

**ORARNGR 27- 5
ORANGI 51-201**

Military Justice

Oregon Code of Military Justice

**Joint Forces Headquarters
Oregon National Guard
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SUMMARY OF CHANGE

ORARNGR 27-5

ORANGI 51-201

Oregon Code of Military Justice

- Makes changes to two articles of the State military justice code, Articles 15 and 120.
- Adds clarifying language to Article 15 and its annotation regarding a Servicemember's ability to appeal the punishment imposed during an Article 15 hearing or to demand a *de novo* (complete) review of the matter.
- Changes Table 15-1, correcting a typographical error regarding company-grade authority over an E-5 Servicemember and noting the requisite authority to demote.
- Adds the recently updated Article 120 from the 2008 version of the Uniform Code of Military Justice (UCMJ). The new article expands the number of punishable sexual offenses.

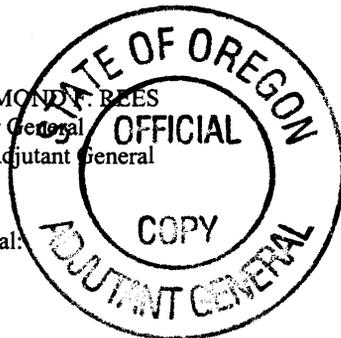
Military Justice

Oregon Code of Military Justice

By Order of the Governor:

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History. This is a minor change to the Oregon Code of Military Justice, which recently was substantially revised in Oct. 2008. The state military justice code is regulatory-based and loosely aligned with the Uniform Code of Military Justice.

Summary. This regulation establishes the Oregon Code of Military Justice as a military regulation and incorporates many provisions of the model state code of military justice that Congress directed and approved. It provides a standard of conduct for service-members in state military service similar to that applicable in federal military service.

Applicability. This regulation applies to the organized militia of the State of

Oregon when not in federal service. The organized militia includes the Oregon National Guard and the State Defense Force.

Proponent Authority. The proponent for this regulation is the State Judge Advocate for the State of Oregon.

Suggested Improvements. Users are invited to send comments and suggested improvements to: Office of the Staff Judge Advocate, JFHQ, Oregon Military Dept., POB 14350, Salem, OR 97309-5047.

Distribution. This publication is available in electronic media only, located on the official Oregon National Guard web site at <http://ormg.or.ngb.army.mil>.

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CHAPTER I. GENERAL PROVISIONS

Article 1. Definitions; gender neutrality

(a) In this Act, unless the context otherwise requires:

(1) The term “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) “Annotation” to an article under this code provides relevant background and/or explanatory information to that particular article. It may not be used to supplant an article’s provisions or used as a basis to challenge an article.

(3) The term “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 the state military forces.

(4) The term “classified information” means —

(A) any information or material that has been determined by an official of the United States or any state pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national or state security, and

(B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(y)).

(5) The term “code” means this military regulation titled, “Oregon Code of Military Justice,” as authorized under Oregon Revised Statutes 396.125 and 396.128.

(6) The term “commanding officer” means a commissioned officer who, by virtue of that officer’s grade and assignment, exercises primary command authority over a state militia organization or prescribed territorial area, that under pertinent official directives is recognized as a command. Commanding officer shall include officers in charge only when administering non-judicial punishment under article 15 of this code. The term ‘commander’ has the same meaning as ‘commanding officer’ unless the context otherwise requires.

(7) The term “commissioned officer” includes a commissioned warrant officer.

(8) The term “confining authority” means the Governor, the Adjutant General, a military court, a convening authority or commanding officer designated by the Adjutant General.

(9) The term “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 to the convening authority.

(10) The term “day” means calendar day and is not synonymous with the term “unit training assembly.” Any punishment authorized by this article which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean succeeding duty days.

(11) The term “duty status other than state active duty” means any other type of duty not in federal service and not full-time duty in the active service of the state; under an order issued by authority of law and includes travel to and from such duty.

(12) The term “enlisted member” means a person in an enlisted grade.

(13) “Enemy” includes organized forces of the enemy, any hostile body that U.S. armed forces or state military forces may be opposing, such as a rebellious mob or a band of renegades, and includes civilians as well as members of military organizations and any individual or organization designated by higher authority. “Enemy” is not restricted to the enemy government or its armed forces. All the citizens of one belligerent are enemies of the government and all the citizens of the other.

(14) The term “judge advocate” means a commissioned officer of the organized state military forces, as described in ORS 398.012, and who is an active member in good standing of the bar of the highest court of the State of Oregon and —

(A) certified or designated as a judge advocate in the Judge Advocate General’s Corps of the Army, Air Force, Navy, or the Marine Corps or designated as a law specialist as an officer of the Coast Guard, or a reserve component of one of these; or

(B) certified as a non-federally recognized judge advocate, under regulations promulgated pursuant to this provision, by the State Judge Advocate or a designee, as competent to perform such military justice duties required by this code.

(15) The term “may” is used in a permissive sense. The phrase “no person may . . .” means that no person is required, authorized, or permitted to do the act prescribed.

(16) The term “military court” means a court-martial or a court of inquiry.

(17) The term “military judge” means an official of a general or special court-martial detailed in accordance with article 26 of this code and an official of the Armed Forces Court of Appeals for Oregon in accordance with Oregon Revised Statute (ORS) 398.420.

