

Assembly Bill 3

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CHAPTER 20, LAWS OF 1969

AN ACT to repeal 21.025 (11) and 21.36 (3); to amend 21.06, 21.12, 21.35, 21.36 (1) and 21.51; to repeal and recreate 21.11 (2) and 21.37; and to create a Wisconsin code of military justice.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This act creates the Wisconsin code of military justice which provides for the administration of justice in the state military forces not in federal service. It is based upon the "Uniform Code of Military Justice" drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1961 (hereafter referred to as the "official text"), which, in turn, was patterned after the U. S. Code of Military Justice presently used by the armed forces of the United States.

The intent of this act is to adopt, so far as practicable, the basic framework of the official text, though a number of major substantive changes have been made. Several of these changes have been adopted to conform with provisions of the Military Justice Act of 1968, recently passed by Congress. This legislation increases the participation of the military judge, formerly the law officer, in general and special courts-martial, and permits a trial before the military judge as a one-man

tribunal if an accused so requests. The Act also attempts to insulate the military judge, counsel and members of a court-martial from command pressures and influences which hinder the fair and impartial administration of military justice.

Some of the major substantive changes emanating from the legislative council staff and the department of justice include the mandatory appointment of a military judge and qualified lawyers as trial and defense counsel in every general and special court-martial case, which is substantially the same as the Military Justice Act of 1968, and streamlined court-martial review procedures with the right to appeal directly to the governor and to the civilian courts of the state. These and other substantive changes are described in greater detail in the legislative council notes at the end of the affected sections. Numerous minor language and structural changes have also been made to adapt the official text to the Wisconsin statutory system, and these, in most instances, are not noted.

Since the Wisconsin code of military justice will not be printed in the statutes, the section numbers of the official text have been retained.

SECTION 1. 21.025 (11) of the statutes is repealed.

NOTE: This subsection is repealed because the items covered are superseded by the Wisconsin code of military justice and the amendment to 21.06.

SECTION 2. 21.06 of the statutes is amended to read:

21.06. Every member of the ~~national guard~~ *state military forces* shall be exempt from jury duty ~~and every member who shall be honorably discharged or separated from the service, either after 5 years' service, or by reason of disability received in the line of duty; shall be forever so exempt and service on any posse comitatus.~~

NOTE: The deleted language serves no valid purpose, and is unnecessary. The purpose of the statute is to keep jury duty and service on a posse comitatus from interfering with duty in the state military forces. There is no valid reason why a former member of the state military forces should be exempt after his separation or discharge.

SECTION 3. 21.11 (2) of the statutes is repealed and recreated to read:

21.11 (2) Any commissioned officer or enlisted member of the national guard who fails to carry out orders or fails to appear at the time or place ordered as provided in sub. (1) shall be punished under the Wisconsin code of military justice. Any person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place or obey such order shall be imprisoned not exceeding 6 months or fined not exceeding \$1,000 or both.

NOTE: This subsection is changed in order to bring personnel of the state military forces who fail to report for active duty under the Wisconsin code of military justice for disciplinary purposes.

SECTION 4. 21.12 of the statutes is amended to read:

21.12. During the time the ~~national guard~~ *is state military forces are performing military duty pursuant to proper orders issued by the governor or such other persons as provided in ss. 21.09 and 21.11 or by his authority*, all members thereof *while going to, remaining at or returning from a place of duty* shall be exempt from arrest or service of any process issued by a civilian court. *In any civil or criminal prosecution against any member arising out of his performing military duty, it shall be a defense that he was acting in good faith or pursuant to any lawful military order. Any such order shall be deemed prima facie lawful.*

NOTE: This section essentially restates s. 21.12 as it exists, and codifies the common law defenses generally afforded military personnel in the performance of their duties.

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SECTION 5. 21.35 of the statutes is amended to read:

21.35. The organization, armament, equipment and discipline of the Wisconsin national guard shall be that prescribed by federal laws or regulations; and the governor may by order perfect such organization, armament, equipment and discipline, at any time, so as to comply with such laws and regulations. The Uniform Code of Military Justice shall apply under the authority of this state to members of the national guard during all periods of military duty. The governor may direct the convening of courts martial for the trial and punishment of offenders *insofar as they are consistent with the Wisconsin code of military justice*. Notwithstanding any rule or regulation prescribed by the federal government or any officer or department thereof, no person, otherwise qualified, shall be denied membership in the Wisconsin national guard because of color, race or creed and no member of the Wisconsin national guard shall be segregated within the Wisconsin national guard on the basis of color, race or creed.

NOTE: Deletions are made in order to conform with the Wisconsin code of military justice, and to remove references to the Uniform Code of Military Justice which governs the conduct of members of the armed forces of the U. S.

SECTION 6. 21.36 (1) of the statutes is amended to read:

21.36 (1) The rules of discipline and the regulations of the ~~United States army~~ *armed forces of the U.S.*, shall, so far as the same ~~may be~~ *are* applicable, constitute the rules of discipline and the regulations of the national guard; the rules and uniform code of military justice established by congress and the ~~war~~ department of defense for ~~said army~~ *the armed forces*, shall be adopted so far as they ~~may be~~ *are* applicable *and consistent with the Wisconsin code of military justice* for the government of the national guard, and the system of instruction and the drill regulations prescribed for the different arms and corps of the ~~United States army~~ *armed forces of the U.S.*, shall be followed in the military instruction and practice of the national guard, and the use of any other system is forbidden.

NOTE: This change is made to bring this subsection up-to-date by substituting the department of defense for the war department, and also to state explicitly that all rules and regulations must be consistent with the Wisconsin code of military justice.

Also, the words "armed forces" are substituted for the word "army" to broaden the scope of the statute as to applicable rules and regulations.

SECTION 7. 21.36 (3) of the statutes is repealed.

NOTE: This subsection is repealed because it is unnecessary. The content of the subsection is adequately covered in s. 21.42 and the Wisconsin code of military justice.

SECTION 8. 21.37 of the statutes is repealed and recreated to read:

21.37 THE WISCONSIN CODE OF MILITARY JUSTICE. The Wisconsin code of military justice as created by Chapter —, Laws of 1969 (Assembly Bill 3) shall govern the conduct of all members of the national guard and any other military force organized under the laws of this state. The revisor of statutes shall not print the Wisconsin code of military justice in the statutes.

NOTE: Old s. 21.37 is repealed and recreated to make it consistent with and refer to the Wisconsin code of military justice.

SECTION 9. 21.51 of the statutes is amended to read:

21.51 Any officer may be discharged by ~~order of~~ the governor ~~upon recommendation of any general court martial after due trial pursuant to the Wisconsin code of military justice~~ or upon resignation or disability preventing full discharge of the duties of his office.

NOTE: This section is amended to make it consistent with Section 104 of the Wisconsin code of military justice.

SECTION 10. The Wisconsin code of military justice is created to read:

WISCONSIN CODE OF MILITARY JUSTICE.

Part I - General Provisions.

101. Definitions.
102. Persons subject to the code.
103. Jurisdiction to try certain personnel.
104. Dismissal of commissioned officer.
105. Territorial applicability of the code.
106. Judge Advocates.

Part II. - Apprehension and Restraint.

201. Apprehension.
202. Apprehension of deserters.
203. Imposition of restraint.
204. Restraint of persons charged with offenses; Bail.
205. Confinement in jails.
206. Reports and receiving of prisoners.
207. Punishment prohibited before trial.
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Part III - Nonjudicial Punishment.

301. Commanding officer's nonjudicial punishment.

Part IV - Courts-Martial Jurisdiction.

401. Courts-martial of state military forces: Composition; Jurisdiction, powers and proceedings.
402. Jurisdiction of courts-martial in general.
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405. Jurisdiction of summary courts-martial.

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501. Who may convene general courts-martial.
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505. Military judge of a general and special court-martial.
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Part VI - Pretrial Procedure.

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602. Compulsory self-incrimination prohibited.
603. Investigation.
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Part VII - Trial Procedure.

701. Governor may prescribe rules.
702. Unlawfully influencing action of court.
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704. Sessions.
705. Continuances.
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710. Pleas of the accused.
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- 713. Contempts.
- 714. Depositions.
- 715. Admissibility of records of courts of inquiry.
- 716. Voting and rulings.
- 717. Number of votes required.
- 718. Court to announce action.
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- Part VIII - Sentences.
- 801. Cruel and unusual punishments prohibited.
- 802. Maximum limits.
- 803. Effective date of sentences.
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- 908. Error of law, lesser included offense.
- 909. Review counsel.
- 910. Vacation of suspension.
- 911. Petition for a new trial.
- 912. Remission and suspension.
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- 914. Finality of proceedings, findings and sentences.
- 915. Review by governor.
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- Part X - Punitive Articles.
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- 1002. Principals.
- 1003. Accessory after the fact.
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- 1006. Conspiracy.
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- 1008. Fraudulent enlistment, appointment or separation.
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- 1010. Desertion.
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- 1013. Contempt towards officials.
- 1014. Disrespect towards superior commissioned officer.
- 1015. Assaulting or willfully disobeying superior commissioned officer.
- 1016. Insubordinate conduct toward warrant officer or noncommissioned officer.
- 1017. Failure to obey order or regulation.
- 1018. Cruelty and maltreatment.
- 1019. Mutiny or sedition.
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- 1021. Releasing prisoner without proper authority.
- 1022. Unlawful detention of another.
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- 1024. Misbehavior before the enemy or any hostile force.
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- 1026. Improper use of countersign.
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- 1030. Misconduct of a prisoner.
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- 1035. Drunken or reckless driving.
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- 1101. Courts of Inquiry.
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- 1110. Presumption of jurisdiction.
- 1111. Delegation of authority by the governor.
- 1113. Short Title.

