

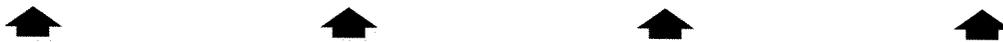


State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 04/16/2008 (Per: RPN/RLR)



➡ Appendix A ... Part 09 of 16

➡ The 2007 drafting file for LRB-2341/1

has been transferred to the drafting file for

2007 LRB-0517

(AB 400 ... Wisconsin Act 200)

➡ The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were added, as an appendix, to the new 2007 drafting file. This section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



waived 4/24 ish

[Signature]
WJ

Note 2 init.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS:

Where the section titles
read "Article #. [Title]."

they should be formatted
like this:

Arabic numeral (plus alpha sometimes)
ⓑ Article # em [Title] ⓐ
eg. ⓑ Article 50a — Admissibility ⓐ

Gen Cat

1 AN ACT ...; relating to: the Wisconsin code of military justice and providing
2 penalties.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

3 SECTION 1. 302.31 (1m) of the statutes is created to read:
4 302.31 (1m) The detention of persons subject to confinement under s. 322.11.

5 SECTION 2. Chapter 322 of the statutes is created to read:

6 **CHAPTER 322**

7 **CODE OF MILITARY JUSTICE**

8 **SUBCHAPTER I**

9 **GENERAL PROVISIONS**

322.001 Criminal code interaction. No ff

(1) Chapters 939, 967 to 973, and 975 to 979 do not apply to proceedings under this chapter.

(2) A crime under this code is a crime under s. 939.12. A felony under this code is a felony under s. 939.22 (12). A misdemeanor under this code is a misdemeanor under s. 939.22 (20).

7 **322.01** Article ~~1~~ ^{em} **Definitions.** In this ^{Chapter} ~~code~~, unless the context otherwise requires:

(1) "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 other person who has an interest other than an official interest in the prosecution of the accused.

(2) "Cadet," "candidate," or "midshipman" means a person who is enrolled in or attending a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in a state military force.

(3) "Classified information" means any of the following:

(a) Any information or material that has been determined by an official of the United States or any state subject to law, an executive order, or regulation to require protection against unauthorized disclosure for reasons of state security or national defense or foreign relations of the United States.

(b) Any restricted data, as defined in 42 USC 2014 (y).

(4) "Code" means this chapter.

(5) "Commanding officer" includes only commissioned officers of the state military forces and shall include officers in charge only when administering

1 nonjudicial punishment under s 322.15. The term 'commander' has the same
2 meaning as 'commanding officer' unless the context otherwise requires.

3 (6) "Convening authority" includes, in addition to the person who convened the
4 court, a commissioned officer commanding for the time being or a successor in
5 command to the convening authority.

6 (7) "Day" means calendar day and is not synonymous with the term "unit
7 training assembly." Any punishment authorized by this code which is measured in
8 terms of days shall, when served in a status other than annual field training, be
9 construed to mean succeeding duty days.

10 (8) "Duty status other than state active duty" means any other type of duty
11 including Unit Training Assemblies or drills but excludes duty not in federal service
12 and not full-time duty in the active service of the state; under an order issued by
13 authority of law and includes travel to and from duty.

14 (9) "Enemy" includes organized forces of the enemy in time of war, any hostile
15 body that U.S. or state forces may be opposing, such as a rebellious mob or band of
16 renegades, and includes civilians as well as members of military organizations.
17 Enemy is not restricted to the enemy government or its armed forces.

18 (10) "Enlisted member" means a person in an enlisted grade.

19 (11) "Forfeiture" means a permanent loss of entitlement to pay or allowances
20 and any forfeiture under this code is not a forfeiture for purposes of Article X, Section
21 2, of the Wisconsin constitution.

22 (12) "Judge advocate" means a commissioned officer of the organized state
23 military forces who is an attorney licensed to practice in this state or a member in
24 good standing of the bar of the highest court of another state, and is any of the
25 following:

1 (a) Certified or designated as a judge advocate in the Judge Advocate General's
2 Corps of the army, air force, navy, or the marine corps or designated as a law
3 specialist as an officer of the coast guard, or a reserve component of one of these.

4 (b) Certified as an non-federally recognized judge advocate, under regulations
5 promulgated subject to this provision, by the senior judge advocate of the commander
6 of the force in the state military force of which the accused is a member, as competent
7 to perform military justice duties required by this code. If there is no judge advocate
8 available, then certification may be made by the senior judge advocate of the
9 commander of another force in the state military forces, as the convening authority
10 directs.

11 (13) "Military court" means a court of inquiry under s. 322.135 or a court
12 martial.

13 (14) "Military judge" means an official of a general or special court-martial
14 detailed under s. 322.26.

15 (15) "Military offenses" means those offenses prescribed under articles 77,
16 principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82, solicitation;
17 83, fraudulent enlistment, appointment, or separation; 84, unlawful enlistment,
18 appointment, or separation; 85, desertion; 86, absence without leave; 87, missing
19 movement; 88, contempt toward officials; 89, disrespect towards superior
20 commissioned officer; 90, assaulting or willfully disobeying superior commissioned
21 officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer,
22 or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment;
23 94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96,
24 releasing prisoner without proper authority; 97, unlawful detention; 98,
25 noncompliance with procedural rules; 99, misbehavior before the enemy; 100,

1 subordinate compelling surrender; 101, improper use of countersign; 102, forcing a
2 safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105,
3 misconduct as prisoner; 107, false official statements; 108, military property — loss,
4 damage, destruction, or wrongful disposition; 109, property other than military
5 property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111,
6 drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty;
7 112a, wrongful use, or possession of controlled substances; 113, misbehavior of
8 sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking
9 speeches or gestures; 120, rape or carnal knowledge; 121, larceny and wrongful
10 appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127, extortion;
11 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds against
12 the government; 133, conduct unbecoming an officer and a gentleman; and 134,
13 general; of this code.

14 (16) “Non-military offenses” mean offenses which are in the state’s civilian
15 penal statute and are not offenses in this code.

16 (17) “Officer” means a commissioned or warrant officer.

17 (18) “Officer in charge” means a member of the naval militia, the navy, the
18 marine corps, or the coast guard as designated by appropriate authority.

19 (19) “Record,” when used in connection with the proceedings of a
20 court-martial, means any of the following:

21 (a) An official written transcript, written summary, or other writing relating
22 to the proceedings.

23 (b) An official audiotape, videotape, digital image or file, or similar material
24 from which sound, or sound and visual images, depicting the proceedings may be
25 reproduced.