(18) The term “military offenses” means those offenses prescribed under articles 77 (Principals), 78 (Accessory after the fact), 80 (Attempts), 81 (Conspiracy), 82 (Solicitation), 83 (Fraudulent enlistment, appointment, or separation), 84 (Unlawful enlistment, appointment, or separation), 85 (Desertion), 86 (Absence without leave), 87 (Missing movement), 88 (Contempt toward officials), 89 (Disrespect towards superior commissioned officer), 90 (Assaulting or willfully disobeying superior commissioned officer), 91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer), 92 (Failure to obey order or regulation), 93 (Cruelty and maltreatment), 94 (Mutiny or sedition), 95 (Resistance, flight, breach of arrest, and escape), 96 (Releasing prisoner without proper authority), 97 (Unlawful detention), 98 (Noncompliance with procedural rules), 102 (Forcing a safeguard), 103 (Captured or abandoned property), 107 (False official statements), 108 (Military property — Loss, damage, destruction, or wrongful disposition), 109 (Property other than military property — Waste, spoilage, or destruction), 110 (Improper hazarding of vessel), 111 (Drunken or reckless operation of vehicle, aircraft or vessel), 112 (Drunk on duty), 112a. (Wrongful use, possession, etc., of controlled substances), 113 (Misbehavior of sentinel), 114 (Dueling), 115 (Malingering), 116 (Riot or breach of peace), 117 (Provoking speeches or gestures), 118 (Murder), 119 (Manslaughter), 120 (Rape and carnal knowledge), 121 (Larceny and wrongful appropriation), 122 (Robbery), 123 (Forgery), 123a (Making, drawing or uttering check, draft, or order without sufficient funds), 124 (Maiming), 125 (Sodomy), 126 (Arson), 127 (Extortion), 128 (Assault), 129 (Burglary), 130 (Housebreaking), 131 (Perjury), 132 (Frauds against the government), 133 (Conduct unbecoming an officer and a gentleman), and 134 (General article) of this code and the enumerated offenses

prescribed under article 134 (paragraphs 61-113), Uniform Code of Military Justice.

(19) The term “national security” means the national defense and foreign relations of the United States.

(20) The term “officer” means a commissioned or warrant officer.

(21) The term “officer in charge” means the commissioned officer of the state military forces looked to and designated in writing by superior authority as the individual chiefly responsible for maintaining discipline in a military organization.

(22) The terms “open hearing” and “open proceeding” means a hearing or proceeding, which is open to, and may be attended by, members of the state military forces, except for any member who is a witness in the hearing.

(23) The term “pay” means the federal active duty base pay in accordance with current Department of Defense military pay tables.

(24) The term “record,” when used in connection with the proceedings of a court-martial, means —

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(25) “Shall” is used in an imperative, mandatory sense.

(26) “State” means one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands.

(27) “State active duty” means full-time duty in the state military forces under an order of the Governor or otherwise issued by authority of law, and paid by state funds, and includes travel to and from such duty.

(28) “Senior force judge advocate” means the senior judge advocate of the commander of the same force of the state military forces as the accused and who is that commander’s chief legal advisor.

(29) “State Judge Advocate” means the commissioned officer, appointed in accordance with ORS 398.012 or by the Adjutant General when the Governor has delegated, in writing, authority to the Adjutant General for one individual appointment and after the Governor has concurred with the proposed officer appointment. The State Judge Advocate is responsible for supervising the administration of military justice and general military legal matters in the organized militia.

(30) “State military forces” means the militia of the state, which shall be divided into the organized militia and the unorganized militia.

(A) The organized militia shall be composed of the Oregon Army National Guard and the Oregon Air National Guard, which forces together with an inactive National Guard shall comprise the Oregon National Guard; the Oregon State Defense Force whenever such a state force shall be duly organized; and such additional forces as may be created by the Governor.

(B) The unorganized militia shall consist of all able-bodied residents of the state between the ages of 18 and 45 who are not serving in any force of the organized militia or who are not on the state retired list and who are or who have declared their intention to become citizens of the United States; subject, however, to such exemptions from military duty as are created by the laws of the United States. The unorganized militia shall be part of the “state military forces” under this code, but only during periods of state active duty to which it is called.

(30) The term “superior commissioned officer” means a commissioned officer superior in rank or command.

(31) “Senior force commander” means the commander of the same force of the state military forces as the accused.

(32) “UCMJ” refers to the Uniform Code of Military Justice, chapter 47, title 10 of the United States Code in effect on October 1, 2008 (2008 Edition).

(b) The use of the masculine gender throughout this code shall also include the feminine gender.

Annotation to Article 1

Language from AR 27-10 is incorporated into commanding officer and officer in charge definitions. Commanding officer definition is expanded to include an officer in a position that has the earmarks of a commanding officer. Officer in charge definition also is expanded to include commissioned officers designated to be responsible for the discipline of a military organization, typically a small contingent of servicemembers supporting a particular mission (e.g., a commissioned officer leading a contingent of Oregon National Guard troops within the continental United States for a particular operation or mission). The Oregon Revised Statutes do not define “Enemy.” Therefore, the “Enemy” definition is substantially from UCMJ and includes any individual or organization designated by higher civil and military authority. The “Judge Advocate” definition includes state law requiring Oregon State Bar license. Definition of “State military forces” is from the Oregon Revised Statutes.

Article 2. Persons subject to this code; jurisdiction

(a) The following persons who are not in federal service are subject to this code:

(1) Members of the organized militia.

(2) All other persons lawfully ordered to duty as part of the state military forces, from the dates they are required by the terms of the order or other directive to obey the same.

(b) A person may not be tried or punished for any offense provided in this code, unless:

(1) The offense was committed while the person was in a duty status during a period of time in which the person was under lawful orders to be in a duty status; or

(2) The offense charged has a connection with the military status or assignment of the person. For purposes of this subsection, the required connection with military status or assignment is conclusively established for offenses for which there is no equivalent offense in the general criminal laws of this state and for offenses involving wrongful use, possession, manufacture and distribution or introduction of a controlled substance described in article 112a of this code.