THE WISCONSIN CODE OF MILITARY JUSTICE.

PART I.

GENERAL PROVISIONS.

Section 101. DEFINITIONS. In this chapter, unless the context otherwise requires:

- (1) "State military forces" means the national guard of the state as defined in sec. 101 (3) of Title 32, U.S.C. and any other military force organized under the laws of this state;
- (2) "Officer" means a commissioned or warrant officer;
- (3) "Commissioned officer" includes a commissioned warrant officer;
- (4) "Commanding officer" includes only commissioned officers;
- (5) "Superior commissioned officer" means a commissioned officer superior in rank or command;
- (6) "Enlisted member" means any person who is serving in an enlisted grade;
- (7) "Grade" means a step or degree in a graduated scale of office or military rank, that is established by law or regulation;
- (8) "Rank" means order of precedence among members of the state military forces;
- (9) "Active state duty" means full-time duty in the active military service of the state under an order of the governor issued under authority vested in him by law, including travel to and from such duty;
- (10) "Duty status" includes active state duty and any other type of state military duty, including travel to and from such duty;
- (11) "Military court" means a court-martial, a court of inquiry or a provost court;
- (12) "Military judge" means an official of general and special courts-martial detailed in accordance with s. 505;
- (13) "State judge advocate" means the commissioned officer respon-

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sible for supervising the administration of military justice in the state military forces;

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

(15) "Military" refers to any or all of the armed forces;

(16) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command;

(17) "May" is used in a permissive sense. The words "no person may" mean that no person is required, authorized or permitted to do the act prescribed;

(18) "Shall" is used in an imperative sense.

(19) "Code" means this chapter.

NOTE: The reference in the official text to the "organized naval militia" of the state is deleted since there is no naval branch of Wisconsin's state military forces. Likewise, all references in the official text to "law specialist" and "legal officer" are deleted since these are naval militia officers. In this section, the definitions of those terms are deleted and the section is renumbered accordingly.

Sub (5). Official text changed from "rank and command" to "rank or command" because a person may lawfully be in command over a person of higher rank.

Sub (6). Official text changed from "person in an enlisted grade" to "any person who is serving in an enlisted grade". Some persons serve in an enlisted grade, yet hold commissioned rank in the reserves.

Sub (10). This subsection was changed to correct the vagueness in the official text.

Sub (12). Reference to special court-martial added to conform to changes made in s. 505.

Section 102. PERSONS SUBJECT TO THIS CODE. This code applies to all members of the state military forces who are not in federal service under a call or order of the president of the U.S.

NOTE: The final clause was added for purposes of clarification.

Section 103. JURISDICTION TO TRY CERTAIN PERSONNEL. (1) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is subject to s. 708, subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in the custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

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

(3) The fact that any person charged with an offense under this code is separated from the service while proceedings are pending or while undergoing sentence shall not affect the jurisdiction of any court-martial.

NOTE: Sub. (3) has been added to make it clear that once an accused has been charged with an offense under the code, a dismissal, discharge or other form of separation from the service does not divest a military court of jurisdiction to try the accused on said charge, and if found guilty, to adjudge an appropriate sentence.

Section 104. DISMISSAL OF AN OFFICER. (1) The governor may dismiss any officer by a written order, but no such written order shall be made until 60 days after the governor has served on the officer a detailed statement of the reasons for dismissal. No dismissal shall be made except

for misconduct as defined in the punitive articles of this code. Any officer, dismissed by order of the governor may within 30 days of notice thereof, make a written application for trial by court-martial, setting forth under oath that he has been wrongfully dismissed. The governor, upon receipt thereof, shall as soon as practicable, convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges. The court-martial may acquit the officer, adjudge the affirmance of the dismissal or, where appropriate, substitute a discharge for dismissal.

(2) If the governor fails to convene a general court-martial within 60 days from the presentation of an application for trial under this code, the order of dismissal under sub. (1) is automatically rescinded.

(3) If a discharge is substituted for a dismissal under this code, the governor alone may reappoint the officer to the grade and rank as that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(4) If an officer is discharged from the state military forces by administrative action or by board proceedings under law or is dropped from the rolls by order of the governor, he has no right to trial under this section.

NOTE: In the title, and in subs. (1) and (3) before the word "officer", the word "commissioned" is deleted. This was done to make this section applicable to warrant officers as well as commissioned officers.

Sub. (1) adds "The governor may dismiss any officer by written order" because this is implied in this section of the official text, yet not specifically stated.

Also added is "within 30 days of notice thereof" in order to place a reasonable limitation on the time in which an officer may request a court-martial after dismissal by the governor.

In the 4th sentence, the sentence has been shortened to end after the word "charges". The remainder of sub. (1) has been deleted, and replaced by the sentence, "The court-martial may acquit the officer, adjudge the affirmance of the dismissal or, where appropriate, substitute a discharge for dismissal."

The above deletions were instituted because the official text provided that an officer requesting a court-martial was deemed to have waived any right to plead any statute of limitations applicable to the offense, and that even if the officer is acquitted by a court-martial, the court could still administratively discharge the officer from the service. Both of these provisions are unfair. There is no reason why an officer should receive treatment different from an enlisted man with respect to the statute of limitations under the code. Also, if an officer is acquitted by a court-martial of all charges, he should receive no punishment at all and be permitted to remain in service if he so desires.

In sub. (2), the remainder of the sentence after the word "code" is deleted and replaced with the words "the order of dismissal under sub. (1) is automatically rescinded". The official text provided that if the governor failed to convene a court-martial as provided in sub. (1) within 6 months, an administrative discharge would be substituted for the dismissal. This provision too, is unfair and acts as a denial of due process, and was deleted. Also "60 days" is substituted for "6 months" to insure speedy action by the governor as a matter of fairness to the dismissed officer.

In sub. (4), references in the official text to "organized militia" are replaced by "state military forces". This change has also been made in other sections of the code for purposes of consistency.

Section 105. TERRITORIAL APPLICABILITY OF THE CODE. (1) This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state and while they are going to and returning from such service outside the state in the same manner and to the same extent as if they were serving inside the state.

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

NOTE: No change from the official text.

Section 106. JUDGE ADVOCATES. (1) The governor, on the recommendation of the adjutant general, shall appoint an officer of the state military forces as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least 5 years.

(2) The adjutant general may appoint as many assistant state judge advocates as he considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the state military forces and members of the bar of the highest court of the state.

(3) Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, or with the state judge advocate.

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

NOTE: Sub. (c) of the official text which orders the state judge advocate and his assistants to make field inspections is deleted because it is unnecessary.

Also the references in the official text to "legal officer" are deleted.

PART II.

APPREHENSION AND RESTRAINT.

Section 201. APPREHENSION. (1) Apprehension is the taking of a person into custody.

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

(3) Commissioned officers, warrant officers, and noncommissioned officers have authority to quell quarrels, frays and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein.

NOTE: References in the official text to "petty officers", a naval rank, are deleted in this section and throughout the code.

Section 202. APPREHENSION OF DESERTERS. Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth or possession, or the District of Columbia, may summarily apprehend a deserter from the state military forces and deliver him into the custody of the state military forces. If an offender is apprehended outside the state, his return to the area must be in accordance with normal extradition procedures, or reciprocal agreement.

NOTE: No change from the official text.

Section 203. IMPOSITION OF RESTRAINT. (1) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

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

(4) No person may be ordered apprehended or into arrest or confinement except for probable cause.

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

NOTE: See note following s. 201.

Section 204. RESTRAINT OF PERSONS CHARGED WITH OFFENSES; BAIL. Any person subject to this code charged with an offense under this code may be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The accused may be admitted to bail by posting bond in the amount ordered by the convening authority, but not to exceed the maximum fine for the offense.

NOTE: In the first sentence, "shall" is changed to "may". Circumstances may be that even a more serious offense may not require arrest or confinement. This change permits the convening authority to use his best judgment depending on the facts of the case.

A provision permitting the accused to be released from custody on bail is also added.

Section 205. CONFINEMENT IN JAILS. Persons confined other than in a guardhouse, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries or prisons, designated by the governor or by such person as he authorizes to act.

NOTE: No change from the official text.

Section 206. REPORTS AND RECEIVING OF PRISONERS. (1) No provost marshal, commander of a guard, master at arms, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated under s. 205, may refuse to receive or keep any prisoner com-

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mitted to his charge when the committing person furnishes a statement signed by him of the offense charged against the prisoner.