1 (20) "Senior force commander" means the commander of the same force of the
2 state military forces as the accused.

3 (21) "Senior force judge advocate" means the senior judge advocate of the
4 commander of the same force of the state military forces as the accused and who is
5 that commander's chief legal advisor.

6 (22) "State active duty" means full-time duty in the state military forces under
7 an order of the governor or otherwise issued by authority of law, and paid by state
8 funds, and includes travel to and from duty.

9 (23) "State military forces" means the Wisconsin army and air national guard,
10 the national guard, as defined in 32 USC 502, 503, or 904, the state defense force, the
11 organized naval militia of the state, and any other military force organized under the
12 Constitution and laws of the state, and does not include the unorganized militia,
13 state guard, or home guard, when not in a status subjecting them to exclusive
14 jurisdiction under 10 USC ch. 47.

15 (24) "Superior commissioned officer" means a commissioned officer superior in
16 rank or command.

17 (25) "Unit Training Assembly" means an assembly for drill and instruction
18 which may consist of a single ordered formation of a company, battery, squadron, or
19 detachment, or, when authorized by the commander, a series of ordered formations
20 of those organizations.

21 **322.02** Article 2, ^(B) ~~Persons~~ ^{XI - em} **subject to this code; jurisdiction.** (No ff)

22 (1) Except as provided in s. 322.03, this code applies only to members of the
23 state military forces at all times.

24 (2) Subject matter jurisdiction is established if a nexus exists between an
25 offense under this code and the state military force. Courts-martial have primary

1 jurisdiction of military offenses as defined in s. 322.01. A proper civilian court has
2 primary jurisdiction of a non-military offense when an act or omission violates both
3 this code and local criminal law, foreign or domestic. In this case, a court-martial
4 may be initiated only after the civilian authority has declined to prosecute or
5 dismissed the charge, provided jeopardy has not attached. Jurisdiction over
6 attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be
7 determined by the underlying offense.

8 **322.03** Article 3 ^{III = cm} **Jurisdiction to try certain personnel.** No ff

9 (1) Each person discharged from a state military force who is later charged with
10 having fraudulently obtained a discharge is, subject to s. 322.43, subject to trial by
11 court-martial on that charge and is, after apprehension, subject to this code while
12 in custody under the direction of the state military forces for that trial. Upon
13 conviction of that charge that person is subject to trial by court-martial for all
14 offenses under this code committed before the fraudulent discharge.

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

18 **322.05** Article 5 ^{III = cm} **Territorial applicability of the code.** No ff

19 (1) This code has applicability in all places, provided that either the person
20 subject to the code is in a duty status or, if not in a duty status, that there is a nexus
21 between the act or omission constituting the offense and the efficient functioning of
22 the state military forces; however, this grant of military jurisdiction shall neither
23 preclude nor limit civilian jurisdiction over an offense.

24 (2) Military courts may be convened and held in units of a state military force
25 while those units are serving outside the state with the same jurisdiction and powers

1 as to persons subject to this code as if the proceedings were held inside the state, and
2 offenses committed outside the state may be tried and punished either inside or
3 outside the state.

4 **322.06** Article 6 **Judge advocates.** *(B)* *(VI=em)* *No ff*

5 (1) The senior force judge advocates in each of the state's military forces or that
6 judge advocate's delegates shall make frequent inspections in the field in supervision
7 of the administration of military justice in that force.

8 (2) Convening authorities shall at all times communicate directly with their
9 judge advocates in matters relating to the administration of military justice. The
10 judge advocate of any command is entitled to communicate directly with the judge
11 advocate of a superior or subordinate command, or with the state judge advocate.

12 (3) No person who has acted as member, military judge, trial counsel, defense
13 counsel, or investigating officer, or who has been a witness, in any case may later act
14 as a judge advocate to any reviewing authority upon the same case.

15 SUBCHAPTER II

16 APPREHENSION AND RESTRAINT

17 **322.07** Article 7 **Apprehension.** *(B)* *(VI=em)* *No ff*

18 (1) "Apprehension" is the taking of a person into custody. *means*

19 (2) Any person authorized by this code or by the Uniform Code of Military
20 Justice, or by regulations issued under either, to apprehend persons subject to this
21 code, any marshal of a court-martial appointed subject to the provisions of this code,
22 and any peace officer or civil officer having authority to apprehend offenders under
23 the laws of the United States or of a state, may do so upon probable cause that an
24 offense has been committed and that the person apprehended committed it.

In this section

1 (3) Commissioned officers, warrant officers, petty officers, and
2 noncommissioned officers have authority to quell quarrels, frays, and disorders
3 among persons subject to this code and to apprehend persons subject to this code.

4 (4) If an offender is apprehended outside the state, the offender's return to the
5 state must be in accordance with normal extradition procedures or by reciprocal
6 agreement.

7 (5) No person authorized by this section to apprehend persons subject to this
8 code or the place where an offender is confined, restrained, held, or otherwise housed
9 may require payment of any fee or charge for so receiving, apprehending, confining,
10 restraining, holding, or otherwise housing a person except as otherwise provided by
11 law.

12 **322.09** Article 9, **Imposition of restraint.**

13 (1) Arrest is the restraint of a person by an order, not imposed as a punishment
14 for an offense, directing him or her to remain within certain specified limits.

15 Confinement is the physical restraint of a person.

16 (2) An enlisted member may be ordered into arrest or confinement by any
17 commissioned officer by an order, oral or written, delivered in person or through
18 other persons subject to this code. A commanding officer may authorize warrant
19 officers, petty officers, or noncommissioned officers to order enlisted members of the
20 commanding officer's command or subject to the commanding officer's authority into
21 arrest or confinement.

22 (3) A commissioned officer, a warrant officer, or a civilian subject to this code
23 or to trial there under may be ordered into arrest or confinement only by a
24 commanding officer to whose authority the person is subject, by an order, oral or

In this section
9(a)

1 written, delivered in person or by another commissioned officer. The authority to
2 order persons into arrest or confinement may not be delegated.

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

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

8 **322.10** ^(B) Article ~~10~~^{X=EM} **Restraint of persons charged with offenses.** Any
9 person subject to this code charged with an offense under this code may be ordered
10 into arrest or confinement, as circumstances may require. When any person subject
11 to this code is placed in arrest or confinement prior to trial, immediate steps shall be
12 taken to inform the person of the specific wrong of which the person is accused and
13 diligent steps shall be taken to try the person or to dismiss the charges and release
14 the person.

15 **322.11** ^(B) Article ~~11~~^{X=EM} **Place of confinement; reports and receiving of**
16 **prisoners.** ^(No 9)

17 (1) If a person subject to this code is confined before, during, or after trial, he
18 or she shall be in a civilian or military confinement.