(c) Subject matter jurisdiction is established if a nexus exists between an offense, either military or non-military, and the state military force. State military forces have primary jurisdiction of military offenses as defined in article 1(a) (18) of this code, when persons subject to this code are in a duty status or were properly ordered to be in a duty status. A proper civilian court, except as provided in subparagraph (d) of this article, has primary jurisdiction of an offense when an act or omission violates both this code and local criminal law, foreign or

domestic, and when a person subject to this code was neither in a duty status nor properly ordered into a duty status. In such a case involving a military offense, a court-martial or non-judicial punishment may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense.

(d) State military forces have primary jurisdiction of any offense involving a person subject to this code, when in a duty status, properly ordered to be in a duty status, or when the sole offense is wrongful use, possession, manufacture, distribution or introduction of a controlled substance described in article 112a of this code.

Annotation to Article 2

Article 2 makes plain the OCMJ's personal jurisdiction is any military duty status, except for federal (Title 10), which includes state active duty (SAD), inactive duty training (IDT), active duty for operational support (ADOS), Active Guard Reserve (AGR) and annual training (AT). Intent is for military jurisdiction over military offenses if servicemember was or should have been in a duty status during the time of the offense. A nexus, for example but not by limitation, may exist if the offense brings discredit upon the military. Article 2 also explicitly grants military jurisdiction over drug offenses if servicemember was or should have been in a duty status or a military nexus exists.

Article 3. Jurisdiction to try certain personnel

(a) Each person discharged from the state military forces who is later charged with having fraudulently obtained a discharge is, subject to article 43 of this code, subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in custody under the direction of the state military forces for that trial. Upon conviction of that charge that person is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

(b) 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.

Article 4. [Reserved]

Article 5. Territorial applicability of the code

(a) This code has applicability at all times and in all places, provided that either the person subject to the code is in a duty status or is subject to this code under article 2.

(b) 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.

Annotation to Article 5

Military jurisdiction is based on the person and the offense, not the location. See ORS 396.130 (Service of organized militia outside state).

Article 6. Judge Advocates

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

(b) Convening authorities shall at all times communicate directly with their judge advocates in matters relating to the administration of military justice. The judge advocate of any command is entitled to communicate directly with the judge advocate of a superior or subordinate command, or with the State Judge Advocate.

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

Article 6a. [Reserved]

CHAPTER II. APPREHENSION AND RESTRAINT

Article 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this code or by chapter 47 of title 10, United States Code, or by regulations issued under either, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer or civil officer having authority to apprehend offenders under the laws of the United States or of a State, may do so upon probable cause that an offense has been committed and that the person apprehended committed it.

(c) 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.

(d) If an offender is apprehended outside the State, the offender's return to the area must be in accordance with normal extradition procedures or by reciprocal agreement.

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

Article 8. [Reserved]

Article 9. Imposition of restraint

(a) 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.

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

(c) A commissioned officer, a warrant officer, or a civilian subject to this code or to trial there under may be ordered into arrest or confinement only by a commanding officer to whose authority the person is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

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

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

Annotation to Article 9

See ORS 399.115 for the arrest of civilian trespassers and disturbers, and the ability to prohibit sales and gambling near the performance of military duty.

Article 10. Restraint of persons charged with offenses

(a) Any person subject to this code charged with an offense under this code may be ordered, as a priority prisoner, into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and diligent steps shall be taken to try the person or to dismiss the charges and release the person.

(b) As used in this section, "priority prisoner" means a person subject to this code who:

(1) Has been ordered into confinement by a confining authority;

(2) Is received by a keeper, officer, warden, or other person in charge of the county jail, penitentiary, prison or other facility in which the person has been ordered confined; and

(3) May be released only upon order of the confining authority.

(c) No place authorized to receive prisoners pursuant to this article or article 11 of this code may charge the Oregon Military Department or any of its officers, employees or agents to receive or keep any prisoner committed to the person's charge by a commissioned officer of the state military forces.

Annotation to Article 10

See ORS 398.058, designating a military prisoner as a priority prisoner.

Article 11. Place of Confinement; Reports and receiving of prisoners

(a) If a person subject to this code is confined before, during, or after trial, confinement shall be in county jails, corrections facilities or prisons designated by the Governor or by such persons as the Governor may authorize to act. If no designation is made by the Governor, the person shall be confined in a county jail. However, any person subject to this code who is sentenced to confinement by courts-martial for more than one (1) year shall be placed in the custody of the state's department of corrections.

(b) No place authorized to receive prisoners pursuant to subsection (a) may refuse to receive or keep any prisoner committed to the person's charge by a commissioned officer of the state military forces, when the committing officer furnishes a statement, signed by such officer, of the offense charged against the prisoner, unless otherwise authorized by law.

(c) Every person authorized to receive prisoners pursuant to subsection (a) to whose charge a prisoner is committed shall, within twenty-four (24) hours after that commitment or as soon as the person is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

Annotation to Article 11

Article 11 includes language from ORS 398.060 to expressly indicate county jails are the primary confinement facility for military offenders.

Article 12. Confinement with enemy prisoners prohibited

No member of the state military forces may be placed in confinement in immediate association with enemy prisoners, both foreign and domestic, or other foreign nationals not members of the armed forces.

Annotation to Article 12

The term "foreign national" was adopted and included to recognize those situations where legal or illegal aliens or immigrants may be confined within the same facility as a member. Although a prisoner may not be a formally designated enemy combatant, such a prisoner may be a terrorist, either foreign or domestic, and considered an enemy. A domestic terrorist refers to a person who engages in activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state; appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States. See 18 U.S.C. § 2331(5). Members of state military forces are due protection and segregation from any of these persons. Hence, the member cannot be placed in immediate physical association with either an enemy or foreign national. Compliance with the term "immediate association" should not involve punitive measures such as solitary confinement. Common sense should be used in these situations to support the interest of protection of the state military forces member.

Article 13. Punishment prohibited before trial

No person, while being held for trial or awaiting a verdict, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon such person be any more rigorous than the circumstances required to insure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline.

Article 14. Delivery of offenders to civil authorities

(a) A person subject to this code accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial or confinement.