(2) Every commander of a guard, master at arms, warden, keeper or officer of a city or county jail or of any other jail, penitentiary or prison designated under s. 205, to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

NOTE: No change from the official text.

Section 207. PUNISHMENT PROHIBITED BEFORE TRIAL. Subject to s. 803, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

NOTE: No change from the official text.

Section 208. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES.

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

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

NOTE: In sub. (2) the words "if followed by conviction in a civil tribunal" are deleted. The remainder of a military sentence should be served without regard to the outcome of the trial by civilian authorities.

Of course, this section does not apply to the double jeopardy situation involving the same offense. This situation is treated elsewhere in the code.

PART III.

NONJUDICIAL PUNISHMENT.

Section 301. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT. (1) Under regulations the governor prescribes, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon an officer of his command:

1. Withholding of privileges for not more than 2 consecutive weeks;
2. Restriction to certain specified limits, with or without suspension from duty, for not more than 2 consecutive weeks; or
3. If imposed by the governor, the commanding officer of a force of the state military forces, or a commanding general, a fine or forfeiture of pay and allowances of not more than \$75.

(b) Upon other military personnel of his command:

1. Withholding of privileges for not more than 2 consecutive weeks;
2. Restriction to certain specified limits with or without suspension from duty, for not more than 2 consecutive weeks;
3. Extra duties for not more than 14 days which need not be consecutive, and for not more than 2 hours per day, holidays included;

4. Reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command;

5. If imposed by an officer exercising special court-martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than \$25.

(2) Prior to being informed of the disciplinary action to be taken under this section, the person to be punished shall have the right to demand a trial by court-martial for the offense.

(3) The governor may by regulation place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

(4) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he is in charge, the punishments authorized to be imposed by commanding officers as the governor by regulation specifically prescribes.

(5) Except where punishment has been imposed by the governor, a person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command and superior authority may suspend, set aside or remit any part or amount of the punishment and restore all rights, privileges and property affected.

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

(7) Whenever a punishment of forfeiture of pay and allowance is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after the date that punishment is imposed and to pay and allowances accrued before that date.

NOTE: Deleted is sub. (a) (2) (E) of the official text which pertains to punishment by confinement while aboard a vessel. This has no applicability to the Wisconsin state military forces. Sub (1) (a) 3. "of a division" is deleted because Wisconsin no longer has divisions in its national guard structure. Sub (1) (b) 5. The official text's \$10 maximum fine has been raised to \$25.

Sub (2). This section was added to conform the Wisconsin code to that used by the armed forces of the U. S., in which the accused has a right to demand a court-martial in lieu of nonjudicial punishment.

Sub (5). "Except where punishment has been imposed by the governor" has been added to the beginning of sub. (5); since the governor is the commander-in-chief of the state military forces, no appeal can be taken from a decision made by him, except as provided in s. 916.

PART IV.

COURTS-MARTIAL JURISDICTION.

Section 401. COURTS-MARTIAL OF STATE MILITARY FORCES COMPOSITION; JURISDICTION, POWERS AND PROCEEDINGS. (1) In the state military forces there are general, special and summary courts-

martial constituted like similar courts of the armed forces of the U. S. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

(2) The 3 kinds of courts-martial are:

(a) General courts-martial:

1. Consisting of a military judge and not less than 5 members, or;
2. Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.

(b) Special courts-martial:

1. Consisting of a military judge and not less than 3 members; or
2. Only a military judge if the accused under the same conditions as those prescribed in sub. (2) (a) 2 so requests.

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

NOTE: In accordance with the Military Justice Act of 1968, a "military judge" now replaces the "law officer" to preside over both general and special courts-martial. The Act also provides for general and special courts-martial consisting of only a military judge if the accused so requests. The code has been changed to comply with these new provisions of the U. S. Code of Military Justice. Also refer to changes made in s. 505.

Section 402. JURISDICTION OF COURTS-MARTIAL IN GENERAL. Each force of the state military forces has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor.

NOTE: No change from the official text.

Section 403. JURISDICTION OF GENERAL COURTS-MARTIAL. Subject to s. 402, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the governor prescribes, adjudge any of the following punishments:

- (1) A fine of not more than \$500, or confinement not more than 6 months, or both;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal, dishonorable or other punitive discharge;
- (5) Reduction of enlisted persons to a lower grade;
- (6) Any combination of these punishments.

NOTE: Sub (1). This subsection raises the maximum fining power of a general court-martial from \$200 to \$500 and also provides for a maximum confinement of 6 months. Compared to civilian courts, the \$500 maximum is not great. But the increase does make the code comparable to many of the fines imposed in the Wisconsin statutes, and also provides a general court-martial with greater flexibility in meting out proper and just punishments.

Sub (4). This subsection changes "dismissal or dishonorable discharge" to "dismissal, dishonorable or other punitive discharge". This was done to encompass all forms of punitive discharge, such as dishonorable, bad conduct and others. This change has been made throughout the code in order to cure the inconsistencies found in many sections of the official text.

Sub (5). "Reduction of a noncommissioned officer to the ranks" changed to "Reduction of enlisted persons to a lower grade" so as to clarify that a general court-martial may reduce an enlisted man by one or more grades.

Section 404. JURISDICTION OF SPECIAL COURTS-MARTIAL. Subject to s. 402, special courts-martial have jurisdiction to try persons subject to this code, except commissioned officers, for any offense for which they may be punished under this code. A special court-martial has the same powers of punishment as a general court-martial, except that dismissal, dishonorable discharge or other punitive discharge may not be adjudged and for a single offense, no fine may be more than \$250 or no confinement may be more than 3 months.

NOTE: This section takes away power of a special court-martial to adjudge punishment in the form of a punitive discharge, thus insuring that the more serious cases, in which punishment by punitive discharge is a distinct possibility, will be handled only by a general court-martial.

The section also raises the fining power of a special court-martial from \$100 to \$250, and adds "or no confinement may be for more than 3 months".

Also added to the first sentence are the words "except commissioned officers". By making this addition in this jurisdictional section of the code, s. 502 (2) becomes unnecessary and is deleted.

Section 405. JURISDICTION OF SUMMARY COURTS-MARTIAL.

(1) Subject to s. 402, summary courts-martial have jurisdiction to try persons subject to this code, except officers, for any offense made punishable by this code.

(2) No person shall be tried by a summary court-martial if, prior to trial, he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by general or special court-martial, as is appropriate.

(3) A summary court-martial may sentence to a fine of not more than \$75 for a single offense or to confinement not more than 30 days, to forfeiture of pay and allowances, to reduction to a lower grade or any combination of these punishments.

NOTE: Sub. (2) has been amended to permit an accused to refuse a trial by summary court-martial despite the fact that he has earlier refused nonjudicial punishment under s. 301 for the same offense. This conforms to the recent changes in the U. S. Code of Military Justice as amended by the Military Justice Act of 1968. The official text made prior refusal to accept nonjudicial punishment the only exception to an accused's right to refuse trial by a summary court-martial. This exception was unfair to the accused because in many cases the officer exercising nonjudicial punishment and the officer sitting as a summary court are one and the same.

In sub. (3), summary court-martial fining power is increased from \$25 to \$75, and power to confine not more than 30 days is added. After the word "reduction", the words "to a lower grade, or any combination of these punishments" are added in place of the words "of a noncommissioned officer".

NOTE: Sections 406, 407 and 408 of the uniform act were deleted.

Section 406 of the official text, which provided for review of certain sentences was deleted because review of records and sentences of all courts-martial is covered fully in Part IX of the Code.

Section 407 of the official text, calling for a verbatim record to be made of court-martial proceedings when certain sentences are adjudged, was deleted because the keeping of records of all courts-martial is fully covered in s. 719 of this Code.

Section 408 of the official text, which permitted a court-martial to substitute one day of confinement for each dollar of the authorized fine was deleted because ss. 403, 404 and 405 were revised to include maximum confinements making s. 408 unnecessary.

PART V.

APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

Section 501. WHO MAY CONVENE GENERAL COURTS-MARTIAL. General courts-martial may be convened by the governor. The governor may delegate this authority to the adjutant general or the commanding officer of a division, brigade, group or other corresponding unit.

NOTE: Official text's references to "the President" and the "commanding general of the National Guard of the District of Columbia" are deleted since they are not applicable to the state military forces not in federal service.

Added is a sentence permitting the governor to delegate his convening authority to the adjutant general and to commanding officers of the larger units of the state military forces.

Section 502. WHO MAY CONVENE SPECIAL COURTS-MARTIAL. The commanding officer of a garrison, fort, post, camp, air base, auxiliary air base or other place where members of the state military forces are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron or any group of detached units placed under a command for this purpose, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior authority.

NOTE: In the first sentence, the word "division" is inserted before the word "brigade". The words "other detached command" are deleted and replaced by the words "any group of detached units placed under a command for this purpose".

The word "competent" is deleted from the last sentence since it created an unnecessarily vague standard.

