him for review as provided under subsection c.
8 If the final action of the court-martial has resulted in an
9 acquittal of all charges and specifications, the opinion of the
10 state judge advocate shall be limited to questions of jurisdiction.

11 e. In a case reviewable by the state judge advocate under
12 this section, the state judge advocate shall take final action.

13 f. In a case reviewable by the state judge advocate under
14 this section, the state judge advocate may:

15 (1) act only with respect to the findings and sentence
16 as approved by the convening authority;

17 (2) affirm only such findings of guilty, and the
18 sentence or such parts of the sentence as he finds correct in law
19 and fact and determines on the basis of the entire record should
20 be approved;

21 (3) weigh the evidence, judge the credibility of
22 witnesses, and determine controverted questions of fact, recogniz-
23 ing that the trial court saw and heard the witnesses;

24 (4) order a rehearing if he set aside the findings
25 and sentence, except where there is not enough evidence to support
26 the findings; and

27 (5) order that the charges be dismissed if he sets
28 aside the findings and sentence and does not order a rehearing.

29 g. In a case reviewable by the state judge advocate under

1 this section, he shall instruct the convening authority to act in
2 accordance with his decision on the review. If he has ordered a
3 rehearing but the convening authority finds a rehearing impractic-
4 able, he may dismiss the charges.

5 h. The state judge advocate may order one or more boards of
6 review each composed of not less than three commissioned officers
7 of the organized militia or on the state reserve list or state re-
8 tired list each of whom must be a member of the bar of the state.
9 Each board of review shall review the record of any trial by
10 special court-martial, including a sentence to a bad conduct dis-
11 charge, referred to it by the state judge advocate. Boards of
12 review have the same authority on review as the state judge
13 advocate has under this section.

14 Sec. 8. ERROR OF LAW; LESSER INCLUDED OFFENSE. a. A find-
15 ing or sentence of a court-martial may not be held incorrect on
16 the ground of an error of law unless the error materially prejudic-
17 es the substantial rights of the accused.

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

21 Sec. 9. REVIEW COUNSEL. a. Upon the final review of a
22 sentence of a general court-martial or of a sentence to a bad
23 conduct discharge, the accused has the right to be represented
24 by counsel before the reviewing authority, before the staff judge
25 advocate or legal officer, as the case may be, and before the
26 state judge advocate.

27 b. Upon the request of an accused entitled to be so repre-
28 sented, the state judge advocate shall appoint a lawyer who is
29 a member of the organized militia or on the state reserve list

1 or the state retired list and who has the qualifications prescribed
2 in Sec. 6, Article V, Title II, if available, to represent the
3 accused before the reviewing authority, before the staff judge
4 advocate or legal officer, as the case may be, and before the
5 state judge advocate, in the review of cases specified in sub-
6 section a of this section.

7 c. If provided by him, an accused entitled to be so repre-
8 sented may be represented by civilian counsel before the review-
9 ing authority, before the staff judge advocate or legal officer,
10 as the case may be, and before the state judge advocate.

11 Sec. 10. VACATION OF SUSPENSION. a. Before the vacation
12 of the suspension of a special court-martial sentence which as
13 approved includes a bad conduct discharge, or of any general
14 court-martial sentence, the officer having special court-martial
15 jurisdiction over the probationer shall hold a hearing on the
16 alleged violation of probation. If he so desires the probationer
17 shall be represented at such hearing either by counsel provided
18 by him or by counsel provided for him at his request in the same
19 manner as specified in Sec. 9, Article IX, Title II of this code.

20 b. The record of the hearing and the recommendation of the
21 officer having special court-martial jurisdiction shall be sent
22 for action to the Adjutant General in cases involving a general
23 court-martial sentence and in all other cases covered by subsection
24 a of this section, to the commanding officer of the force of the
25 organized militia of which the probationer is a member. If the
26 Adjutant General or commanding officer vacates the suspension,
27 any unexecuted portion of the sentence except a dismissal shall
28 be executed.

29 c. The suspension of any other sentence may be vacated by

1 any authority competent to convene, for the command in which the
2 accused is serving or assigned, a court of the kind that imposed
3 the sentence.