19 (2) No sheriff or other person authorized to receive prisoners subject to sub. (1)
20 may refuse to receive or keep any prisoner committed to the person's charge by a
21 commissioned officer of the state military forces, when the committing officer
22 furnishes a statement, signed by the officer, of the offense charged against the
23 prisoner, unless otherwise authorized by law.

24 (3) Every person authorized to receive prisoners subject to sub. (1) to whose
25 charge a prisoner is committed shall, within 24 hours after that commitment or as

1 soon as the person is released from guard, report to the commanding officer of the
2 prisoner the name of the prisoner, the offense charged against the prisoner, and the
3 name of the person who ordered or authorized the commitment.

4 ^B 322.12 ^{XI} Article ^{com} 12. **Confinement with enemy prisoners prohibited.** No
5 member of a state military force may be placed in confinement in immediate physical
6 association with enemy prisoners or other foreign nationals not members of the
7 armed forces.

8 ^B 322.13 ^{XIII} Article ^{com} 13. **Punishment prohibited before trial.** No person, while
9 being held for trial or awaiting a verdict, may be subjected to punishment or penalty
10 other than arrest or confinement upon the charges pending against the person, nor
11 shall the arrest or confinement imposed upon the person be any more rigorous than
12 the circumstances required to insure the person's presence, but the person may be
13 subjected to minor punishment during that period for infractions of discipline.

14 ^B 322.14 ^{XIV} Article ^{com} 14. **Delivery of offenders to civil authorities.** ^{off}

15 (1) A person subject to this code accused of an offense under this code or ^e under
16 the state's civilian penal statute may be delivered to the civil authority for trial or
17 confinement.

18 (2) When delivery under this section is made to any civil authority of a person
19 undergoing sentence of a court-martial, the delivery, if followed by conviction in a
20 civil tribunal, interrupts the execution of the sentence of the court-martial, and the
21 offender after having answered to the civil authorities for the offense shall, upon the
22 request of competent military authority, be returned to the place of original custody
23 for the completion of the person's sentence.

24 SUBCHAPTER III

25 NON-JUDICIAL PUNISHMENT

1 **322.15** ^(B) Article 15 ^{= 15a} **Commanding officer's non-judicial punishment.** ^(No IT)

2 (1) Under regulations as prescribed, any commanding officer, and for purposes
3 of this section, officers-in-charge, may impose disciplinary punishments for minor
4 offenses without the intervention of a court-martial. The governor, the adjutant
5 general, or an officer of a general or flag rank in command may delegate the powers
6 under this section to a principal assistant who is a member of a state military force.

7 (2) Any commanding officer may impose any of the following upon enlisted
8 members of the officer's command:

9 (a) Admonition.

10 (b) Reprimand.

11 (c) Withholding of privileges for not more than 6 months, which need not be
12 consecutive.

13 (d) Forfeiture of not more than ⁷ ~~seven~~ days' pay.

14 (e) Fine of not more than ⁷ ~~seven~~ days' pay.

15 (f) Reduction to the next inferior pay grade, if the grade from which demoted
16 is within the promotion authority of the officer imposing the reduction or any officer
17 subordinate to the one who imposes the reduction.

18 (g) Extra duties, including fatigue or other duties, for not more than 14 days,
19 which need not be consecutive.

20 (h) Restriction to certain specified limits, with or without suspension from duty,
21 for not more than 14 days, which need not be consecutive.

22 (3) Any commanding officer of the grade of major or lieutenant commander, or
23 above may impose any of the following upon enlisted members of the officer's
24 command:

25 (a) Any punishment authorized in sub. (2) (a), (b), and (c).

1 (b) Forfeiture of not more than one-half of one month's pay per month for ²two
2 months.

3 (c) Fine of not more than one month's pay.

4 (d) Reduction to the lowest or any intermediate pay grade, if the grade from
5 which demoted is within the promotion authority of the officer imposing the
6 reduction or any officer subordinate to the one who imposes the reduction, but an
7 enlisted member in a pay grade above E-4 may not be reduced more than ²two pay
8 grades.

9 (e) Extra duties, including fatigue or other duties, for not more than 45 days,
10 which need not be consecutive.

11 (f) Restriction to certain specified limits, with or without suspension from duty,
12 for not more than 60 days, which need not be consecutive.

13 (4) The governor, the adjutant general, an officer exercising general
14 court-martial convening authority, or an officer of a general or flag rank in command
15 may impose any of the following penalties:

16 (a) Upon officers of the officer's command, any punishment authorized in sub.
17 (3) (a), (b), (c), and (f) and arrest in quarters for not more than 30 days, which need
18 not be consecutive.

19 (b) Upon enlisted members of the officer's command, any punishment
20 authorized in sub. (3).

21 (5) Whenever any of the punishments under this section are combined to run
22 consecutively, the total length of the combined punishment cannot exceed the
23 authorized duration of the longest punishment in the combination, and there must
24 be an apportionment of punishments so that no single punishment in the
25 combination exceeds its authorized length under this section.

1 (6) The service member shall have the right to demand trial by court-martial
2 in lieu of nonjudicial punishment, and shall have the right to consult with a judge
3 advocate.

4 (7) (a) The officer who imposes the punishment, or the successor in command,
5 may, at any time, suspend, set aside, mitigate, or remit any part or amount of the
6 punishment and restore all rights, privileges, and property affected. The officer also
7 may do any of the following:

8 (a) (1) Mitigate reduction in grade to forfeiture of pay.

9 (b) (2) Mitigate arrest in quarters to restriction.

10 (c) (3) Mitigate extra duties to restriction.

11 (8) The mitigated punishment shall not be for a greater period than the
12 punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the
13 amount of the forfeiture shall not be greater than the amount that could have been
14 imposed initially under this section by the officer who imposed the punishment
15 mitigated.

16 (9) A person punished under this section who considers the punishment unjust
17 or disproportionate to the offense may, through the proper channel, appeal to the
18 next superior authority within 15 days after the punishment is either announced or
19 sent to the accused, as the commander may determine. The appeal shall be promptly
20 forwarded and decided, but the person punished may in the meantime be required
21 to undergo the punishment adjudged. The superior authority may exercise the same
22 powers with respect to the punishment imposed as may be exercised under sub. (7)
23 by the officer who imposed the punishment. Before acting on an appeal from a
24 punishment, the authority that is to act on the appeal may refer the case to a judge
25 advocate for consideration and advice.

1 (a) A military judge and not less than ³ ~~three~~ members. An accused may waive
 2 having 12 members and proceed to a special court-martial with not less than ⁶ ~~six~~
 3 members.