Sub. (2) of the official text is deleted, and placed properly in the code's jurisdictional section. Refer to the note following s. 404.

Section 503. WHO MAY CONVENE SUMMARY COURTS-MARTIAL.

(1) The commanding officer of a garrison, fort, post, camp, air base, auxiliary air base or other place where members of the state military forces are on duty, or of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company or other detachment may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary courts-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior authority.

NOTE: Sub. (1). The words "in the state military forces not in federal service" are deleted. Also the words "division, brigade", are inserted before the word "regiment".

Sub. (2). The word "competent" is removed from the last sentence. Refer to note following s. 502.

Section 504. WHO MAY SERVE ON COURTS-MARTIAL. (1) Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person subject to this code.

(2) Any warrant officer of or on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer.

(3) (a) Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general

and special courts-martial for the trial of any enlisted member, but he shall serve as a member of a court, only if, before the conclusion of a session called by the military judge under s. 704 prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such request, the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If enlisted members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

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

(4) (a) No person subject to this code may be tried by a court-martial any member of which is junior to him in rank or grade, unless it cannot be avoided and then only by order of the governor.

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

NOTE: Sub. (3) (a) has been revised to make it explicit that a request for enlisted members to serve on courts-martial must be made prior to the conclusion of any pretrial session called by a military judge under s. 704 or, if no session is called, before the court is assembled for the trial. This conforms to the federal code as amended by the Military Justice Act of 1968.

Sub. (4) (a) has been reworded and the words "only by order of the governor" are added. Cases where a member of a court-martial is junior in rank to the accused may sometimes occur out of necessity. But this would be a rare and unusual occurrence. In such an emergency, some higher authority must determine the circumstances under which a person may be tried by a member of a court-martial junior to him in rank or grade. The code gives this responsibility to the governor.

Section 505. MILITARY JUDGE OF A GENERAL AND SPECIAL COURT-MARTIAL. (1) The authority convening a general or special court-martial shall request the state judge advocate to detail as military judge thereof a commissioned officer who is a member of the bar of the highest court of the state. No person is eligible to act as military judge in a case if he is the accuser or witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(2) The military judge may not consult with the members of the court except in the presence of the accused, trial counsel and defense counsel, nor may he vote with the members of the court.

NOTE: This section provides for the detail of a military judge in all general and special courts-martial. The Military Justice Act of 1968 contains a similar provision, except that a military judge need not be appointed for a special court-martial where no punitive discharge can be adjudged. The code removes this exception and provides that a military judge be detailed in every general and special court-martial case.

Sub. (1) has also been amended to provide that the military judge is to be appointed by the state judge advocate rather than the convening authority, as was formerly the practice. This change helps to insulate the military judge from any undue influence of the convening authority, and, hopefully, will insure a fairer and more impartial trial for the accused.

In sub. (2), the words "other than on the form of the findings as provided in section 704" have been deleted.

Section 506. DETAIL OF TRIAL AND DEFENSE COUNSEL. (1) For each general and special court-martial the authority convening the court shall request the state judge advocate to detail trial counsel and defense counsel and assistants as he considers appropriate. No person who has acted as investigating officer, military judge or court member in any case may act later as trial counsel, assistant trial counsel or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel and defense counsel for a general and special court-martial shall be members of the bar of the highest court of the state.

NOTE: As in the preceding section, sub. (1) has been amended to provide that trial counsel and defense counsel be appointed by the state judge advocate rather than the convening authority.

Subs. (2) and (3) of the official text are deleted, but sub. (2) has been recreated to provide that in both general and special courts-martial trial counsel and defense counsel must be lawyers, and more specifically, members of the Wisconsin bar. This change was made to best serve the interest of justice and more fully protect the rights of the accused. Because a special court-martial is a full-blown legal proceeding, there is no reason why both the prosecution and the defense should not be represented by qualified attorneys at all times. This change is consistent with the Military Justice Act of 1968 and also with the changes made in s. 505 which call for the appointment of a military judge for both general and special courts-martial.

Section 507. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS. Under regulations the governor prescribes, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may detail or employ interpreters who shall interpret for the court.

NOTE: No change from the official text.

Section 508. ABSENT AND ADDITIONAL MEMBERS. (1) No member of a general or special court-martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(2) Whenever a general court-martial is reduced below 5 members, the trial may not proceed unless specifically consented to by the accused and defense counsel. In such case a new trial may be ordered by the convening authority.

(3) Whenever a special court-martial is reduced below 3 members, the trial may not proceed unless specifically consented to by the accused and defense counsel. In such case a new trial may be ordered by the convening authority.

NOTE: The official text provides that when a court-martial drops below its required membership, the convening authority must detail new members to bring the court up to full strength. After the new members have been sworn, all prior testimony must be read to the court before the trial can proceed.

This provision does not give adequate protection to the accused because the newly sworn members do not get the opportunity to observe the demeanor of witnesses and otherwise judge the credibility of the testimony. The code cures this by providing that the trial may not continue unless the accused and defense counsel specifically consent thereto. If this consent is not given, the convening authority may order a new trial.

PART VI.

PRETRIAL PROCEDURE.

Section 601. CHARGES AND SPECIFICATIONS. (1) Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

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

(b) That they are true in fact to the best of his knowledge and belief.

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

NOTE: No change from the official text.

Section 602. COMPULSORY SELF-INCRIMINATION PROHIBITED.

(1) No person subject to this code shall compel any person to incriminate himself or to answer any question, the answer to which may tend to incriminate him.

(2) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected, that any statement made by him may be used as evidence against him in a trial by court-martial, that he has a right to consult with a lawyer, that he has a right to have a lawyer present during questioning, that he has a right to request a lawyer and that upon his request one will be provided him without cost or, if he prefers, he may retain counsel of his choice at his own expense.

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

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

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

NOTE: Sub. (2) has been amended to conform with *Miranda v. Arizona*, 384 U.S. 436, 86 S Ct 1602, 16 L Ed 2d 694 (1966), and other U.S.

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Supreme Court decisions handed down since the official text was drafted, which give an accused the right to consult with an attorney if he requests one.

Sub. (5) has been added. It is identical to s. 603 (4), and is applicable to this stage of criminal proceedings as well as the investigation stage.

Section 603. INVESTIGATION. (1) No charge or specification may be referred to a court-martial for trial until a thorough and impartial investigation of all matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the state judge advocate. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination and presentation prescribed in sub. (2), no further investigation of that charge is necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

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

NOTE: In sub. (1) the word "general" is deleted to make investigations apply to all courts-martial. In sub. (2) counsel is detailed by the state judge advocate in accordance with this change made in other portions of the bill.

Section 604. FORWARDING OF CHARGES. When a person is held for trial by general court-martial, the commanding officer shall, within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

NOTE: This section replaces "the governor" with "the officer exercising general court-martial jurisdiction". This amendment is in accord with the change made in s. 501.

Section 605. ADVICE OF STATE JUDGE ADVOCATE AND REFERENCE FOR TRIAL. (1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

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

NOTE: No change from the official text.

Section 606. SERVICE OF CHARGES. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. No person shall, against his objection, be brought to trial or be required to participate by himself or counsel in a session called by the military judge under s. 704 before a general court-martial within 5 days after the service of the charges upon him, or before a special court-martial within 3 days after the service of the charges upon him.

NOTE: In the last sentence, "may" is changed to "shall" and the words "In time of peace" have been deleted. The scope of the section has also been expanded to include sessions called by the military judge under s. 704. All of these changes have been incorporated to insure that the accused under all circumstances must be given a minimum reasonable period of time in which to prepare a defense.

PART VII.

TRIAL PROCEDURE.

Section 701. GOVERNOR MAY PRESCRIBE RULES. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the governor by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state, but which may not be contrary to or inconsistent with this code.

NOTE: No change from the official text.

Section 702. UNLAWFULLY INFLUENCING ACTION OF COURT.

(1) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand or admonish the court or any member, military judge or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving or reviewing authority with respect to his judicial acts. The foregoing provisions shall not apply to:

(a) General instructional or informational courses in military justice, if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or

(b) Statements and instructions given in open court by the military judge or counsel.

(2) In the preparation of an effectiveness, fitness or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade or in determining the assignment or transfer of a member of the state military forces or in determining whether a member of the state military forces should be retained on duty, no person subject to this code may in preparing any such report:

(a) Consider or evaluate the performance of duty of any such member as a member, military judge or trial counsel of a court-martial; or

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(b) Give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which such member as counsel represented any accused before a court-martial. This subsection is not applicable to evaluations made by the state judge advocate of the performance of personnel under his supervision.

NOTE: In sub. (1) (a) and (b) have been added to explicitly set forth the lawful and legitimate purposes for which influence may be exerted over persons engaged in the administration of military justice.

Sub. (2) is created to insulate participants in courts-martial from command pressures which may inhibit them in the fair and impartial performance of their duties, and to protect members, counsel and the military judge from subsequent vindictive action of commanding officers who may be displeased with the result of a court-martial or the performance of any participant thereof. These changes are consistent with the Military Justice Act of 1968.