4 Sec. 11. PETITION FOR A NEW TRIAL. At any time within two
5 years after approval by the convening authority of a court-martial
6 sentence which extends to dismissal, dishonorable or bad conduct
7 discharge, the accused may petition the Governor for a new trial
8 on ground of newly discovered evidence or fraud on the court-
9 martial.

10 Sec. 12. REMISSION AND SUSPENSION. a. A convening authority
11 may remit or suspend any part or amount of the unexecuted part of
12 any sentence, including all uncollected forfeitures.

13 b. The Governor may, for good cause, substitute an admin-
14 istrative form of discharge for a discharge or dismissal executed
15 in accordance with the sentence of a court-martial.

16 Sec. 13. RESTORATION. a. Under such regulations as may
17 be prescribed under this code, all rights, privileges, and prop-
18 erty affected by an executed part of a court-martial sentence
19 which has been set aside or disapproved, except an executed dis-
20 missal or discharge, shall be restored unless a new trial or re-
21 hearing is ordered and such executed part is included in a sentence
22 imposed upon the new trial or rehearing.

23 b. If a previously executed sentence of dishonorable or
24 bad conduct discharge is not imposed on a new trial, the Governor
25 shall substitute therefor a form of discharge authorized for
26 administrative issuance unless the accused is to serve out the
27 remainder of his enlistment.

28 c. If a previously executed sentence of dismissal is not
29 imposed on a new trial, the Governor shall substitute therefor

1 a form of discharge authorized for administrative issue, and the
2 commissioned officer dismissed by that sentence may be reappointed
3 by the Governor alone to such commissioned grade and with such
4 rank and precedence as in the opinion of the Governor such former
5 officer would have attained had he not been dismissed. The re-
6 appointment of such a former officer may be made if a position
7 vacancy is available under applicable tables of organization.
8 All time between the dismissal and reappointment shall be con-
9 sidered as service for all purposes.

10 Sec. 14. FINALITY OF PROCEEDINGS, FINDINGS AND SENTENCES.

11 The proceedings, findings, and sentences of courts-martial as
12 reviewed and approved, as required by this code, and all dis-
13 missals and discharges carried into execution under sentences
14 by courts-martial following review and approval, as required by
15 this code, are final and conclusive. Orders publishing the pro-
16 ceedings of courts-martial and all action taken pursuant to those
17 proceedings are binding upon all departments, courts, agencies,
18 and officers of the state, subject only to action upon a petition
19 for a new trial as provided in Sec. 11, Article IX, Title II of
20 this code.

21 ARTICLE X--PUNITIVE ARTICLES

22 Section 1. PERSONS TO BE TRIED OR PUNISHED. No person may
23 be tried or punished for any offense provided for in Secs. 2
24 through 44, Article X, Title II, inclusive, of this code, unless
25 it was committed while he was in a duty status.

26 Sec. 2. PRINCIPALS. Any person subject to this code is a
27 principal who:

28 (1) commits an offense punishable by this code, or
29 aids, abets, counsels, commands, or procures its commission; or

SB #228

1 (2) causes an act to be done which if directly per-
2 formed by him would be punishable by this code.

3 Sec. 3. ACCESSORY AFTER THE FACT. Any person subject to
4 this code who, knowing that an offense punishable by this code
5 has been committed, receives, comforts, or assists the offender
6 in order to hinder or prevent his apprehension, trial, or punish-
7 ment shall be punished as a court-martial may direct.

8 Sec. 4. CONVICTION OF LESSER INCLUDED OFFENSE. An accused
9 may be found guilty of an offense necessarily included in the
10 offense charged or of an attempt to commit either the offense
11 charged or of an offense necessarily included therein.

12 Sec. 5. ATTEMPTS. a. An act, done with specific intent to
13 commit an offense under this code, amounting to more than mere
14 preparation and tending, even though failing, to effect its
15 commission, is an attempt to commit that offense.

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

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

22 Sec. 6. CONSPIRACY. Any person subject to this code who
23 conspires with any other person to commit an offense under this
24 code shall, if one or more of the conspirators does an act to
25 effect the object of the conspiracy, be punished as a court-martial
26 may direct.