4 (b) Only a military judge, if one has been detailed to the court, and the accused
 5 under the same conditions as those prescribed in sub. (1) (b) so requests.

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

7 **322.17** ^(B) Article 17 ^{= cm} **Jurisdiction of courts-martial in general.** Each
 8 component of the state military forces has court-martial jurisdiction over all
 9 members of the particular component who are subject to this code. Additionally, the
 10 state military forces have court-martial jurisdiction over all members subject to this
 11 code.

12 **322.18** ^(B) Article 18 ^{= cm} **Jurisdiction of general courts-martial.** Subject to s.
 13 322.17, general courts-martial have jurisdiction to try persons subject to this code
 14 for any offense made punishable by this code, and may, under limitations as the
 15 governor may prescribe, adjudge any punishment not forbidden by this code.

16 **322.19** ^(B) Article 19 ^{= cm} **Jurisdiction of special courts-martial.** Subject to s.
 17 322.17, special courts-martial have jurisdiction to try persons subject to this code for
 18 any offense made punishable by this code, and may, under limitations as the
 19 governor may prescribe, adjudge any punishment not forbidden by this code except
 20 dishonorable discharge, dismissal, confinement for more than one year, forfeiture of
 21 pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

22 **322.20** ^(B) Article 20 ^{= cm} **Jurisdiction of summary courts-martial.** No 7

23 (1) Subject to s. 322.17, summary courts-martial have jurisdiction to try
 24 persons subject to this code, except officers, cadets, candidates, and midshipmen, for

1 any offense made punishable by this code under limitations as the governor may
2 prescribe.

3 (2) No person with respect to whom summary courts-martial have jurisdiction
4 may be brought to trial before a summary court-martial if that person objects. If
5 objection to trial by summary court-martial is made by an accused, trial by special
6 or general court-martial may be ordered, as may be appropriate. Summary
7 courts-martial may, under limitations as the governor may prescribe, adjudge any
8 punishment not forbidden by this code except dismissal, dishonorable or
9 bad-conduct discharge, confinement for more than one month, restriction to
10 specified limits for more than ~~two~~² months, or forfeiture of more than two-thirds of
11 one month's pay.

12 SUBCHAPTER V

13 APPOINTMENT AND COMPOSITION

14 OF COURTS-MARTIAL

15 **322.22** [Ⓟ] Article 22 ^{= em} **Who may convene general courts-martial.** [Ⓟ] **No ff**

16 (1) General courts-martial may be convened by any of the following:

17 (a) The governor.

18 (b) The adjutant general.

19 (c) The commanding general officer of any force of the state military forces.

20 (d) The commanding officer of a division or a separate brigade.

21 (e) The commanding officer of a separate wing.

22 (2) If any commanding officer is an accuser, the court shall be convened by
23 superior competent authority and may in any case be convened by a superior
24 authority if considered desirable by the authority.

25 **322.23** [Ⓟ] Article 23 ^{= em} **Who may convene special courts-martial.** [Ⓟ] **No ff**

1 (1) Special courts-martial may be convened by any of the following:

2 (a) Any person who may convene a general court-martial.

3 (b) The commanding officer of a garrison, fort, post, camp, station, air national
4 guard base, or naval base or station.

5 (c) The commanding officer of a brigade, regiment, detached battalion, or
6 corresponding unit of the army national guard.

7 (d) The commanding officer of a wing, group, separate squadron, or
8 corresponding unit of the air national guard.

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

11 (2) If the officer is an accuser, the court shall be convened by superior
12 competent authority and may in any case be convened by a superior authority if
13 considered desirable by the superior competent authority.

14 **322.24** ^B Article 24, SM **Who may convene summary courts-martial.** ^{No ff}

15 (1) Summary courts-martial may be convened by any of the following:

16 (a) Any person who may convene a general or special court-martial.

17 (b) The commanding officer of a detached company or other detachment, or
18 corresponding unit of the army national guard.

19 (c) The commanding officer of a detached squadron or other detachment, or
20 corresponding unit of the air national guard.

21 (d) The commanding officer or officer in charge of any other command when
22 empowered by the adjutant general.

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

1 Summary courts-martial may, however, be convened in any case by superior
2 competent authority if considered desirable by that authority.

3 **322.25** [§] Article 25 ^{= en} **Who may serve as a member on courts-martial.** ^{No ff}

4 (1) Any commissioned officer of the state military forces is eligible to serve on
5 all courts-martial for the trial of any person subject to this code.

6 (2) Any warrant officer of the state military forces is eligible to serve on general
7 and special courts-martial for the trial of any person subject to this code, other than
8 a commissioned officer.

9 (3) Any enlisted member of the state military forces who is not a member of the
10 same unit as the accused is eligible to serve on general and special courts-martial
11 for the trial of any enlisted member subject to this code, but that member shall serve
12 as a member of a court only if, before the conclusion of a session called by the military
13 judge under s. 322.39 (1) prior to trial or, in the absence of a session, before the court
14 is assembled for the trial of the accused, the accused personally has requested orally
15 on the record or in writing that enlisted members serve on it. After a request, the
16 accused may not be tried by a general or special court-martial the membership of
17 which does not include enlisted members in a number comprising at least one-third
18 of the total membership of the court, unless eligible enlisted members cannot be
19 obtained on account of physical conditions or military exigencies. If the members
20 cannot be obtained, the court may be assembled and the trial held without them, but
21 the convening authority shall make a detailed written statement, to be appended to
22 the record, stating why they could not be obtained.

23 (4) When it can be avoided, no person subject to this code may be tried by a
24 court-martial any member of which is junior to the accused in rank or grade.

1 (5) When convening a court-martial, the convening authority shall detail
2 members of the state military forces as, in the convening authority's opinion, are best
3 qualified for the duty by reason of age, education, training, experience, length of
4 service, and judicial temperament. No member of the state military forces is eligible
5 to serve as a member of a general or special court-martial when that member is the
6 accuser, a witness, or has acted as investigating officer or as counsel in the same case.

7 (6) Before a court-martial is assembled for the trial of a case, the convening
8 authority may excuse a member of the court from participating in the case.

9 (7) The convening authority may delegate the authority under this section to
10 a judge advocate or to any other principal assistant.

11 (8) In this section, "unit" means any regularly organized body of the state
12 military forces not larger than a company, a squadron, a division of the naval militia,
13 or a body corresponding to one of them.

14 **322.26** ⁸ Article 26, ^{ELM} **Military judge of a general or special court-martial.** No ff

15 (1) A military judge shall be detailed to each general and special
16 court-martial. The military judge shall preside over each open session of the
17 court-martial to which the military judge has been detailed.