Section 703. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL. (1) The trial counsel of a general or special court-martial shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of the proceedings.

(2) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel, if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under s. 506. If the accused has counsel of his own selection, the defense counsel and assistant defense counsel, if any, who were detailed shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge.

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

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by s. 506, perform any duty imposed by law, regulation or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by s. 506, perform any duty imposed by law, regulation or the custom of the service upon counsel for the accused.

NOTE: In the 2nd sentence of sub. (2), "should the accused have counsel" is changed to read "if the accused has counsel".

Section 704. SESSIONS. (1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may call the court into session without the presence of the members for:

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

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge whether or not the matter is appropriate for later consideration or decision by the members of the court; or

(c) If permitted by the regulations of the governor, holding the arraignment and receiving the pleas of the accused; and

(d) Performing any other procedural function which may be performed by the military judge under s. 701 which does not require the

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

(2) Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. All other proceedings, including any consultation of the court with counsel or the military judge, shall be made part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel and the military judge.

NOTE: Sub. (1) is created to conform with the Military Justice Act of 1968 and permits the military judge to call pretrial and other sessions outside the presence of the members of the court to hear and rule on matters not requiring a vote of the court.

Sub. (2) is essentially the same as the official text except that the provision permitting the military judge to assist the court in putting the findings in proper form outside the presence of accused, defense counsel, and trial counsel has been deleted. This is also in conformity with the Military Justice Act of 1968.

Section 705. CONTINUANCES. The military judge or a court-martial without a military judge may for reasonable cause grant a continuance to any party for such time as often as appears to be just.

NOTE: "The military judge or a court-martial without a military judge may . . ." is substituted for "A court-martial may . . ." to conform with the Military Justice Act of 1968.

Section 706. CHALLENGES. (1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

NOTE: Amended to be consistent with s. 505. Refer to the note following that section.

Section 707. OATHS. (1) Interpreters and, in general and special courts-martial, members, military judges, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(2) Each witness before a military court shall be examined on oath or affirmation.

NOTE: Refer to the note following s. 706.

Section 708. STATUTE OF LIMITATIONS. (1) A person charged with any offense is not liable to be tried by court-martial or punished under s. 301 if the offense was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under s. 301. Notwithstanding the foregoing, a prosecution for larceny and wrongful appropriation under s. 1043 against one who obtained the property lawfully and subsequently misappropriated it may be commenced within one year after discovery of the loss, but in no case shall this extend the time limitation by more than 5 years.

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

NOTE: Sub. (a) and (b) of the official text are deleted. These subsections provide for an unlimited statute of limitations for mutiny, aiding the enemy and desertion in wartime and a 3-year limitation for the crimes of perjury and desertion in time of peace. The normal 2-year limitation provided in sub. (1) is adequate to cover these offenses.

Also added to sub. (1) is language taken from s. 939.74 (2) (b) of the statutes. This was added to take cognizance of crimes such as embezzlement where the loss of funds or other property might not be discovered until some time after the crime was actually committed.

In sub. (2), the words "or any hostile force" are added after the word "enemy". The purpose of this addition is to broaden the code to include situations where members of the state military forces face hostile mobs or guerilla forces in times of civil disorder. This addition also appears in other sections of the code.

Section 709. FORMER JEOPARDY. (1) No person may be tried a 2nd time in any court of the state for the same offense.

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

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

NOTE: In sub. (1), "without his consent" is deleted. Art. I, sec. 8 of the state constitution states flatly that "no person for the same offense shall be put twice in jeopardy of punishment". This makes the "consent" of the accused totally irrelevant.

Also, in the same sentence, the word "military" is deleted before the word "court". This was done to insure that no accused could be tried for the same offense, first by a military court and then by a civilian court, and vice versa. Again, Art. I, sec. 8 implies that the nature of the court should make no difference. It is a flat prohibition.

Section 710. PLEAS OF THE ACCUSED. (1) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record and the court shall proceed as though he had pleaded not guilty.

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

NOTE: In sub. (1), the words "after arraignment" are substituted for "arraigned before a court-martial". This conforms to the changes made in s. 704 whereby the arraignment may take place at a special session called by the military judge.

Sub. (2) has been added to conform courts-martial procedure with that of the civilian criminal courts. The Military Justice Act of 1968 also incorporates this subsection into the federal code.

Section 711. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE. (1) The trial counsel, the defense counsel and the court-

martial shall have equal opportunity to obtain witnesses and other evidence in accordance with regulations the governor prescribes.

(2) The military judge of a court-martial or a summary court officer may:

(a) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue subpoenas duces tecum and other subpoenas;

(c) Enforce by attachment the attendance of witnesses and the production of books and papers.

NOTE: Sub. (b) (4) of the official text is deleted because it is covered adequately in the next section of the code.

Similarly, the official text dealing with execution of process is fully covered in Part XI of the code.

Section 712. REFUSAL TO APPEAR OR TESTIFY. (1) Any person not subject to this code who:

(a) Has been subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before such a court; and

(b) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce may be fined not more than \$250 or imprisoned not more than 30 days or both.

(2) Upon the certification of the facts under sub. (1) by the military court or tribunal to the district attorney of the county where the offense occurred, the district attorney shall prosecute the accused in any court of record and jurisdiction is hereby conferred upon such courts for this purpose.

NOTE: Sub. (a) (2) of the official text is deleted. This subsection made as a prerequisite for prosecution under this section that a witness first had to be tendered fees and mileage. This is inconsistent with Wis. Stat. 885.06 (2) providing that no witness shall be entitled to fees in advance.

The latter portion of sub. (1) (b) is deleted and replaced by a provision setting forth maximum penalties for the offense.

Sub. (2) is created to confer jurisdiction upon the civilian courts of the state. The official text gave military courts the power to try persons not subject to the code. The validity of that provision is dubious. Therefore, the above changes were made to clear up this problem. Also see Art. 47 (b), Uniform Code of Military Justice (50 USC 551-736).

Section 713. CONTEMPTS. (1) A military court may punish for contempt any person subject to this code who uses any disrespectful word, sign or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

(2) Any person not subject to this code who engages in conduct described in sub. (1) may be fined not more than \$250 or imprisoned not more than 30 days or both. Upon certification of the facts by the military court or tribunal to the district attorney of the county where the offense occurred, the district attorney shall prosecute the accused in any court of record and jurisdiction is hereby conferred upon such courts for this purpose.

NOTE: This section has been substantially revised. Sub. (1) refers only to persons subject to the code. The word "menacing" is deleted since it tends to be confusing and vague, and is replaced by "disrespectful".

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Sub. (2) has been created to deal with persons *not* subject to the code and is patterned after the subsection created in s. 712. Refer to the note after that section for further explanation.

Section 714. DEPOSITIONS. (1) At any time after charges have been signed as provided in s. 601, any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority shall designate lawyers to represent the prosecution and the defense.

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

(3) Depositions shall be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) An authenticated deposition taken upon reasonable notice to the other parties, if otherwise admissible under the rules of evidence, may be used in evidence before any court-martial or in any proceeding before a court of inquiry in accordance with s. 887.06 (6) of the statutes, governing the use of depositions in criminal proceedings.

NOTE: In the last sentence of sub. (1), "may" is changed to "shall", "lawyers" is substituted for "commissioned officers", and the last part of the sentence which authorizes the officers to take the deposition is deleted. These changes were made to insure that the accused and the prosecution are represented by attorneys at all times.

Sub. (3) is changed from the permissive to the imperative to insure fair dealing in the taking of depositions.

In sub. (4) specific rules governing the admissibility of depositions are removed and the subsection is made to conform with s. 887.06 (6) which governs the use of depositions in the criminal courts of the state.

Section 715. ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY. Records of courts of inquiry are not admissible as evidence in any court-martial.

NOTE: The official text permitted records of a court of inquiry to be introduced as evidence in a court-martial under limited circumstances. This section did not afford adequate protection to the rights of the accused. Furthermore, the creation of a court of inquiry is completely at the discretion of the governor under s. 1101. Therefore, this section has been changed to make such records inadmissible as evidence in a court-martial.

Section 716. VOTING AND RULINGS. (1) Voting by members of a general or special court-martial upon questions of challenge, on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge of a general or special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any ruling made by the military judge upon any interlocutory question, other than a motion for a finding of not guilty, or the question of accused's sanity, is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice veto as provided in s. 717 beginning with the junior in rank.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

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

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

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

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

(4) Subsections (1), (2) and (3) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum decision is filed, it will be sufficient if the findings of fact appear therein.

NOTE: Subs. (1), (2) and (3) have been amended to conform with s. 505. Refer to the note following that section.

Sub. (4) is new, and conforms with the federal code as amended by the Military Justice Act of 1968. It explains the fact-finding and sentencing role of the military judge when sitting as a one-man court pursuant to s. 401.

Section 717. NUMBER OF VOTES REQUIRED. (1) No person may be convicted of an offense except by the unanimous concurrence of the members present at the time the vote is taken.