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

CHAPTER III. NON-JUDICIAL PUNISHMENT

Note: Commanding officers shall consider all available administrative measures to address misbehavior before resorting to non-judicial punishment (NJP) or other punitive action. Administrative measures include, but are not limited to: 1) Removal from leadership position; 2) Written reprimand or admonition; 3) Written counseling; 4) Corrective training; 5) Bar to re-enlistment; 6) Termination of temporary military orders; 7) Denial of pass or privilege; and 8) MOS/AFSC reclassification. Commanding officers further are strongly encouraged to use the lowest level discipline that adequately and appropriately will address the misbehavior at hand. Commanding officers should first consult with the Office of the Staff Judge Advocate (OSJA) or with a unit-assigned Judge Advocate before holding an Article 15 hearing, unless extraordinary circumstances of time or place exist. OSJA or a unit-assigned Judge Advocate shall discuss all available and appropriate administrative and disciplinary measures for a particular matter, advise the commander whether the evidence substantiates an allegation of misconduct and assist commanders and their staff with the preparation of documents for counseling and for any substantiated and warranted NJP.

Article 15. Commanding officer's non-judicial punishment

(a) Under such regulations as prescribed, any commanding officer (and for purposes of this article, officers-in-charge) may impose disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this article. Only the Governor or The Adjutant General may delegate, in writing, the powers under this article.

(b) Any commanding officer may impose upon enlisted members of the officer's command —

- (1) an admonition;
- (2) a reprimand;
- (3) the withholding of privileges for not more than six (6) months which need not be consecutive;
- (4) the forfeiture of pay of not more than seven (7) days' pay;
- (5) a fine of not more than seven (7) days' pay;
- (6) a reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but the officer imposing the reduction need not have actual authority to promote the member on whom the reduction is imposed;
- (7) extra duties, including fatigue or other duties, for not more than fourteen (14) days, which need not be consecutive; but to be completed within 90 days of the date punishment was imposed; and
- (8) restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive; but to be completed within 90 days of the date punishment was imposed.

(c) Any commanding officer of the grade of major or above may impose upon enlisted members of the officer's command —

- (1) any punishment authorized in subsections (b)(1), (2), and (3);

(2) the forfeiture of not more than one-half (1/2) of one (1) month's pay per month for two (2) months;

(3) a fine of not more than one (1) month's pay;

(4) a reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but the officer imposing the reduction need not have actual authority to promote the member on whom the reduction is imposed and an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

(5) extra duties, including fatigue or other duties, for not more than forty-five (45) days which need not be consecutive; but to be completed within 90 days of the date punishment was imposed; and

(6) restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days which need not be consecutive; but to be completed within 90 days of the date punishment was imposed.

(d) Any commanding officer may, in addition to or in lieu of admonition or reprimand, impose upon officers of the command the following disciplinary punishment for minor offenses without the intervention of a court-martial:

(1) Restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive duty or drill days; but to be completed within 90 days of the date punishment was imposed.

(e) The Governor, The Adjutant General, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command may impose —

(1) upon officers of the officer's command —

(A) any punishment authorized in subsections (c)(1), (2), (3), and (6); and

(B) arrest in quarters for not more than thirty (30) days which need not be consecutive; but to be completed within 90 days of the date punishment was imposed.

(2) upon enlisted members of the officer's command —

(A) any punishment authorized in subsection (c).

(f) Whenever any of those punishments are combined to run consecutively, the total length of the combined punishment cannot exceed the authorized duration of the longest punishment in the combination, and there must be an apportionment of punishments so that no single punishment in the combination exceeds its authorized length under this article.

(g) The officer who imposes the punishment, or the successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. The officer also may —

(1) mitigate reduction in grade to forfeiture of pay;

(2) mitigate arrest in quarters to restriction; or

(3) mitigate extra duties to restriction.

The mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(h) Punishment may not be imposed by a commanding officer of the grade of major or higher upon any person subject to this code under this article if the person has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment.

(i) A person punished under this article by a commanding officer of the grade of captain or below who considers the findings unsupported by the evidence or the punishment unjust or disproportionate to the offense may demand to the commanding officer, within five (5) days after the punishment is either announced or sent to the accused, a de novo review of the findings and/or punishment adjudged. Upon such a demand, any adjudged punishment shall be stayed and the Article 15 hearing record, all evidence and any supporting documents shall be promptly forwarded to the next superior authority of the grade of major or higher. Upon receipt, the next superior authority shall first obtain a written legal review on the matter and, after providing the accused an opportunity to be heard, make a written decision on: 1) whether to uphold or reverse any finding of guilt, and 2) whether to uphold or reduce any adjudged punishment.

(j) A person punished under this article by a commanding officer of the grade of captain or above, who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority within five (5) days after the punishment is either announced or sent to the accused, as the commander may determine, and personally submit written and oral statements 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 superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (g) by the officer who imposed the punishment. Before acting on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a judge advocate for consideration and advice.

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

(l) Whenever forfeiture of pay is imposed under this article, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed. The term "pay" refers to federal active duty base pay in accordance with current Department of Defense military pay tables.

(m) Any hearing conducted under this article by a commanding officer of the grade of captain or below during which a finding of guilt is made and punishment is adjudged shall have a written record that includes all real and testimonial evidence and all other supporting documents. Regulations may further prescribe the form of records to be kept of proceedings under this article and may prescribe additional categories of these proceedings that shall be in writing.

(n) The information accompanying each punitive article of the Uniform Code of Military Justice that this code also includes shall be used in the charging of any offense and the drafting of any charge and specification (such as text, elements, explanation, lesser-included offense, maximum punishment, and sample specifications), but only to the extent not inconsistent with this code and state law.