18 (2) A military judge shall meet all of the following qualifications:

19 (a) Be a commissioned officer of an organized state military force.

20 (b) Be an attorney licensed to practice in this state or be a member of the bar
21 of a federal court for at least ⁵ ~~five~~ years.

22 (c) Certified as qualified for duty as a military judge by the senior force judge
23 advocate which is the same force as the accused.

24 (3) In the instance when a military judge is not an attorney licensed to practice
25 in this state, the military judge shall be deemed admitted on motion, subject to filing

1 with the senior force judge advocate of the same force as the accused setting forth the
2 qualifications provided in sub. (2).

3 (4) The military judge of a general or special court-martial shall be designated
4 by the state senior force judge advocate of the same force as the accused if possible,
5 or otherwise by the senior of the senior force judge advocates, or a designee, for detail
6 by the convening authority. Neither the convening authority nor any staff member
7 of the convening authority shall prepare or review any report concerning the
8 effectiveness, fitness, or efficiency of the military judge so detailed, which relates to
9 performance of duty as a military judge.

10 (5) No person is eligible to act as military judge in a case if that person is the
11 accuser or a witness, or has acted as investigating officer, trial counsel, or defense
12 counsel in the same case.

13 (6) The military judge of a court-martial may not consult with the members
14 of the court except in the presence of the accused, trial counsel, and defense counsel
15 nor vote with the members of the court.

16 **322.27** ⁸ Article 27 ^{=cm} **Detail of trial counsel and defense counsel.** ^{No ff}

17 (1) For each general and special court-martial the authority convening the
18 court shall detail trial counsel, defense counsel, and assistants as are appropriate.

19 (2) No person who has acted as investigating officer, military judge, witness or
20 court member in any case may act later as trial counsel, assistant trial counsel, or,
21 unless expressly requested by the accused, as defense counsel or assistant or
22 associate defense counsel in the same case. No person who has acted for the
23 prosecution may act later in the same case for the defense nor may any person who
24 has acted for the defense act later in the same case for the prosecution.

1 (3) Except as provided in sub. (4), trial counsel or defense counsel detailed for
2 a general or special court-martial must meet all of the following:

3 (a) A judge advocate as defined in this code.

4 (b) In the case of trial counsel, an attorney licensed to practice in this state.

5 (4) In the instance when a defense counsel is not an attorney licensed to
6 practice in this state, the defense counsel shall be deemed admitted on motion,
7 subject to filing with the military judge setting forth the qualifications that counsel
8 is all of the following:

9 (a) Commissioned officer of the armed forces of the United States or a
10 component thereof.

11 (b) Member in good standing of the bar of the highest court of another state.

12 (c) Certified as a judge advocate in the Judge Advocate General's Corps of the
13 army, air force, navy, or the marine corps, or a judge advocate as defined in this code.

14 (5) Trial counsel detailed to a court-martial shall be considered a prosecutor
15 under state statutes.

16 **322.28** ^{cm} Article 28 **Detail or employment of reporters and interpreters.**

17 Under regulations as may be prescribed, the convening authority of a general or
18 special court-martial or court of inquiry shall detail or employ qualified court
19 reporters, who shall record the proceedings of and testimony taken before that court
20 and may detail or employ interpreters who shall interpret for the court.

21 **322.29** ^{cm} Article 29 **Absent and additional members.** No 9

22 (1) No member of a general or special court-martial may be absent or excused
23 after the court has been assembled for the trial of the accused unless excused as a
24 result of a challenge, excused by the military judge for physical disability or other
25 good cause, or excused by order of the convening authority for good cause.

1 (2) Whenever a general court-martial, other than a general court-martial
 2 composed of a military judge only, is reduced below ~~five~~⁵ members, the trial may not
 3 proceed unless the convening authority details new members sufficient in number
 4 to provide not less than the applicable minimum number of ~~five~~⁵ members. The trial
 5 may proceed with the new members present after the recorded evidence previously
 6 introduced before the members of the court has been read to the court in the presence
 7 of the military judge, the accused, and counsel for both sides.

8 (3) Whenever a special court-martial, other than a special court-martial
 9 composed of a military judge only, is reduced below ~~three~~³ members, the trial may not
 10 proceed unless the convening authority details new members sufficient in number
 11 to provide not less than ~~three~~³ members, unless the accused waives the number of
 12 members. The trial shall proceed with the new members present as if no evidence
 13 had been introduced previously at the trial, unless a verbatim record of the evidence
 14 previously introduced before the members of the court or a stipulation is read to the
 15 court in the presence of the military judge, the accused, and counsel for both sides.

16 (4) If the military judge of a court-martial composed of a military judge only
 17 is unable to proceed with the trial because of physical disability, as a result of a
 18 challenge, or for other good cause, the trial shall proceed, subject to any applicable
 19 conditions of s. 322.16 (1) (b) or (2) (b), after the detail of a new military judge as if
 20 no evidence had previously been introduced, unless a verbatim record of the evidence
 21 previously introduced or a stipulation is read in court in the presence of the new
 22 military judge, the accused, and counsel for both sides.

SUBCHAPTER VI

PRE-TRIAL PROCEDURE

322.30 Article 30 ^{sen} Charges and specifications. N.F.

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1 (1) Charges and specifications shall be signed by a person subject to this code
2 under oath before a commissioned officer authorized by s. 322.136 (1) to administer
3 oaths and shall state all of the following:

4 (a) The signer has personal knowledge of, or has investigated, the matters set
5 forth in the charges and specifications.

6 (b) The facts are true to the best of the signer's knowledge and belief.

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

11 **322.31** ^{em} Article 31 **Compulsory self-incrimination prohibited.** ^{No ff}

12 (1) No person subject to this code may compel any person to incriminate
13 himself or herself or to answer any question the answer to which may tend to
14 incriminate him or her.

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

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

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

4 **322.32** ^{em} Article 32 ^{em} Investigation. ^{em} No ff

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

10 (2) The accused shall be advised of the charges against the accused and of the
11 right to be represented at that investigation by counsel. The accused has the right
12 to be represented at that investigation as provided in s. 322.38 and in regulations
13 prescribed under that section. At that investigation, full opportunity shall be given
14 to the accused to cross-examine witnesses against the accused, if they are available,
15 and to present anything the accused may desire in the accused's own behalf, either
16 in defense or mitigation, and the investigating officer shall examine available
17 witnesses requested by the accused. If the charges are forwarded after the
18 investigation, they shall be accompanied by a statement of the substance of the
19 testimony taken on both sides and a copy shall be given to the accused.