27 Sec. 7. SOLICITATION. a. Any person subject to this code
28 who solicits or advises another or others to desert in violation
29 of Sec. 10, Article X, Title II of this code or mutiny in

1 violation of Sec. 19, Article X, Title II of this code shall, if
2 the offense solicited or advised is attempted or committed, be
3 punished with the punishment provided for the commission of the
4 offense, but, if the offense solicited or advised is not committed
5 or attempted, he shall be punished as a court-martial may direct.

6 b. Any person subject to this code who solicits or advises
7 another or others to commit an act of misbehavior before the
8 enemy in violation of Sec. 24, Article X, Title II of this code
9 or sedition in violation of Sec. 19, Article X, Title II of this
10 code shall, if the offense solicited or advised is committed, be
11 punished with the punishment provided for the commission of the
12 offense, but, if the offense solicited or advised is not committed
13 he shall be punished as a court-martial may direct.

14 Sec. 8. FRAUDULENT ENLISTMENT, APPOINTMENT OR SEPARATION.

15 Any person who

16 (1) procures his own enlistment or appointment in the
17 organized militia by means of knowingly false representations or
18 deliberate concealment as to his qualifications for such enlistment
19 or appointment and receives pay or allowances thereunder; or

20 (2) procures his own separation from the organized
21 militia by means of knowingly false representations or deliberate
22 concealment as to his eligibility for such separation;
23 shall be punished as a court-martial may direct.

24 Sec. 9. UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION.

25 Any person subject to this code who effects an enlistment or
26 appointment in or a separation from the organized militia of any
27 person who is known to him to be ineligible for such enlistment,
28 appointment, or separation because it is prohibited by law,
29 regulation, or order shall be punished as a court-martial may

1 direct.

2 Sec. 10. DESERTION. a. Any member of the organized militia
3 who

4 (1) without authority goes or remains absent from his
5 unit, organization, or place of duty with intent to remain away
6 therefrom permanently;

7 (2) quits his unit, organization or place of duty with
8 intent to avoid hazardous duty or to shirk important service; or

9 (3) without being regularly separated from one of the
10 forces of the organized militia enlists or accepts an appointment
11 in the same or another one of the forces of the organized militia
12 without fully disclosing the fact that he has not been regularly
13 separated;
14 is guilty of desertion.

15 b. Any commissioned officer of the organized militia who,
16 after tender of his resignation and before notice of its acceptance,
17 quits his post or proper duties without leave and with intent to
18 remain away therefrom permanently is guilty of desertion.

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

21 Sec. 11. ABSENCE WITHOUT LEAVE. Any person subject to this
22 code who, without authority:

23 (1) fails to go to his appointed place of duty at the
24 time prescribed;

25 (2) goes from that place; or

26 (3) absents himself or remains absent from his unit,
27 organization, or place of duty at which he is required to be at
28 the time prescribed;

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

1 Sec. 12. MISSING MOVEMENT. Any person subject to this code
2 who through neglect or design misses the movement of a ship,
3 aircraft, or unit with which he is required in the course of duty
4 to move shall be punished as a court-martial may direct.

5 Sec. 13. CONTEMPT TOWARDS OFFICIALS. Any person subject to
6 this code who uses contemptuous words against the President, the
7 Governor, or the legislature shall be punished as a court-martial
8 may direct.

9 Sec. 14. DISRESPECT TOWARDS SUPERIOR COMMISSIONED OFFICER.
10 Any person subject to this code who behaves with disrespect towards
11 his superior commissioned officer shall be punished as a court-
12 martial may direct.

13 Sec. 15. ASSAULTING OR WILFULLY DISOBEYING SUPERIOR COMMIS-
14 SIONED OFFICER. Any person subject to this code who

15 (1) strikes his superior commissioned officer or draws
16 or lifts up any weapon or offers any violence against him while
17 he is in the execution of his office; or

18 (2) wilfully disobeys a lawful command of his superior
19 commissioned officer;
20 shall be punished as a court-martial may direct.