Annotation to Article 15

Company-grade: This article does not afford servicemember the right to demand a court-martial at a company-grade hearing. It provides servicemember the right to demand de novo review by the next higher commander (O-4 or above) of any finding of guilt and any punishment adjudged. Demand for de novo review immediately stays any adjudged punishment and triggers a legal review on whether the evidence substantiates an allegation of misconduct.

Grade, not Status: This article also specifies the authority to demote is based on grade, and not status (M-day, DSG, ADSW, AGR, etc.) of the servicemember to be reduced. Article 15 makes clear the officer imposing the reduction need not have actual authority to promote the servicemember who is to be reduced. The imposing officer just needs to be of the grade/rank necessary to place the grade of the servicemember who is to be reduced within that officer's promotion authority.

M-day/DSG/AGR Commanders: This article 15 provision allows a commanding officer or officer in charge, whether occupying a part-time or full-time command position, to demote a servicemember, whether part-time or full-time, so long as the servicemember is within the officer's command at the time of the offense.

No Jail or Custody: Because imposing correctional custody on a servicemember during drill weekend or annual training largely cannot be done properly, this form of punishment has been removed as an option.

Federal pay chart: This article also clarifies that pay refers to the federal active duty base pay in accordance with current DoD pay tables, regardless of whether the servicemember is in State Active Duty status or Title 32 duty status. The provision further requires use not inconsistent with this code and state law of the provisions under the UCMJ punitive articles.

Table 15-1 ARNG Enlisted Punishments (Formal Proceedings)

Commanding Officer	Admonition or Reprimand	Restriction	Extra Duties	Correctional Custody	Forfeiture of Pay	Reduction in Rank
Company Grade: E-5 to E-9 E-1 to E-4	Yes Yes	14 days 14 days	14 days 14 days	No No	7 days 7 days	No To one grade lower
Field Grade: E-5 to E-9 E-1 to E-4	Yes Yes	60 days 60 days	45 days 45 days	No No	½ pay per month for 2 months ½ pay per month for 2 months	To one grade lower To one or more grades lower
Notes:						
1. Restriction and extra duty may be combined, but in such a case, the total may not exceed the maximum allowed for extra duty.						
2. A field-grade commander must be an O-5 (Lieutenant Colonel) or above to demote an E-5 or E-6 through non-judicial punishment, and an O-6 (Colonel) or above to demote an E-7 or above. See AR 600-8-19.						

Table 15-2 ARNG Officer Punishments

Punishment	Imposed by company grade officers	Imposed by field grade officers	Imposed by general officers or GCMCAs
Admonition or Reprimand, and	Yes	Yes	Yes
Arrest in quarters, or	No	No	30 days
Restriction, and	30 days	30 days	60 days
Forfeiture	No	No	½ pay per month for 2 months
Note: Admonitions and reprimands given as non-judicial punishment must be administered in writing.			

Table 15-3 ANG Enlisted Punishments

Punishment	Imposed by Lt or Capt	Imposed by Major	Imposed by Lt Col or Above
Additional Restrictions	May not Impose NJP on CMSgt or SMSgt	May not Impose NJP on CMSgt or SMSgt	See Note 2 for reduction of CMSgt or SMSgt
Correctional Custody	No	No	No
Reduction	CMSgt-No, SMSgt-No, MSgt-No, TSgt-No, SSgt-One Grade, SrA-One Grade, A1C-One Grade, Amn-to AB	CMSgt-No, SMSgt-No, MSgt-No, TSgt-One Grade, SSgt-One Grade, SrA-to AB, A1C-to AB, Amn-to AB	CMSgt-See Note 2, SMSgt-See Note 2, MSgt-One Grade, TSgt-One Grade, SSgt-One Grade, SrA-to AB, A1C-to AB, Amn-to AB
Forfeiture	7 days pay	½ of 1 month’s pay per month for 2 months	½ of 1 month’s pay per month for 2 months
Reprimand	Yes	Yes	Yes
Restriction	14 days	60 days	60 days
Extra Duties	14 days	45 days	45 days
Notes:			
1. See Manual for Courts-Martial, Part V, paragraph 5d, for further limitations on combinations of punishments. For example, restriction and extra duties can be combined to run concurrently, but the combination must not be for a period in excess of the maximum duration imposable for extra duties. This means a field grade officer may combine 45 days of extra duties to run concurrently with 45 days of restriction when imposing NJP on an enlisted member.			
2. Neither bread and water nor diminished rations punishments are authorized.			
3. Frocked commanders may exercise only that authority associated with their actual pay grade. No increased punishment authority is conferred by assumption of the title and insignia of the frocked grade.			

Table 15-4 ANG Officer Punishments

Punishment	Imposed by Colonel	Imposed by General Officer or GCMCA
Correctional Custody	No	No
Reduction	No	No
Forfeiture	No	½ of 1 month’s pay per month for 2 months

Reprimand	Yes	Yes
Arrest in Quarters	No	30 days
Restriction	30 days	60 days
Extra Duties	No	No
<i>Notes:</i>		
1. Officers in the grade of Lieutenant Colonel and below (includes frocked Colonels) may not impose NJP on an officer.		
2. See Manual for Courts-Martial, Part V, paragraph 5d, for further limitations on combinations of punishments.		

CHAPTER IV. COURT-MARTIAL JURISDICTION

Article 16. Courts-martial classified

The three kinds of courts-martial in the state military forces are —

- (1) general courts-martial, consisting of —
 - (A) a military judge and not less than five (5) members; or
 - (B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;
- (2) special courts-martial, consisting of —
 - (A) a military judge and not less than three (3) members; or
 - (B) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in subsection (1) (B) so requests; and
- (3) summary courts-martial, consisting of one (1) commissioned officer.