20 (3) If an investigation of the subject matter of an offense has been conducted
21 before the accused is charged with the offense, and if the accused was present at the
22 investigation and afforded the opportunities for representation, cross-examination,
23 and presentation prescribed in sub. (2), no further investigation of that charge is
24 necessary under this section unless it is demanded by the accused after the accused
25 is informed of the charge. A demand for further investigation entitles the accused

1 to recall witnesses for further cross-examination and to offer any new evidence in
2 the accused's own behalf.

3 (4) If evidence adduced in an investigation under this section indicates that
4 the accused committed an uncharged offense, the investigating officer may
5 investigate the subject matter of that offense without the accused having first been
6 charged with the offense if the accused is afforded all of the following:

7 (a) Present at the investigation;

8 (b) Informed of the nature of each uncharged offense investigated; and

9 (c) Afforded the opportunities for representation, cross-examination, and
10 presentation prescribed in sub. (2).

11 (5) The requirements of this section are binding on all persons administering
12 this code but failure to follow them does not constitute jurisdictional error.

13 **322.33** ^(B) Article 33 ^{=cm} **Forwarding of charges.** When a person is held for trial
14 by general court-martial, the commanding officer shall within ⁸ ~~eight~~ days after the
15 accused is ordered into arrest or confinement, if practicable, forward the charges,
16 together with the investigation and allied papers, to the person exercising general
17 court-martial jurisdiction. If that is not practicable, the commanding officer shall
18 report in writing to that person the reasons for delay.

19 **322.34** ^(B) Article 34 ^{=cm} **Advice of judge advocate and reference for trial.** ^(No ff)

20 (1) Before directing the trial of any charge by general court-martial, the
21 convening authority shall refer it to a judge advocate for consideration and advice.
22 The convening authority may not refer a specification under a charge to a general
23 court-martial for trial unless the convening authority has been advised in writing
24 by a judge advocate that all the following conditions are met:

25 (a) The specification alleges an offense under this code.

1 (b) The specification is warranted by the evidence indicated in the report of
2 investigation under s. 322.32, if there is a report.

3 (c) A court-martial would have jurisdiction over the accused and the offense.

4 (2) The advice of the judge advocate under sub. (1) with respect to a
5 specification under a charge shall include a written and signed statement by the
6 judge advocate that does all of the following:

7 (a) Expressing conclusions with respect to each matter set forth in sub. (1).

8 (b) Recommending action that the convening authority take regarding the
9 specification.

10 (3) If the specification is referred for trial, the recommendation of the judge
11 advocate shall accompany the specification.

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

16 ⁸ **322.35** Article 35, ^{= em} **Service of charges.** The trial counsel shall serve or caused
17 to be served upon the accused a copy of the charges. No person may, against the
18 person's objection, be brought to trial before a general court-martial case within a
19 period of ⁵ ~~five~~ days after the service of charges upon the accused, or in a special
20 court-martial, within a period of ³ ~~three~~ days after the service of charges upon the
21 accused.

22 SUBCHAPTER VII

23 TRIAL PROCEDURE

24 ⁸ **322.36** Article 36, ^{= em} **Governor may prescribe regulations.** Pretrial, trial,
25 and post-trial procedures, including modes of proof, for courts-martial cases arising

1 under this code, and for courts of inquiry, may be prescribed by the governor by
2 regulations, or as otherwise provided by law, which shall apply the principles of law
3 and the rules of evidence generally recognized in military criminal cases in the courts
4 of the armed forces but which may not be contrary to or inconsistent with this code.

5 **322.37** Article 37^{em} **Unlawfully influencing action of court.** (No ff)

6 (1) No authority convening a general, special, or summary court-martial, nor
7 any other commanding officer, or officer serving on the commanding officer's staff,
8 may censure, reprimand, or admonish the court or any member, the military judge,
9 or counsel, with respect to the findings or sentence adjudged by the court or with
10 respect to any other exercise of its or their functions in the conduct of the proceedings.

11 No person subject to this code may attempt to coerce or, by any unauthorized means,
12 influence the action of a court-martial or court of inquiry or any member, in reaching
13 the findings or sentence in any case, or the action of any convening, approving, or
14 reviewing authority with respect to their judicial acts. The foregoing provisions of
15 the subsection shall not apply with respect to the any of the following:

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

19 (b) Statements and instructions given in open court by the military judge,
20 summary court-martial officer, or counsel.

21 (2) In the preparation of an effectiveness, fitness, or efficiency report, or any
22 other report or document used in whole or in part for the purpose of determining
23 whether a member of the state military forces is qualified to be advanced in grade,
24 or in determining the assignment or transfer of a member of the state military forces,
25 or in determining whether a member of the state military forces should be retained

1 on active status, no person subject to this code may, in preparing any report, do any
2 of the following:

3 (a) Consider or evaluate the performance of duty of any member as a member
4 of a court-martial or witness.

5 (b) Give a less favorable rating or evaluation of any counsel of the accused
6 because of zealous representation before a court-martial.

7 **322.38** ^{Article 38} ^{clm} **Duties of trial counsel and defense counsel.** ^{No ft}

8 (1) The trial counsel of a general or special court-martial shall be an attorney
9 licensed to practice in this state and shall prosecute in the name of the state, and
10 shall, under the direction of the court, prepare the record of the proceedings.

11 (2) (a) The accused has the right to be represented in defense before a general
12 or special court-martial or at an investigation under s. 322.32.

13 (b) The accused may be represented by civilian counsel at the provision and
14 expense of the accused.

15 (c) The accused may be represented by any of the following:

16 1. Military counsel detailed under s. 322.27.

17 2. Military counsel of the accused's own selection if that counsel is reasonably
18 available as determined under par. (g).

19 (d) If the accused is represented by civilian counsel, military counsel detailed
20 or selected under par. (c) shall act as associate counsel unless excused by military
21 judge at the request of the accused.

22 (e) Except as provided under par. (f), if the accused is represented by military
23 counsel of his or her own selection under par. (c) 2., any military counsel detailed
24 under par. (c) 1. shall be excused.

1 (f) The accused is not entitled to be represented by more than one military
2 counsel. However, the person authorized under regulations prescribed under s.
3 322.27 to detail counsel, in that person's sole discretion may do any of the following:

- 4 1. Detail additional military counsel as assistant defense counsel.
- 5 2. If the accused is represented by military counsel of the accused's own
- 6 selection under par. (c) 2., may approve a request from the accused that military
- 7 counsel detailed under par. (c) 1. act as associate defense counsel.