21 Sec. 16. INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER, NON-
22 COMMISSIONED OFFICER, OR PETTY OFFICER. Any warrant officer or
23 enlisted person who:

24 (1) strikes or assaults a warrant officer, noncommis-
25 sioned officer, while that officer is in the execution of his
26 office;

27 (2) wilfully disobeys the lawful order of a warrant
28 officer or noncommissioned officer; or

29 (3) treats with contempt or is disrespectful in language

1 or deportment toward a warrant officer or noncommissioned officer,
2 while that officer is in the execution of his office;
3 shall be punished as a court-martial may direct.

4 Sec. 17. FAILURE TO OBEY ORDER OR REGULATION. Any person
5 subject to this code who:

6 (1) violates or fails to obey any lawful general order
7 or regulation;

8 (2) having knowledge of any other lawful order issued
9 by a member of the armed forces, which it is his duty to obey,
10 fails to obey the order; or

11 (3) is derelict in the performance of his duties;
12 shall be punished as a court-martial may direct.

13 Sec. 18. CRUELTY AND MALTREATMENT. Any person subject to
14 this code who is guilty of cruelty toward, or oppression or mal-
15 treatment of, any person subject to his orders shall be punished
16 as a court-martial may direct.

17 Sec. 19. MUTINY OR SEDITION. a. Any person subject to this
18 code who:

19 (1) with intent to usurp or override lawful military
20 authority refuses, in concert with any other person, to obey
21 orders or otherwise do his duty or creates any violence or dis-
22 turbance is guilty of mutiny;

23 (2) with intent to cause the overthrow or destruction
24 of lawful civil authority, creates, in concert with any other
25 person, revolt, violence, or other disturbance against such
26 authority is guilty of sedition.

27 (3) fails to do his utmost to prevent and suppress a
28 mutiny or sedition being committed in his presence, or fails to
29 take all reasonable means to inform his superior commissioned

1 officer or commanding officer of a mutiny or sedition which he
2 knows or has reason to believe is taking place, is guilty of a
3 failure to suppress or report a mutiny or sedition.

4 b. A person who is found guilty of attempted mutiny, mutiny,
5 sedition, or failure to suppress or report a mutiny or sedition
6 shall be punished as a court-martial may direct.

7 Sec. 20. RESISTANCE, BREACH OF ARREST, AND ESCAPE. Any
8 person subject to this code who resists apprehension or breaks
9 arrest or who escapes from physical restraint lawfully imposed
10 shall be punished as a court-martial may direct.

11 Sec. 21. RELEASING PRISONER WITHOUT PROPER AUTHORITY. Any
12 person subject to this code who, without proper authority, releases
13 any prisoner committed to his charge, or who through neglect or
14 design suffers any such prisoner to escape, shall be punished
15 as a court-martial may direct, whether or not the prisoner was
16 committed in strict compliance with law.

17 Sec. 22. UNLAWFUL DETENTION OF ANOTHER. Any person subject
18 to this code who, except as provided by law or regulation,
19 apprehends, arrests, or confines any person shall be punished as
20 a court-martial may direct.

21 Sec. 23. NONCOMPLIANCE WITH PROCEDURAL RULES. Any person
22 subject to this code who:

23 (1) is responsible for unnecessary delay in the disposi-
24 tion of any case of a person accused of an offense under this
25 code; or

26 (2) knowingly and intentionally fails to enforce or
27 comply with any provision of this code regulating the proceedings
28 before, during, or after trial of an accused;
29 shall be punished as a court-martial may direct.

1 Sec. 24. MISBEHAVIOR BEFORE THE ENEMY. Any person subject
2 to this code who before or in the presence of the enemy:

3 (1) runs away;

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

7 (3) through disobedience, neglect, or intentional mis-
8 conduct endangers the safety of any such command, unit, place, or
9 military property which it is his duty to defend;

10 (4) casts away his arms or ammunition;

11 (5) is guilty of cowardly conduct;

12 (6) quits his place of duty to plunder or pillage;

13 (7) causes false alarms in any command, unit, or place
14 under control of the armed forces of the United States or the
15 organized militia;

16 (8) wilfully fails to do his utmost to encounter, engage,
17 capture, or destroy any enemy troops, combatants, vessels, air-
18 craft, or any other thing, which it is his duty to so encounter,
19 engage, capture, or destroy; or

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

25 Sec. 25. SUBORDINATE COMPELLING SURRENDER. Any person
26 subject to this code who compels or attempts to compel a commander
27 of any place, vessel, aircraft, or other military property, or of
28 any body of members of the armed forces of the United States,
29 this state, or of any other state, to give it up to an enemy or

1 to abandon it, or who strikes the colors or flag to an enemy with-
2 out proper authority, shall be punished as a court-martial may
3 direct.