Article 17. Jurisdiction of courts-martial in general

Each component of the state military forces has court-martial jurisdiction over all members of the particular component who are subject to this code. Additionally, the Army and Air National Guard state military forces have court-martial jurisdiction over all members subject to this code. State military forces may exercise court-martial jurisdiction over a person subject to this code and any offense punishable by more than one year confinement only: 1) after any state civil authority, who also has jurisdiction, declines to prosecute; or 2) if no other state civil authority has jurisdiction to prosecute.

Annotation to Article 17

State military forces will have jurisdiction over felony cases as a last resort, where no other state civil authority has jurisdiction to prosecute or a state civil authority, which has jurisdiction over the matter, declines or refuses to prosecute.

Article 18. Jurisdiction of general courts-martial

Subject to article 17 of this code, 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 may prescribe, adjudge any punishment not forbidden by this code.

Article 19. Jurisdiction of special courts-martial

Subject to article 17, special 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 may prescribe, adjudge any punishment not forbidden by this code except dishonorable discharge, dismissal, confinement for more than one (1) year, forfeiture of base pay exceeding two-thirds (2/3) pay per month, or forfeiture of base pay for more than one (1) year.

Article 20. Jurisdiction of summary courts-martial

(a) Subject to article 17 of this code, summary courts-martial have jurisdiction to try persons subject to this code, in an open hearing, except officers, cadets, candidates, and midshipmen, for any offense made punishable by this code under such limitations as the Governor may prescribe.

(b) Summary courts-martial may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this code except dismissal, dishonorable or bad-conduct discharge, confinement for more than one (1) month, restriction to specified limits for more than two (2) months, or forfeiture of more than two-thirds (2/3) of one (1) month's base pay.

(c) Any person with respect to whom summary courts-martial have jurisdiction, who has demanded trial by court-martial during a proceeding under article 15 of this code, may be brought to trial before a summary court-martial on the same matter.

Annotation to Article 20

A person cannot object to being tried by a summary court-martial convened in accordance with this code.

Article 21. [Reserved]

CHAPTER V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

Article 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

- (1) The Governor, or
- (2) The Adjutant General.

Article 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by —

- (1) The Governor, or
- (2) The Adjutant General.

Article 24. Who may convene summary courts-martial

(a) Except as provided in subsection (c) of this article, summary courts-martial may be convened by —

- (1) any person who may convene a general or special court-martial;
- (2) the commanding officer of a battalion, detached company or other detachment, or corresponding unit of the Army;
- (3) the commanding officer of a detached squadron or other detachment, or corresponding unit of the Air Force; or
- (4) the commanding officer or officer in charge of any other command when empowered, in writing, by The Adjutant General.

(b) When only one commissioned officer is present with a command or detachment that officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases. Summary courts-martial may, however, be convened in any case by superior competent authority if considered desirable by such authority.

(c) A commanding officer, who initiated a proceeding under article 15 of this code against a person who subsequently demanded trial by court-martial, may not convene a summary court-martial or be appointed as a summary court-martial on the same matter. No officer under the command of the commander, who initiated a proceeding under article 15 against a person who subsequently demanded trial by court-martial, may be appointed as a summary court-martial on the same matter.

Annotation to Article 24

Because a person cannot object to a summary court-martial, a commander, who initiated an article 15 proceeding that subsequently is turned down, must forward to matter to the next higher level of command for resolution. Moreover, the commander cannot be later appointed as the summary court-martial, nor can any officer under his/her command, on the same matter on which the article 15 proceeding was initiated.

Article 25. Who may serve on courts-martial

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

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

(c) 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 subject to this code, but that member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under article 39(a) of this code 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 orally on the record or in writing that enlisted members serve on it. After such a request, the accused may 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 (1/3) of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such 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. In this article, "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

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

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

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. The convening authority may delegate the authority under this subsection to a judge advocate or to any other principal assistant.

Article 25a. [Reserved]

Article 26. Military judge of a general or special court-martial

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

(b) A military judge shall be —

(1) an active or retired commissioned officer of an organized state military force;

(2) an active member of the Oregon State Bar and in good standing of the highest court of the State; and

(3) certified as qualified for duty as a military judge by the State Judge Advocate.

(c) The military judge of a general or special court-martial shall be designated by the State Judge Advocate for detail by the convening authority. Neither the convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge.

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

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

(f) The military judge of a general or special court-martial shall comply with the Oregon Code of Judicial Conduct.

Article 27. Detail of trial counsel and defense counsel

(a)

(1) For each general and special court-martial the State Judge Advocate, or that officer's designee, shall detail trial counsel, defense counsel, and such assistants as are appropriate.

(2) No person who has acted as investigating officer, military judge, witness 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 or associate 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.

(b) Except as provided in subsection (c), trial counsel or defense counsel detailed for a general or special court-martial must be —

(1) a judge advocate as defined in article 1(14) of this code; and (2) an active member in good standing of the bar of the highest court of the State where the court-martial is held.

(c) In the instance when a defense counsel is not a member of the bar of the highest court of the State, the defense counsel may be deemed admitted *pro hac vice*, subject to filing a certificate with and obtaining approval from the military judge, setting forth the qualifications that counsel is —

(1) a commissioned officer of the armed forces of the United States or a component thereof;

(2) a member in good standing of the bar of the highest court of a state;

(3) obtains *pro hac vice* admission from the Oregon State Bar; and

(4) certified as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, or the Marine Corps.

Article 28. Detail or employment of reporters and interpreters

Under such regulations as may be prescribed, the State Judge Advocate, or that officer's designee, shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court and may detail or employ interpreters who shall interpret for the court.

Article 29. Absent and additional members

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

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five (5) members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the

applicable minimum number of five (5) members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

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

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of article 16(1)(B) or (2)(B) of this code, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

CHAPTER VI. PRE-TRIAL PROCEDURE

Article 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this code under oath before a commissioned officer authorized by article 136(a) of this code to administer oaths and shall state —

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

(2) that they are true in fact to the best of the signer's knowledge and belief.