8 (g) The senior force judge advocate of the same force of which the accused is a
9 member, shall determine whether the military counsel selected by an accused is
10 reasonably available.

11 (3) In any court-martial proceeding resulting in a conviction, the defense
12 counsel may do any of the following:

13 (a) Forward for attachment to the record of proceedings a brief of matters as
14 counsel determines should be considered in behalf of the accused on review, including
15 any objection to the contents of the record which counsel considers appropriate.

16 (b) Assist the accused in the submission of any matter under s. 322.60.

17 (c) Take other action authorized by this code.

18 **322.39** ^(b) Article 39^{=cm} Sessions. ^(No ff)

19 (1) At any time after the service of charges which have been referred for trial
20 to a court-martial composed of a military judge and members, the military judge
21 may, subject to s. 322.35, call the court into session without the presence of the
22 members for the purpose of any of the following:

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

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

4 (c) Holding the arraignment and receiving the pleas of the accused.

5 (d) Performing any other procedural function which does not require the
6 presence of the members of the court under this code.

7 (2) These proceedings shall be conducted in the presence of the accused, the
8 defense counsel, and the trial counsel and shall be made a part of the record. These
9 proceedings may be conducted notwithstanding the number of court members and
10 without regard to s. 322.29.

11 (3) When the members of a court-martial deliberate or vote, only the members
12 may be present. All other proceedings, including any other consultation of the
13 members of the court with counsel or the military judge, shall be made a part of the
14 record and shall be in the presence of the accused, the defense counsel, the trial
15 counsel, and the military judge.

16 **322.40** ^{em} Article 40 **Continuances.** The military judge of a court-martial or
17 a summary court-martial may, for reasonable cause, grant a continuance to any
18 party for time, and as often, as may appear to be just.

19 **322.41** ^{em} Article 41 **Challenges.** **(No ff)**

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

1 (b) If exercise of a challenge for cause reduces the court below the minimum
2 number of members required by s. 322.16, all parties shall, notwithstanding s.
3 322.29, either exercise or waive any challenge for cause then apparent against the
4 remaining members of the court before additional members are detailed to the court.
5 However, peremptory challenges shall not be exercised at that time.

6 (2) (a) Each accused and the trial counsel are entitled initially to one
7 peremptory challenge of members of the court. The military judge may not be
8 challenged except for cause.

9 (b) If exercise of a peremptory challenge reduces the court below the minimum
10 number of members required by s. 322.16, the parties shall, notwithstanding s.
11 322.29, either exercise or waive any remaining peremptory challenge, not previously
12 waived, against the remaining members of the court before additional members are
13 detailed to the court.

14 (c) Whenever additional members are detailed to the court, and after any
15 challenges for cause against additional members are presented and decided, each
16 accused and the trial counsel are entitled to one peremptory challenge against
17 members not previously subject to peremptory challenge.

18 ^(b) **322.42** Article 42^{em} **Oaths or affirmations.** (No ff)

19 (1) Before performing their respective duties, military judges, general and
20 special courts-martial members, trial counsel, defense counsel, reporters, and
21 interpreters shall take an oath or affirmation in the presence of the accused to
22 perform their duties faithfully. The form of the oath or affirmation, the time and
23 place of the taking, the manner of recording the same, and whether the oath or
24 affirmation shall be taken for all cases in which these duties are to be performed or
25 for a particular case, shall be as prescribed in regulation or as provided by law. These

1 regulations may provide that an oath or affirmation to perform faithfully the duties
2 as a military judge, trial counsel, or defense counsel may be taken at any time by any
3 judge advocate or other person certified or designated to be qualified or competent
4 for the duty, and if an oath or affirmation is taken, it need not again be taken at the
5 time the judge advocate or other person is detailed to that duty.

6 (2) Each witness before a court-martial shall be examined under oath or
7 affirmation.

8 **322.43** ^{em} Article 43 ^{No ff} Statute of limitations.

9 (1) Except as otherwise provided in this section, a person charged with any
10 offense is not liable to be tried by court-martial or punished under s. 322.15 if the
11 offense was committed more than ³~~three~~ years before the receipt of sworn charges and
12 specifications by an officer exercising court-martial jurisdiction over the command
13 or before the imposition of punishment under s. 322.15.

14 (2) Periods in which the accused is absent without authority or fleeing from
15 justice shall be excluded in computing the period of limitation prescribed in this
16 section.

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

21 (4) When the United States is at war based on a congressional declaration or
22 by presidential declaration under the Global War on Terror, the running of any
23 statute of limitations is suspended until ²~~two~~ years after the termination of
24 hostilities, as proclaimed by the president or by a joint resolution of congress, and is
25 applicable to any offense under this code under any of the following circumstances:

1 (a) Involving fraud or attempted fraud against the United States, any state, or
2 any agency of either in any manner, whether by conspiracy or not.

3 (b) Committed in connection with the acquisition, care, handling, custody,
4 control, or disposition of any real or personal property of the United States or any
5 state.

6 (c) Committed in connection with the negotiation, procurement, award,
7 performance, payment, interim financing, cancellation, or other termination or
8 settlement, of any contract, subcontract, or purchase order which is connected with
9 or related to the prosecution of the war, or with any disposition of termination
10 inventory by any war contractor or government agency.

11 (5) (a) If charges or specifications are dismissed as defective or insufficient for
12 any cause and the period prescribed by the applicable statute of limitations has
13 expired, or will expire within 180 days after the date of dismissal of the charges and
14 specifications, trial and punishment under new charges and specifications are not
15 barred by the statute of limitations if the conditions specified in par. (b) are met.

16 (b) The conditions referred to in par. (a) are that the new charges and
17 specifications satisfy all of the following:

18 1. Be received by an officer exercising summary court-martial jurisdiction over
19 the command within 180 days after the dismissal of the charges or specifications.

20 2. Allege the same acts or omissions that were alleged in the dismissed charges
21 or specifications, or allege acts or omissions that were included in the dismissed
22 charges or specifications.

23 **322.44** ^(b) Article 44^{=em} **Former jeopardy.** (No ff)

24 (1) No person may, without his or her consent, be tried a ^{2nd} ~~second~~ time for the
25 same offense.

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

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

8 **322.45** Article 45^{em} **Pleas of the accused.** (No ff)

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

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

22 **322.46** Article 46^{em} **Opportunity to obtain witnesses and other evidence.**

23 The trial counsel, the defense counsel, and the court-martial shall have equal
24 opportunity to obtain witnesses and other evidence as prescribed by regulations and
25 provided by law. Process issued in court-martial cases to compel witnesses to appear

1 and testify and to compel the production of other evidence shall apply the principles
 2 of law and the rules of courts-martial generally recognized in military criminal cases
 3 in the courts of the armed forces of the United States, but which may not be contrary
 4 to or inconsistent with this code. Process shall run to any part of the United States,
 5 or the territories, commonwealths, and possessions, and may be executed by civil
 6 officers as prescribed by the laws of the place where the witness or evidence is located
 7 or of the United States.