(2) All sentences shall be determined by the unanimous concurrence of the members present at the time the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

NOTE: In subs. (1) and (2) the vote is changed from two-thirds to a "unanimous concurrence" in order to conform more fully to civilian criminal jury trials.

Section 718. COURT TO ANNOUNCE ACTION. A court-martial shall announce its findings and sentence to the parties as soon as determined.

NOTE: No change from the official text.

Section 719. RECORD OF TRIAL. (1) General and special courts-martial shall keep a verbatim record of the trial of each case. Upon request of the accused or a reviewing authority, or the state judge advocate, the record shall be transcribed and authenticated by the president and the military judge. If the record cannot be authenticated by either the president or the military judge by reason of his death, disability or absence, it shall be signed by a member in lieu of him. If both the president and the military judge are unavailable, the record shall be authenticated by 2 members. In all other courts-martial, records of trial shall contain such matter and be authenticated in such manner as the governor by regulation prescribes.

(2) A copy of the record of each general and special court-martial shall be given to the accused as soon as it is authenticated.

NOTE: This section has been substantially revised to streamline the rules governing the keeping of records of courts-martial. It provides that a verbatim record be kept of all general and special courts-martial, but they need not be transcribed unless requested by certain specified individuals. Other court-martial records are to be kept as per regulations prescribed by the governor.

PART VIII.

SENTENCES.

Section 801. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED. Cruel and unusual punishment may not be adjudged by any court-martial or inflicted upon any person subject to this code.

NOTE: This section has been revised to delete archaic references to such outmoded punishments as flogging, branding, tattooing the body, and the use of irons. Nevertheless, the meaning and intent of this section is unchanged.

Section 802. MAXIMUM LIMITS. The punishment which a court-martial may direct for an offense shall not exceed limits prescribed by this code.

NOTE: No change from the official text.

Section 803. EFFECTIVE DATE OF SENTENCES. (1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances, in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement.

(3) All other sentences of court-martial are effective on the date ordered executed. In no case may a sentence be executed until final action is taken on review.

NOTE: In sub. (2) the last sentence which provides that in sentences of confinement, the governor may provide for approval by certain officers before execution, is deleted.

In sub. (3), the last sentence is added and provides that no sentence may be executed before final action is taken on review.

Section 804. EXECUTION OF CONFINEMENT. (1) A sentence of confinement adjudged by a military court may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary or prison designated for that purpose. Persons so confined in a jail, penitentiary or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary or prison by the courts of the state.

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

(3) The keepers, officers and wardens of city or county jails and of all other jails, penitentiaries or prisons designated by the governor or by such person as he authorizes to act under s. 205 shall receive persons or-

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

NOTE: In sub. (1), the words "or of any political subdivision thereof" are deleted from the end of the last sentence. They are unnecessary in Wisconsin.

In the first sentence, the words "whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed" have been deleted as unnecessary.

PART IX.

REVIEW OF COURTS-MARTIAL.

NOTE: Section 901, which provides that a court-martial sentence may be ordered executed by the convening authority when approved by him, is deleted. This provision has been superseded by the change made in s. 803 (3).

The second sentence of this section, which states some of the general powers of the convening authority as the initial reviewing authority, has been added to s. 902.

Section 902. INITIAL ACTION ON THE RECORD. After a trial by court-martial, the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command or by the governor. He shall approve the sentence or such part, amount or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence as approved by him.

NOTE: The last sentence of this section has been added. It is identical to the language used in the second sentence of s. 901 of the official text.

NOTE: Section 903, dealing with action on the record of general courts-martial, has been deleted. Action on the records of all courts-martial on review is now covered in s. 907.

Section 904. RECONSIDERATION AND REVISION. (1) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

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

(a) For reconsideration of a finding of not guilty or a ruling which amounts to a finding of not guilty; or

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

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

NOTE: No change from the official text.

Section 905. REHEARINGS. (1) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disap-

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proval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

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

NOTE: Sub. (2) changed to preclude the same military judge who heard the case originally from participating in the rehearing.

Section 906. APPROVAL BY THE CONVENING AUTHORITY. In acting on the findings and sentence of a court-martial, the convening authority may approve only the findings of guilty, and the sentence or part or amount of the sentence, as he finds correct in law and fact and determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

NOTE: The words "as he in his discretion" are deleted from the end of the first sentence as being superfluous.

Section 907. REVIEW OF RECORDS, DISPOSITION. (1) If the convening authority is the governor, he shall refer the record of courts-martial to the state judge advocate who shall submit his written opinion to the governor. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. After consideration of the opinion, the governor's action on review of any record is final.

(2) (a) Except as provided in sub. (1), the convening authority may refer the record of a general court-martial to the staff judge advocate designated by the state judge advocate who shall submit his written opinion to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. When the convening authority has taken final action he shall forward the entire record, including his action thereon and the opinion of the staff judge advocate, to the state judge advocate for review.

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

(c) The state judge advocate shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(3) Except as provided in sub. (1), the convening authority of any summary or special court-martial, after taking final action on review, shall forward the entire record, including his action thereon, to the staff judge advocate designated by the state judge advocate. The staff judge advo-

cate has the duties and powers as provided for the state judge advocate in sub. (2) (b) and (c).

(4) The state judge advocate may order one or more boards of review each composed of not less than 3 commissioned officers of the state military forces, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section.

NOTE: This section has been substantially revised in order to simplify review procedure of all courts-martial, and to consolidate this procedure all in a single section. As a result, 2 prior sections of the code, ss. 406 and 903, have been deleted.

The major substantive change in this section is the elimination of special review to the governor of every court-martial sentence of a dismissal or punitive discharge. An earlier provision in the code permits only a general court-martial to adjudge such punishment. Therefore, this section provides uniform review for all general courts-martial aside from those convened by the governor.

The section also provides for automatic review of special and summary courts-martial proceedings by a staff judge advocate, and sets forth the powers and duties of both the staff judge advocate and state judge advocate on review. These provisions and the provision on boards of review have not been substantially changed from the official text.

Section 908. ERROR OF LAW, LESSER INCLUDED OFFENSE. (1) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

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

NOTE: No change from the official text.

Section 909. REVIEW COUNSEL. (1) Upon the final review of a sentence of any court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate and before the state judge advocate.

(2) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in s. 506, if available, to represent the accused before the reviewing authority, before the staff judge advocate and before the state judge advocate, in the review of cases specified in sub. (1).

(3) If provided by him, accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate and before the state judge advocate.

NOTE: Sub. (1) changed to permit review counsel for any court-martial instead of only general courts-martial and others where dismissal and punitive discharge is adjudged.

Section 910. VACATION OF SUSPENSION. (1) Before the vacation of the suspension of any court-martial sentence, the officer having court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel, if he so desires.

(2) The record of the hearing and the recommendation of the officer having court-martial jurisdiction shall be sent for action to the state judge advocate in cases involving a general court-martial sentence. If the state

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judge advocate vacates the suspension, any unexecuted part of the sentence shall be executed.

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

NOTE: This section has been revised to provide a uniform procedure upon the vacation of suspension of a sentence for all courts-martial, with review by the state judge advocate in cases involving a general court-martial sentence. This is in conformity with the general revision of review procedures in s. 907.

Section 911. PETITION FOR A NEW TRIAL. At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.

NOTE: This section has been changed to permit a petition for new trial on grounds of fraud or newly discovered evidence with respect to *any* court-martial. The official text limited the petition to cases involving dismissal or punitive discharge.

Section 912. REMISSION AND SUSPENSION. (1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

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

NOTE: No change from the official text.

Section 913. RESTORATION. (1) Under regulations prescribed by the governor, all rights, privileges and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable or other punitive discharge is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

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

NOTE: No change from the official text.

Section 914. FINALITY OF PROCEEDINGS, FINDINGS AND SENTENCES. The proceedings, findings and sentences of courts-martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this code, are final. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies and officers of the state, subject only to action upon a petition for a new trial as provided in s. 911.

NOTE: In the first sentence, the words "and conclusive" are deleted as superfluous.

Section 915. REVIEW BY GOVERNOR. Notwithstanding review procedures provided in this code, in any case where no right to review by the governor exists, the accused may, within 30 days after final action taken by any reviewing authority, petition the governor to review such final action. The governor may take action as he deems appropriate. Failure of the governor to act within 30 days constitutes a denial for purposes of s. 916.

NOTE: This section is new. Its purpose is to provide additional safeguards for an accused above and beyond the automatic review procedures set up in s. 907. Under this section, an accused may, even after automatic review, petition the governor directly for review. This creates a right of petition to the commander-in-chief of the state military forces when other review remedies are exhausted.

Section 916. JUDICIAL REVIEW. (1) When the accused has exhausted all of his rights of review under this code, including s. 915, he shall be entitled to judicial review as provided in ss. 227.16 to 227.21 of the statutes. No petition for judicial review may be filed more than 30 days after final action or denial by the governor.

(2) Proceedings for review shall be instituted by filing a petition in the office of the clerk of circuit court for Dane county. A copy of the petition shall be served on the governor personally or by registered mail or by leaving a copy at his office not later than 30 days after the institution of the proceedings and no additional parties need be served.