(b) 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 as soon as practicable.

(c) The information accompanying each punitive article of the Uniform Code of Military Justice that this code also includes shall be used in the charging of any offense and the drafting of any charge and specification (i.e., text, elements, explanation, lesser-included offense, maximum punishment, and sample specifications), but only to the extent not inconsistent with this code and state law.

Article 31. Compulsory self-incrimination prohibited

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

(b) 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 that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

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

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

Article 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the 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.

(b) The accused shall be advised of the charges against the accused and of the right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in article 38 of this code and in regulations prescribed under that article. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against the accused, if they are available, and to present anything the accused may desire in the accused's 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.

(c) 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 subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after the accused is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in the accused's own behalf.

(d) If evidence adduced in an investigation under this article indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused —

(1) is present at the investigation;

(2) is informed of the nature of each uncharged offense investigated; and

(3) is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b).

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

Article 33. Forwarding of charges

When a person is held for trial by general court-martial, the commanding officer shall within eight (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 person exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that person the reasons for delay.

Article 34. Advice of judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to a judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless the convening authority has been advised in writing by a judge advocate that —

- (1) the specification alleges an offense under this code;
- (2) the specification is warranted by the evidence indicated in the report of investigation under article 32 of this code, if there is such a report; and
- (3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the judge advocate —

- (1) expressing conclusions with respect to each matter set forth in subsection (a); and
- (2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the judge advocate shall accompany the specification.

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

Annotation to Article 34

This article permits any judge advocate — not only the convening authority's staff judge advocate — to provide this advice. It is assumed that judge advocates will address any conflict of interest or ethical considerations potentially inherent in this action.

Article 35. Service of charges

The trial counsel shall serve or cause to be served upon the accused a copy of the charges. No person may, against the person's objection, be brought to trial before a general court-martial case within a period of five (5) days after the service of charges upon the accused, or in a special court-martial, within a period of three (3) days after the service of charges upon the accused.

CHAPTER VII. TRIAL PROCEDURE

Article 36. Governor or The Adjutant General may prescribe rules Pretrial, trial, and post-trial procedures, including modes of proof, for courts-martial cases arising under this code, and for courts of inquiry, may be prescribed by the Governor or The Adjutant General by regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this code.

Article 37. Unlawfully influencing action of court

(a) 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, the 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 their functions in the conduct of the proceedings. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry 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 their judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) 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 (2) to statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

(b) 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 active status, no person subject to this code may, in preparing any such report, (1) consider or evaluate the performance of duty of any such member as a member of a court-martial or witness therein or (2) give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

Article 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall be an active member in good standing of the Oregon State Bar and shall prosecute in the name of the State, and shall, under the direction of the court, be responsible for the record of the proceedings.

(b)

(1) The accused has the right to be represented in defense before a general or special court-martial or at an investigation under article 32 of this code as provided in this subsection.

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

(3) The accused may be represented —

(A) by military counsel detailed under article 27 of this code; or

(B) by military counsel of the accused's own selection if that counsel is reasonably available as determined under paragraph (7).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under article 27 of this code to detail counsel, in that person's sole discretion —

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of the accused's own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

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

(c) In any court-martial proceeding resulting in a conviction, the defense counsel —

(1) may forward for attachment to the record of proceedings a brief of such matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which counsel considers appropriate;

(2) may assist the accused in the submission of any matter under article 60 of this code; and

(3) may take other action authorized by this code.

Article 39. Sessions

(a) 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, subject article 35 of this code, call the court into session without the presence of the members for the purpose of —

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

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

(3) holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which does not require the presence of the members of the court under this code.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of court members and without regard to article 29.

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

Article 40. Continuances

The military judge of a court-martial or a summary court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

Article 41. Challenges

(a)

(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 military judge or 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) If exercise of a challenge for cause reduces the court below the minimum number of members required by article 16 of this code, all parties shall, notwithstanding article 29 of this code, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)

(1) Each accused and the trial counsel are entitled initially to one (1) peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by article 16 of this code, the parties shall, notwithstanding article 29 of this code, either exercise or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

(3) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one (1) peremptory challenge against members not previously subject to peremptory challenge.

Article 42. Oaths or Affirmations

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

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

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

Article 43. Statute of limitations

(a) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial if the offense was committed more than three (3) years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command.

(b) A person charged with any offense is not liable to be punished under article 15 of this code if the offense was committed more than one (1) year before any proceeding under article 15 relating to the offense has been initiated.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this article.

(d) Periods in which the accused was absent from territory in which the State has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) When the United States is at war or the President of the United States has declared a national emergency, the running of any statute of limitations applicable to any offense under this code —

(1) involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States or any state; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until two (2) years after the termination of hostilities or national emergency as proclaimed by the President or by a joint resolution of Congress.

(f)

(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations —

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must —

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

Annotation to Article 43

The statute of limitations tolls while a violator is outside of the state lines and cannot be apprehended by the state police forces of the state in which the violator serves. This is regardless of whether the state law enforcement force where the violator may be located has the authority to apprehend the violator. Paragraph (e) allows for new charges, if previously dismissed, when the statute of limitations has expired or will expire within 180 days if the new charges allege the same acts or omissions originally alleged and those new charges are brought within 180 days of the dismissal. The state is cautioned that while its criminal procedure laws may not allow for new civilian charges if the original, similar charges are dismissed, this Code otherwise provides in the military justice context. The language of this article is intended to cover those wars declared by the President, whether or not actually declared under Article 1 of the Constitution of the United States.

Article 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

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

(c) 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 article.

Article 45. Pleas of the accused

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

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

Article 46. Opportunity to obtain witnesses and other evidence

(a) The process by which the attendance of a witness, or production of books, papers, records, data, documents, and tangible things, may be compelled before a military court is a subpoena.