8 **322.47** ^{em} Article 47, **Refusal to appear or testify.** ^{Woff}

9 (1) Any person not subject to this code may be punished by the military court
 10 in the same manner as a court of the state, if all of the following apply to that person:

11 (a) Has been duly subpoenaed to appear as a witness or to produce books and
 12 records before a court-martial or court of inquiry, or before any military or civil
 13 officer designated to take a deposition to be read in evidence before a court.

14 (b) Has been duly paid or tendered the fees and mileage of a witness at the rates
 15 allowed to witnesses attending a court of the state.

16 (c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or
 17 to testify or to produce any evidence which that person may have been legally
 18 subpoenaed to produce.

19 (2) The fees and mileage of witnesses shall be advanced or paid out of the
 20 appropriations for the compensation of witnesses.

21 **322.48** ^{em} Article 48, **Contempt.** A military judge may punish for contempt any

22 person who uses any menacing word, sign, or gesture in its presence, or who disturbs
 23 its proceedings by any riot or disorder. A person subject to this code may be punished
 24 for contempt by confinement not to exceed 30 days or a fine of \$100, or both. A person

1 not subject to this code may be punished for contempt by a military court in the same
2 manner as a court of the state.

3 **322.49** Article 49, ^{em} **Depositions.** (No ff)

4 (1) At any time after charges have been signed as provided in s. 322.30, any
5 party may take oral or written depositions unless the military judge or summary
6 court-martial officer hearing the case or, if the case is not being heard, an authority
7 competent to convene a court-martial for the trial of those charges forbids it for good
8 cause.

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

11 (3) A duly authenticated deposition taken upon reasonable notice to the other
12 parties, so far as otherwise admissible under the rules of evidence, may be read in
13 evidence or, in the case of audiotape, videotape, digital image or file, or similar
14 material, may be played in evidence before any military court, if any of the following
15 apply:

16 (a) The witness resides or is beyond the State in which the court is ordered to
17 sit, or beyond one hundred miles from the place of trial or hearing;

18 (b) The witness by reason of death, age, sickness, bodily infirmity,
19 imprisonment, military necessity, non amenability to process, or other reasonable
20 cause, is unable or refuses to appear and testify in person at the place of trial or
21 hearing.

22 (c) The present whereabouts of the witness is unknown.

23 **322.50** Article 50, ^{em} **Admissibility of records of courts of inquiry.** (No ff)

24 (1) In any case not extending to the dismissal of a commissioned officer, the
25 sworn testimony, contained in the duly authenticated record of proceedings of a court

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

5 (2) Testimony may be read in evidence only by the defense in cases extending
6 to the dismissal of a commissioned officer.

7 (3) Testimony may also be read in evidence before a court of inquiry.

8 **322.505** Article 50a²¹ **Defense of mental disease or defect.** (No ff)

9 (1) The accused has an affirmative defense of mental disease or defect in a trial
10 by court-martial if, at the time of the commission of the acts constituting the offense,
11 the accused, as a result of a mental disease or defect, lacked substantial capacity
12 either to appreciate the wrongfulness of his or her conduct or to conform his or her
13 conduct to the requirements of the law. Mental disease or defect does not otherwise
14 constitute a defense.

15 (2) The accused has the burden of proving the defense of mental disease or
16 defect to a reasonable certainty by the greater weight of the credible evidence.

17 (3) Whenever lack of mental disease or defect of the accused with respect to an
18 offense is properly at issue, the military judge shall instruct the members of the
19 military court as to the defense of mental disease or defect under this section and
20 charge them to find the accused any one of the following:

21 (a) Guilty.

22 (b) Not guilty.

23 (c) Not guilty by reason of mental disease or defect.

24 (4) Sub. (3) does not apply to a court-martial composed of a military judge only.

25 In the case of a court-martial composed of a military judge only or a summary

1 court-martial officer, whenever mental disease or defect of the accused with respect
2 to an offense is properly at issue, the military judge or summary court-martial officer
3 shall find the accused of any of the following:

4 (a) Guilty.

5 (b) Not guilty.

6 (c) Not guilty by reason of mental disease or defect.

7 **(5)** Notwithstanding the provisions of s. 322.52, the accused shall be found not
8 guilty by reason of mental disease or defect if any of the following apply:

9 (a) A majority of the members of the court-martial present at the time the vote
10 is taken determines that the defense of mental disease or defect has been
11 established.

12 (b) In the case of a court-martial composed of a military judge only or a
13 summary court-martial officer, the military judge or summary court-martial officer
14 determines that the defense of mental disease or defect has been established.

15
16 **322.51** ⁶ Article 51² **Voting and rulings.** **(No IT)**

17 **(1)** Voting by members of a general or special court-martial on the findings and
18 on the sentence shall be by secret written ballot. The junior member of the court shall
19 count the votes. The count shall be checked by the president, who shall as soon as
20 possible announce the result of the ballot to the members of the court.

21 **(2)** The military judge shall rule upon all questions of law and all interlocutory
22 questions arising during the proceedings. Any ruling made by the military judge
23 upon any question of law or any interlocutory question other than the factual issue
24 of mental disease or defect of the accused is final and constitutes the ruling of the
25 court. However, the military judge may change the ruling at any time during the

1 trial. Unless the ruling is final, if any member objects, the court shall be cleared and
2 closed and the question decided by a voice vote as provided in s. 322.52, beginning
3 with the junior in rank.

4 (3) Before a vote is taken on the findings, the military judge shall, in the
5 presence of the accused and counsel, instruct the members of the court as to the
6 elements of the offense and charge them with all of the following:

7 (a) The accused shall be presumed to be innocent until his or her guilt is
8 established by legal and competent evidence beyond reasonable doubt.

9 (b) The case being considered, if there is a reasonable doubt as to the guilt of
10 the accused, the doubt must be resolved in favor of the accused and the accused must
11 be acquitted.

12 (c) If there is a reasonable doubt as to the degree of guilt, the finding shall be
13 in a lower degree as to which there is no reasonable doubt.

14 (d) The burden of proof to establish the guilt of the accused beyond reasonable
15 doubt is upon the state.

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

23 ^(e) **322.52** Article 52, ^{=em} **Number of votes required.** **(Woff)**