NOTE: This section is new. It was added to provide further safeguards for an accused by permitting him a final appeal to the civilian courts of the state in the manner in which administrative decisions are appealed from under ch. 227 of the statutes. The official text does not contain any provision for appeal to civilian courts. This omission raises constitutional questions of lack of due process which are cured by the addition of s. 916.

PART X.

PUNITIVE ARTICLES.

Section 1001. PERSONS TO BE TRIED OR PUNISHED. No person may be tried or punished for any offense under ss. 1002 to 1045 unless it was committed while he was in a duty status, except for the offense of failure to obey an order to report for state active duty under s. 1017.

NOTE: The final clause is added to conform with the change made in s. 21.11 (2) of the statutes.

Section 1002. PRINCIPALS. Any person subject to this code is a principal if he:

(1) Commits an offense punishable by this code or intentionally aids, abets, counsels, commands or procures its commission; or

(2) Intentionally causes an act to be done which if directly performed by him would be punishable by this code.

NOTE: The word "intentionally" is added to subs. (1) and (2). This conforms the section to the criminal laws of the state relating to parties to a crime, specifically, s. 939.05 of the statutes.

Section 1003. ACCESSORY AFTER THE FACT. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment shall be punished as a court-martial directs.

NOTE: No change from the official text. This section has essentially the same meaning as ss. 939.05 and 946.47 of the statutes.

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Section 1004. **CONVICTION OF LESSER INCLUDED OFFENSE.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein, but not both.

NOTE: Words "but not both" added to conform with s. 939.66 of the statutes.

Section 1005. **ATTEMPTS.** (1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending even though failing to effect its commission, is an attempt to commit that offense.

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

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

NOTE: No change from the official text. This section conforms substantially with s. 939.32 of the statutes.

Section 1006. **CONSPIRACY.** Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial directs.

NOTE: No change from the official text. This section conforms substantially with s. 939.31 of the statutes.

Section 1007. **SOLICITATION.** (1) Any person subject to this code who solicits or advises another to desert in violation of s. 1010 or mutiny in violation of s. 1019 shall be punished as a court-martial directs.

(2) Any person subject to this code who solicits or advises another to commit an act of misbehavior before the enemy or any hostile force in violation of s. 1024 or sedition in violation of s. 1019 shall be punished as a court-martial directs.

NOTE: The official text provides that "if the offense solicited or advised is attempted or committed (the accused) shall be punished with the punishment provided for the commission of that offense", otherwise punishment will be as a court-martial directs. The official text version makes very little sense because the punishment provided for the enumerated offenses are "as a court-martial directs". Therefore, the above-quoted clauses in both subs. (1) and (2) have been deleted.

Also see the note pertaining to the change made in s. 708 (2).

Section 1008. **FRAUDULENT ENLISTMENT, APPOINTMENT OR SEPARATION.** Any person shall be punished as a court-martial directs when he:

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

(2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation.

NOTE: No change from the official text.

Section 1009. **UNLAWFUL ENLISTMENT, APPOINTMENT OR SEPARATION.** Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment or separation because it is prohibited by law, regulation or order shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1010. DESERTION. (1) Any member of the state military forces is guilty of desertion if he:

(a) Without authority goes or remains absent from his unit, organization or place of duty with intent to remain away therefrom permanently; or

(b) Quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces or in one of the armed forces of the U. S. without fully disclosing the fact that he has not been regularly separated.

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

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

NOTE: No change from the official text.

Section 1011. ABSENCE WITHOUT LEAVE. Any person subject to this code shall be punished as a court-martial directs when he, without authority:

(1) Fails to go to his appointed place of duty at the time prescribed; or

(2) Goes from that place; or

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

NOTE: No change from the official text.

Section 1012. MISSING MOVEMENT. Any person subject to this code who through neglect or design misses the movement of a ship, aircraft or unit with which he is required in the course of duty to move shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1013. CONTEMPT TOWARDS OFFICIALS. Any person subject to this code who uses contemptuous words against the president or the governor which may detrimentally effect the morale or effectiveness of any unit of the state military forces shall be punished as a court-martial directs.

NOTE: The words "or the governor of any other state, territory, commonwealth, or possession in which that person may be serving" are deleted.

The words "which may detrimentally effect the morale or effectiveness of any unit of the state military forces" has been added. This creates a standard for determining whether a person should be prosecuted under this section, and eliminates the constitutional vulnerability of the official text version.

Section 1014. DISRESPECT TOWARDS SUPERIOR COMMISSIONED OFFICER. Any person subject to this code who behaves with disrespect towards his superior commissioned officer shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1015. ASSAULTING OR WILFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER. Any person subject to this code shall be punished as a court-martial directs when he:

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

(2) Wilfully disobeys a lawful command of his superior commissioned officer.

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NOTE: No change from the official text.

Section 1016. **INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER OR NONCOMMISSIONED OFFICER.** Any warrant officer or enlisted member shall be punished as a court-martial directs when he:

- (1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office; or
- (2) Wilfully disobeys the lawful order of a warrant officer or non-commissioned officer; or
- (3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office.

NOTE: References to "petty officer" have been deleted.

Section 1017. **FAILURE TO OBEY ORDER OR REGULATION.** Any person subject to this code shall be punished as a court-martial directs when he:

- (1) Knowingly violates or fails to obey any lawful order or regulation, including an order to report for state active duty;
- (2) Is derelict in the performance of his duties.

NOTE: The clause "including an order to report for state active duty" is added to sub. (1) to conform to the changes made in s. 21.11 (2) of the statutes. Also the word "knowingly" is inserted before the word "violates", and before the word "order" the word "general" is deleted. Sub. (2) is deleted as unnecessary and sub. (3) is renumbered to be sub. (2).

Section 1018. **CRUELTY AND MALTREATMENT.** Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders, shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1019. **MUTINY OR SEDITION.** Any person subject to this code shall be punished as a court-martial directs when he:

- (1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance, is guilty of mutiny; or
- (2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbance against that authority, is guilty of sedition; or
- (3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

NOTE: No change from the official text, except as to form.

Section 1020. **RESISTANCE, BREACH OF ARREST AND ESCAPE.** Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1021. **RELEASING PRISONER WITHOUT PROPER AUTHORITY.** Any person subject to this code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial directs, whether or not the prisoner was committed in strict compliance with law.

NOTE: No change from the official text.

Section 1022. UNLAWFUL DETENTION OF ANOTHER. Any person subject to this code who, except as provided by law or regulation, apprehends, arrests or confines any person shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1023. NONCOMPLIANCE WITH PROCEDURAL RULES. Any person subject to this code shall be punished as a court-martial directs when he:

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

NOTE: No change from the official text, except as to form.

Section 1024. MISBEHAVIOR BEFORE THE ENEMY OR ANY HOSTILE FORCE. Any person subject to this code shall be punished as a court-martial directs when he, before or in the presence of the enemy or any hostile force:

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

NOTE: Refer to the note relating to s. 708 (2).

Section 1025. SUBORDINATE COMPELLING SURRENDER. Any person subject to this code who compels or attempts to compel the commander of any of the state military forces of the state, or of any other state, to give it up to an enemy or any hostile force or to abandon it or who strikes the colors or flag to an enemy or any hostile force without proper authority, shall be punished as a court-martial directs.

NOTE: Refer to the note relating to s. 708 (2).

Section 1026. IMPROPER USE OF COUNTERSIGN. Any person subject to this code who discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial directs.

NOTE: The words "in time of war" have been deleted.

Section 1027. FORCING A SAFEGUARD. Any person subject to this code who forces a safeguard shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1028. CAPTURED OR ABANDONED PROPERTY. (1) All persons subject to this code shall secure all property taken from the enemy

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or any hostile force and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

(2) Any person subject to this code shall be punished as a court-martial directs when he:

(a) Fails to carry out the duties prescribed in sub. (1); or

(b) Buys, sells, trades or in any way deals in or disposes of captured or abandoned property whereby he receives or expects any profit, benefit or advantage to himself or another directly or indirectly connected with himself; or

(c) Engages in looting or pillaging.

NOTE: In sub. (1), the word "public" has been deleted. Also the words "for the service of the United States" has been deleted and replaced with "or any hostile force".

Section 1029. AIDING THE ENEMY OR ANY HOSTILE FORCE. Any person subject to this code shall be punished as a court-martial directs when he:

(1) Aids, or attempts to aid, the enemy or any hostile force with arms, ammunition supplies, money or other things; or

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

NOTE: Refer to the note relating to s. 708 (2).

Section 1030. MISCONDUCT OF A PRISONER. Any person subject to this code shall be punished as a court-martial directs when he, while in the hands of the enemy or any hostile force:

(1) For the purpose of securing favorable treatment by his captors, acts without proper authority in a manner contrary to law, custom or regulation, to the detriment of others held by the enemy or any hostile force as civilian or military prisoners; or

(2) While in a position of authority over prisoners maltreats them without justifiable cause.