4 Sec. 26. IMPROPER USE OF COUNTERSIGN. Any person subject
5 to this code who in time of war discloses the parole or counter-
6 sign to any person not entitled to receive it, or who gives to
7 another who is entitled to receive and use the parole or counter-
8 sign a different parole or countersign from that which, to his
9 knowledge, he was authorized and required to give, shall be
10 punished as a court-martial may direct.

11 Sec. 27. FORCING A SAFEGUARD. Any person subject to this
12 code who forces a safeguard shall be punished as a court-martial
13 may direct.

14 Sec. 27. CAPTURED OR ABANDONED PROPERTY. a. All persons
15 subject to this code shall secure all public property taken from
16 the enemy for the service of the United States, and shall give
17 notice and turn over to the proper authority without delay all
18 captured or abandoned property in their possession, custody, or
19 control.

20 b. Any person subject to this code who:

21 (1) fails to carry out the duties prescribed in sub-
22 section (a) of this section; or

23 (2) buys, sells, trades, or in any way deals in or
24 disposes of captured or abandoned property, whereby he receives
25 or expects any profit, benefit, or advantage to himself or another
26 directly or indirectly connected with himself; or

27 (3) engages in looting or pillaging;
28 shall be punished as a court-martial may direct.

29 Sec. 29. AIDING THE ENEMY. Any person subject to this code

1 who:

2 (1) aids, or attempts to aid, the enemy with arms,
3 ammunition, supplies, money, or other things; or

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

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

9 Sec. 30. MISCONDUCT AS A PRISONER. Any person subject to
10 this code who, while in the hands of the enemy in time of war:

11 (1) for the purpose of securing favorable treatment by
12 his captors acts without proper authority in a manner contrary to
13 law, custom, or regulation, to the detriment of others of whatever
14 nationality held by the enemy as civilian or military prisoners;
15 or

16 (2) while in a position of authority over such persons
17 maltreats them without justifiable cause;
18 shall be punished as a court-martial may direct.

19 Sec. 31. FALSE OFFICIAL STATEMENTS. Any person subject to
20 this code who, with intent to deceive, signs any false record,
21 return, regulation, order, or other official document, knowing
22 the same to be false, or makes any other false official statement
23 knowing the same to be false, shall be punished as a court-martial
24 may direct.

25 Sec. 32. MILITARY PROPERTY--LOSS, DAMAGE, DESTRUCTION, OR
26 WRONGFUL DISPOSITION. Any person subject to this code who, with-
27 out proper authority

28 (1) sells or otherwise disposes of; or

29 (2) wilfully or through neglect damages, destroys, or

1 loses; or

2 (3) wilfully or through neglect suffers to be lost,
3 damaged, destroyed, sold or wrongfully disposes of;
4 any military property of the United States or of the state, shall
5 be punished as a court-martial may direct.

6 Sec. 33. PROPERTY OTHER THAN MILITARY PROPERTY--WASTE,
7 SPOILAGE, OR DESTRUCTION. Any person subject to this code who
8 while in a duty status, wilfully or recklessly wastes, spoils, or
9 otherwise wilfully and wrongfully destroys or damages any property
10 other than military property of the United States or of the state
11 shall be punished as a court-martial may direct.

12 Sec. 34. DRUNKEN OR RECKLESS DRIVING. Any person subject
13 to this code who, while in a duty status, operates any vehicle
14 while drunk, or in a reckless or wanton manner, shall be punished
15 as a court-martial may direct.