NOTE: The words "in time of war" have been deleted. In sub. (1), after the word "others" the words "of whatever nationality" have been deleted.

Also refer to the note regarding the change in s. 708 (2).

Section 1031. FALSE OFFICIAL STATEMENTS. Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1032. MILITARY PROPERTY, LOSS, DAMAGE, DESTRUCTION OR WRONGFUL DISPOSITION. Any person subject to this code shall be punished as a court-martial directs, when he, without proper authority: sells or otherwise disposes of, wilfully or through neglect, damages, destroys or loses or wilfully or through neglect suffers to be damaged, destroyed, sold or wrongfully disposed of any military property of the United States or of the state.

NOTE: No change from the official text, except as to form.

Section 1033. PROPERTY OTHER THAN MILITARY PROPERTY, WASTE, SPOILAGE, OR DESTRUCTION. Any person subject to this code who while in a duty status wilfully or recklessly wastes, spoils or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial directs.

NOTE: No change from the official text.

NOTE: Section 1034, which makes it a crime to wilfully or negligently hazard a vessel of the armed forces of the U. S. or of the state, has been deleted. It is inapplicable in Wisconsin since we have no state naval or coast guard forces. Further, it is highly unlikely that any member of the state military forces as they now exist would ever be in a position to wrongfully hazard a vessel, and even if such an incident could take place, the conduct is made punishable by other sections of the code.

Section 1035. DRUNKEN OR RECKLESS DRIVING. Any person subject to this code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1036. DRUNK ON DUTY, SLEEPING ON POST, LEAVING POST BEFORE RELIEF. Any person subject to this code who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1037. DUELING. Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial directs.

NOTE: No change from the official text. This section conforms with s. 947.07 of the statutes.

Section 1038. MALINGERING. Any person subject to this code shall be punished as a court-martial directs when he, for the purpose of avoiding work, duty or service in the state military forces:

(1) Feigns illness, physical disablement, mental lapse or derangement, or

(2) Intentionally inflicts self-injury.

NOTE: No change from the official text, except as to form.

Section 1039. RIOT OR BREACH OF PEACE. Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial directs.

NOTE: No change from the official text.

NOTE: Section 1040, which made it an offense for any person to use provoking or reproachful words or gestures towards any other person subject to the code, has been deleted. The standards for this offense are so vague and the danger of wrongful and arbitrary application of this provision are so great as to make the section constitutionally vulnerable. Furthermore, any aggravated conduct of this nature can be adequately prosecuted under other provisions of the code.

Section 1041. PERJURY. Any person subject to this code who in a judicial proceeding or in a course of justice conducted under this code, wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1042. FRAUDS AGAINST THE GOVERNMENT. Any person subject to this code shall be punished as a court-martial directs when he:

(1) Knowing it to be false or fraudulent:

(a) Makes any claim against the United States, the state or any officer thereof, or

(b) Presents to any person in the civil or military service, for approval or payment, any claim against the United States, the state or any officer thereof.

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(2) For the purpose of obtaining the approval, allowance or payment of any claim against the United States, the state or any officer thereof:

(a) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(b) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited.

(3) Having charge, possession, custody or control of any money or other property of the United States, or the state, furnished or intended for the armed forces of the U. S. or the state military forces knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) Being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state furnished or intended for the armed forces of the U. S. or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state.

NOTE: No change from the official text, except as to form.

Section 1043. LARCENY AND WRONGFUL APPROPRIATION. (1) Any person subject to this code who wrongfully takes, obtains, or withholds by any means, from the possession of the owner or of any other person any money, personal property or article of value of any kind:

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

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

(2) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1044. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN. Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial directs.

NOTE: No change from the official text.

Section 1045. GENERAL ARTICLE. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of and jurisdiction may not be extended to any offense which constitutes a felony under the laws of this state without a prior written waiver by the district attorney of the county where the alleged offense occurred.

NOTE: In the first sentence, the words "and all conduct of a nature to bring discredit upon the state military forces" are added.

The final sentence of the section is new. It replaces a provision in the official text which reserves exclusive jurisdiction over the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, ar-

son, extortion, assault, burglary, and housebreaking to the civilian courts of the state.

The official text version is deficient because it provides only a partial enumeration of major crimes in which the civilian courts might properly exercise jurisdiction, and a complete enumeration would be unwieldy and impractical. The new provision gives the civilian authorities the first opportunity to prosecute all felonies under the laws of the state. However, the district attorney may waive jurisdiction over those offenses properly within the purview of the military courts. Because of the limitations placed on the sentencing power of courts-martial under this code, waiver of jurisdiction by the district attorney over serious crimes is not contemplated, except for unusual or compelling circumstances.

PART XI.

MISCELLANEOUS PROVISIONS.

Section 1101. COURTS OF INQUIRY. (1) Courts of inquiry to investigate any matter may be convened by the governor.

(2) A court of inquiry consists of 3 or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

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

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

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

(6) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

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

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

NOTE: No change from the official text.

Section 1102. AUTHORITY TO ADMINISTER OATHS. (1) The following members of the state military forces may administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

- (a) The state judge advocate and all assistant state judge advocates;
- (b) All summary courts-martial members;
- (c) All adjutants, assistant adjutants, acting adjutants and personnel adjutants;
- (d) All commanding officers;
- (e) The president, military judge, trial counsel and assistant trial counsel for all general and special courts-martial;

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(f) The president and the counsel for the court of any court of inquiry;

(g) All officers designated to take a deposition

(h) All persons detailed to conduct an investigation; and

(i) All other persons designated by regulations of the governor.

(2) Officers of the state military forces may not be authorized to administer oaths as provided in this section unless they are on active duty in or with those forces under orders of the governor as prescribed in this code.

(3) The signature without seal of any such person together with the title of his office, is prima facie evidence of his authority.

NOTE: Sub. (1) (b) and (f) of the official text pertaining to naval militia officers have been deleted.

Section 1103. SECTIONS TO BE EXPLAINED. Sections 102, 103, 201 to 301, 504, 506, 602, 702, 703, 801, 1001 to 1043, 1045, 1103 and 1104 shall be carefully explained to every enlisted person at the time of his enlistment or transfer or induction into or at the time of his order to duty in or with any of the state military forces or within 30 days thereafter. They shall also be explained annually to each enlisted member of the state military forces. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

NOTE: Added to the list of sections enumerated in the official text are ss. 602, 703 and 1045.

In the 2nd sentence, the word "unit" is changed to "enlisted member".

Section 1104. COMPLAINTS OF WRONGS. Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor through the adjutant general; the governor, after investigation, shall take such measures as he deems proper.

NOTE: At the end of the first sentence, "to" is deleted and changed to "through". Also, "the governor, after investigation, shall take such measures as he deems proper" is added. This enables the governor to take any action on the complaint as he sees fit under the circumstances of each case.

NOTE: Section 1105, which deals with redress of injuries to property and the establishment of claims procedures, has been deleted. This subject matter is adequately covered by other statutory claims procedures of the state which include a claims board to hear and rule on claims against the state.

Section 1106. EXECUTION OF PROCESS AND SENTENCE. In the state military forces the processes and sentences of its courts-martial extend to any part of this state and shall be executed by the civil officers prescribed by the laws of the state.

NOTE: The words "extend to any part of this state and" have been added.

Section 1107. PROCESS OF MILITARY COURTS. (1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books, records and papers when it is sitting within the state, and the witnesses, books, records and papers sought are also so located.

(2) Process and mandates may be issued by summary courts-martial or the military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace

officer and shall be in the form prescribed by regulations issued under this code.

(3) All officers to whom process or mandates are so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing or returning such a process or mandate or for any service in connection therewith.

NOTE: In sub. (1), the words "and papers" are added.

Section 1108. PAYMENT OF FINES AND DISPOSITION THEREOF. Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of the fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine. Notwithstanding any other law, a fine or penalty imposed by a military court upon an officer or enlisted man shall be paid by the officer collecting the same within 30 days to the state treasurer and shall form a part of, and be credited to, the general fund.

NOTE: The last sentence has been changed substantially to make all collected fines payable to the state treasurer and credited to the general fund.

Section 1109. IMMUNITY FOR ACTION OF MILITARY COURTS. No accused may bring an action or proceeding against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings, because of the approval, imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.

NOTE: No change from the official text.

Section 1110. PRESUMPTION OF JURISDICTION. The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

NOTE: No change from the official text.

Section 1111. DELEGATION OF AUTHORITY BY THE GOVERNOR. The governor may delegate any authority vested in him under this code.

NOTE: This section has been changed to permit the governor to delegate any and all authority vested in him by the code. The official text did likewise with the exception of the powers given to the governor in ss. 406 and 501.

NOTE: Section 1112 of the official text expressed a general intent that the code be interpreted uniformly with the laws of those states enacting the code, and the military law of the United States so far as practical. Because of the many changes and major innovations in the Wisconsin code, strict uniformity of interpretation is no longer advisable, and the section has been deleted.

Section 1113. SHORT TITLE. This act may be cited as the "Wisconsin Code of Military Justice".

Approved May 8, 1969.