16 Sec. 35. DRUNK ON DUTY--SLEEPING ON POST--LEAVING POST BEFORE
17 RELIEF. Any person subject to this code who is found drunk on
18 duty or sleeping upon his post, or who leaves his post before he
19 is regularly relieved, shall be punished as a court-martial may
20 direct.

21 Sec. 36. DUELING. Any person subject to this code who, while
22 in a duty status, fights or promotes, or is concerned in or con-
23 nives at fighting a duel, or who, having knowledge of a challenge
24 sent or about to be sent, fails to report the fact promptly to
25 the proper authority, shall be punished as a court-martial may
26 direct.

27 Sec. 37. MALINGERING. Any person subject to this code who
28 for the purpose of avoiding work, duty or service in the militia:

29 (1) feigns illness, physical disablement, mental lapse

1 or derangement; or

2 (2) intentionally inflicts self-injury;
3 shall be punished as a court-martial may direct.

4 Sec. 38. RIOT OR BREACH OF PEACE. Any person subject to
5 this code who, while in a duty status, causes or participates in
6 any riot or breach of the peace shall be punished as a court-
7 martial may direct.

8 Sec. 39. PROVOKING SPEECHES OR GESTURES. Any person subject
9 to this code who, while in a duty status, uses provoking or re-
10 proachful words or gestures towards any other person subject to
11 this code shall be punished as a court-martial may direct.

12 Sec. 40. PERJURY. Any person subject to this code who, in
13 a judicial proceeding or in a course of justice conducted under
14 this code wilfully and corruptly gives, upon a lawful oath or in
15 any form allowed by law to be substituted for an oath, any false
16 testimony material to the issue or matter of inquiry is guilty of
17 perjury and shall be punished as a court-martial may direct.

18 Sec. 41. FRAUDS AGAINST THE GOVERNMENT. Any person subject
19 to this code:

20 (1) who, knowing it to be false or fraudulent;

21 (a) makes any claim against the United States, the
22 state, or any officer thereof; or

23 (b) presents to any person in the civil or military
24 service thereof, for approval or payment, any claim against
25 the United States, the state, or any officer thereof; or

26 (2) who, for the purpose of obtaining the approval,
27 allowance, or payment of any claim against the United States, the
28 state or any officer thereof:

29 (a) makes or uses any writing or other paper knowing

1 the same to contain any false or fraudulent statements;

2 (b) makes any oath to any fact or to any writing or
3 other paper knowing such oath to be false; or

4 (c) forges or counterfeits any signature upon any
5 writing or other paper, or uses any such signature knowing
6 it to be forged or counterfeited; or

7 (3) who, having charge, possession, custody, or control
8 of any money or other property of the United States or the state,
9 furnished or intended for the armed forces of the United States
10 or the organized militia or any force thereof, knowingly delivers
11 to any person having authority to receive it, any amount thereof
12 less than that for which he receives a certificate or receipt; or

13 (4) who, being authorized to make or deliver any paper
14 certifying the receipt of any property of the United States or
15 the state, furnished or intended for the armed forces of the
16 United States or the organized militia or any force thereof, makes
17 or delivers to any person such writing without having full know-
18 ledge of the truth of the statements therein contained and with
19 intent to defraud the United States or the organized militia or
20 any force thereof, makes or delivers to any person such writing
21 without having full knowledge of the truth of the statements
22 therein contained and with intent to defraud the United States
23 or the state;

24 shall, upon conviction, be punished as a court-martial may
25 direct.

26 Sec. 42. STEALING GOODS OF LESS THAN FIFTY DOLLARS' VALUE.

27 Any person subject to this code, who while in a duty status,
28 wrongfully and fraudulently takes and carries away the personal
29 goods of another, of the value of less than fifty dollars, with

1 intent to steal it, shall be punished as a court-martial may
2 direct.

3 Sec. 43. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN.
4 Any commissioned officer who is convicted of conduct unbecoming
5 an officer and a gentleman shall be punished as a court-martial
6 may direct.

7 Sec. 44. GENERAL ARTICLE. Though not specifically mentioned
8 in this code, all disorders and neglects to the prejudice of
9 good order and discipline in the organized militia, of which
10 persons subject to this code may be guilty, shall be taken cogni-
11 zance of by a general, special, or summary court-martial,
12 according to the nature and degree of the offense, and shall
13 be punished at the discretion of such court. However, cogni-
14 zance may not be taken and jurisdiction may not be extended to
15 the crimes of murder, manslaughter, rape, larceny and wrong-
16 ful appropriation for value of fifty dollars and over, robbery,
17 maiming, sodomy, arson, extortion, assault, burglary, or house-
18 breaking, jurisdiction of which is reserved to civil courts,
19 except as provided in Sec. 7, Article IV, Title II of this
20 code.

21 ARTICLE XI--MISCELLANEOUS PROVISIONS

22 Section I. AUTHORITY TO ADMINISTER OATHS. a. The follow-
23 ing officers of the organized militia may administer oaths for
24 the purposes of military administration, including military
25 justice, and affidavits may be taken for such purposes before
26 those officers:

27 (1) All judge advocates of the Army National Guard and
28 the Air National Guard.

29 (2) All summary courts-martial.

1 (3) All adjutants, assistant adjutants, acting adju-
2 tants, and personnel adjutants.

3 (4) All staff judge advocates and legal officers, and
4 acting or assistant staff judge advocates and legal officers.

5 (5) All other persons designated by regulations issued
6 under this code.

7 b. The following officers of the organized militia may
8 administer oaths necessary in the performance of their duties,
9 and affidavits may be taken for such purposes before those of-
10 ficers:

11 (1) The president, law officer, trial counsel, and
12 assistant trial counsel for all general and special courts-martial

13 (2) All officers designated to take a deposition.

14 (3) All persons detailed to conduct an investigation;
15 and

16 (4) All other persons designated by regulations issued
17 under this code.

18 c. The signature without seal of any such person, together
19 with the title of his office, is prima facie evidence of his
20 authority.

21 Sec. 2. SECTIONS TO BE EXPLAINED. Sec. 2 and 3 of Article
22 I, Sec. 1, Article II, through Sec. 1 of Article III, Sec. 4 and
23 6 of Article V, Sec. 2 of Article VII, Sec. 1 of Article VIII,
24 Sec. 1 through 42 of Article X, and Sec. 2 through 5 of Article XI,
25 Title II of this code shall be carefully explained to every enlist-
26 ed member at the time of his enlistment or transfer or induction
27 into, or at the time of his order to duty in or with any of the
28 forces of the organized militia or within thirty days thereafter.
29 They shall also be explained annually to each unit of the organ-

1 ized militia. A complete text of this code and of the regulations
2 prescribed by the Governor thereunder shall be made available to
3 any member of the organized militia, upon his request, for his
4 personal examination.

5 Sec. 3. COMPLAINTS OF WRONGS. Any member of the organized
6 militia who believes himself wronged by his commanding officer
7 and who, upon due application to that commanding officer, is
8 refused redress, may complain to any superior officer, who shall
9 forward the complaint to the Governor or adjutant general.

10 Sec. 4. REDRESS OF INJURIES TO PROPERTY. a. Whenever
11 complaint is made to any commanding officer that wilfull damage
12 has been done to the property of any person or that his property
13 has been wrongfully taken by members of the organized militia, he
14 may, subject to such regulations as may be prescribed under this
15 code, convene a board to investigate the complaint. The board
16 shall consist of from one to three officers and, for the purpose
17 of such investigation, it has power to summon witnesses and examine
18 them upon oath or affirmation, to receive depositions or other
19 documentary evidence, and to assess the damages sustained against
20 the responsible parties. The assessment of damages made by the
21 board is subject to the approval of the commanding officer, and
22 the amount approved by him shall be charged against the pay of
23 the offenders. The order of the commanding officer directing
24 charges herein authorized is conclusive, except as provided in
25 subsection (c) of this section, on any disbursing officer for
26 the payment by him to the injured parties of the damages so
27 assessed and approved.

28 b. If the offenders cannot be ascertained, but the organ-
29 ization or detachment to which they belong is known, the chief of

1 staff may direct that the amount of damages assessed and approved
2 be paid to the injured parties from the military fund of the unit
3 or units of the organized militia to which such offenders belonged.

4 c. Any person subject to this code who is accused of causing
5 wilfull damage to property, has the right to be represented by
6 counsel, to summon witnesses in his behalf, and to cross-examine
7 those appearing against him. He has the right of appeal to the
8 next higher commander.

9 Sec. 5. MARSHALS. a. Summary courts-martial and the
10 presidents of other courts-martial may each appoint, and at any
11 time remove, one or more marshals, each of whom shall, before
12 entering upon his duties, execute a bond to the state in the penal
13 sum of one thousand dollars, with sufficient sureties, to be ap-
14 proved by the president of the court or officer appointing him,
15 for the faithful performance of his duties and the prompt payment
16 of all moneys collected by him.

17 b. A bond given as herein provided may be prosecuted for
18 breach of the conditions thereof, in the name of the people, by
19 the attorney general or a judge advocate and all moneys recovered
20 shall be paid to any military fund injured and used to satisfy a
21 judgment or claim against the state because of a breach of con-
22 ditions of the bond. All such marshals shall be considered
23 peace officers for the purposes of this code and shall have all
24 the powers and immunities of peace officers.

25 Sec. 6. PROCESS OF MILITARY COURTS. a. Military courts
26 may issue all process and mandates necessary to carry into effect
27 the powers vested in those courts. Such courts may issue sub-
28 poenas and subpoenas duces tecum and enforce by attachment attend-
29 ance of witnesses and production of books and records, when the

1 courts are sitting within the state and the witnesses, books,
2 and records sought are also so located.

3 b. Such process and mandates may be issued by summary courts-
4 martial, provost courts, or the president of other military courts
5 and may be directed to and may be executed by the marshals of the
6 military court or any peace officer and shall be in such form as
7 may be prescribed by regulations issued under this code.

8 c. All officers to whom such process or mandates may be so
9 directed shall execute them and make return of their acts there-
10 under according to the requirements of those documents. Except
11 as otherwise specifically provided in this code, no such officer
12 may demand or require payment of any fee or charge for receiving,
13 executing, or returning such a process or mandate or for any
14 service in connection therewith.

15 Sec. 7. PAYMENT OF FINES AND DISPOSITION THEREOF. Fines may
16 be paid to a military court or to an officer executing its process.
17 The amount of such a fine may be noted upon any state roll or
18 account for pay of the delinquent and deducted from any pay or
19 allowance due or thereafter to become due him, until the fine is
20 liquidated. Any sum so deducted shall be turned in to the military
21 court which imposed the fine and shall be paid over by the officer
22 receiving it in like manner as provided for other fines and moneys
23 collected under a sentence of a summary court-martial. Notwith-
24 standing any other law, a fine or penalty imposed by a military
25 court upon an officer or enlisted man shall be paid by the officer
26 collecting it within thirty days to the treasurer of the State of
27 Alaska and shall form a part of, be credited to, and be spent from
28 the military fund of the organization or detachment to which the
29 officer or enlisted man who paid the fine belonged. The treasurer

1 of the state shall then report the amount thereof designating the
2 organization or detachment to which it belongs, to the adjutant-
3 general of the state, and shall pay it over to the organization
4 or detachment on request of its commanding officer.

5 Sec. 8. IMMUNITY FOR ACTION OF MILITARY COURTS. No action
6 or proceeding may be prosecuted against the convening authority
7 or a member of a military court or officer or person acting under
8 its authority or reviewing its proceedings because of the approval,
9 imposition, or execution of any sentence of the imposition or
10 collection of a fine or penalty, or the execution of any process
11 or mandate of a military court.

12 Sec. 9. PRESUMPTION OF JURISDICTION. The jurisdiction of
13 the military courts and boards established by this code shall be
14 presumed and the burden of proof rests on any person seeking to
15 oust such courts or boards of jurisdiction in any action or
16 proceeding.

17 Sec. 10. DELEGATION OF AUTHORITY BY THE GOVERNOR. The
18 Governor may delegate any authority given him under this code,
19 and may provide for its subdelegation.

20
21
22
23
24
25
26
27
28
29