(b) A military court before whom a proceeding is pending may issue subpoenas subscribed by

the summary courts-martial, provost courts or the president or military judge of other military courts, either on its own behalf, or that of the state or a defendant.

(c) An attorney for either party may issue subpoenas subscribed by such attorney for not to exceed 10 witnesses within the state in support of a hearing before the military court at which it is to be tried.

(d) Any subpoena that a defendant before a military court is entitled to have issued shall be issued:

(1) Upon application of the defendant, by the military court before which the action is pending for trial, and in blank, under the seal of the military court and subscribed by the summary courts-martial, provost courts or the president or military judge of other military courts;
or

(2) By an attorney for the defendant, and subscribed by such attorney.

(e) If any party to the proceeding desires more than 10 witnesses, application therefore shall be made to the military court by motion for an order allowing the issuance of subpoenas for such additional witnesses, which motion shall be supported affidavit. The affidavit shall state the names of such witnesses, their places of residence and the facts expected to be proved by each of them. The military court shall make an order allowing the issuance of subpoenas for so many of such witnesses as appear from such statement or affidavit to be necessary and material to a fair, full and impartial trial.

(f) Upon the motion of any party, the military court may direct that the books, papers, records, data, documents, and tangible things described in the subpoena be produced before the military court prior to the trial or prior to the time when the books, papers, records, data, documents, and tangible things are to be offered in evidence and may, upon production, permit the books, papers, records, data, documents, and tangible things to be inspected and copied by any party or its attorneys

(g) A subpoena may be served by either party or any other person over 18 years of age, and shall be served by any sheriff or constable within the county or district of the sheriff or constable, as the case may be, when delivered to the sheriff or constable for service, either on the part of the prosecution or of the defendant.

(h) Medical records may be obtained by subpoena only as provided in Oregon Rules of Civil Procedure (ORCP) 55 H and shall be sent only to the military court before which the matter is pending. In relation to proceedings under Article 32, notice need not be given as required in ORCP 55 H.

(i) Except as provided herein and in subsection (g) above, a subpoena is served by delivering a copy to the witness personally, and by giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated plus one day's attendance fees. Such sums shall be calculated as described in ORS 44.415(2), ORS 136.603 or ORS 136.627. Proof of the service is made in the same manner as in the service of a summons. In the case of service on a peace officer, service of the subpoena and witness and mileage fee shall be made in the manner provided in ORS 136.595(2). When a subpoena has been served as

provided herein and, subsequent to service, the date on, or the time at, which the person subpoenaed is to appear has changed, a new subpoena and witness or mileage fee is not required to be served if:

(1) The subpoena is continued orally in open court in the presence of the person subpoenaed; or

(2) The person who issued the original subpoena notifies the person subpoenaed of the change by first class mail and by either (A) Certified or registered mail, return receipt requested; or (B) Express mail.

(j) The provisions of ORS 44.150 and ORCP 39 B and 55 E and G apply to subpoenas issued under this section.

(k) Whenever any person attends any military court pursuant to a subpoena, and it appears that the witness has come from outside the state or that the witness is indigent, the military court may, by an order entered in its records, direct payment to the witness of such sum of money as the military court considers reasonable for the expenses of the witness. The order of the military court, so entered and containing the information described in subsection (m)(1) below, is sufficient authority for the payment. However, in the case of a prisoner of a jurisdiction outside of this state who is required to attend as a witness in this state, whether for the prosecution or the defense, the sheriff shall be responsible for transporting the witness to the military court of this state, and the sheriff shall assume any costs incurred in connection with the witness while the witness is in the custody of the sheriff. However, the sheriff and not the witness shall be entitled to the witness fees, mileage and expenses to which the witness would otherwise be entitled under this section, ORS 136.603, ORS 136.627 or other applicable law

(l) Except as otherwise specifically provided by law, the costs of serving the subpoena, any per diem fees and mileage fees to a witness, and any expenses ordered under subsection (l) above, shall be paid by the Oregon Military Department. The following shall apply to such payments:

(1) In the case of a sum ordered under subsection (l) above, the military court shall provide to the State Finance Office a copy of the order containing the full name of the payee, stating the components and costs of the total amount to be paid, the reason such sums are deemed reasonable, and providing the total amount to be paid.

(2) In the case of initial service of a subpoena, the person seeking the subpoena shall provide to the State Finance Office a claim verified under oath, showing the payee for all sums claimed, the components and costs of the total amount to be paid, a summary reason such sums are necessary in the action, and providing the total amount to be paid to each payee.

(3) In the case of a witness who has appeared, but who traveled more miles than those for which he or she has been reimbursed, or who was held as a witness for more than one day, the witness shall provide to the State Finance Office a claim verified under oath within 14 days after the last day's attendance as a witness, showing the amount the witness received with service

of the subpoena, stating the dates on which the witness attended military court as a witness, and the unreimbursed mileage the witness drove to attend as such a witness.

(4) State Finance Office shall, within five (5) working days of receiving such claim, provide to the person requesting it either checks for such sums or a written explanation why such sums, or any portion thereof, are denied.

(5) In the event the defendant is found guilty of an offense, any sums paid by the Oregon Military Department for the defendant's witnesses hereunder may be recovered from the defendant by the Oregon Military Department as a cost at the time of sentencing.

(m) In any proceeding before a military court, if a witness refuses to testify or produce evidence of any kind on the ground that the witness may be incriminated thereby, the prosecuting attorney may move the military court to order the witness to testify or produce evidence. The military court shall forthwith hold a summary hearing at which the prosecuting attorney shall show reasonable cause to believe the witness possesses knowledge relevant to the proceeding, or that no privilege protects the evidence sought to be produced. The witness may show cause why the witness should not be compelled to testify or produce evidence. The military court shall order the witness to testify regarding the subject matter under inquiry upon such showing of reasonable cause or shall order the production of evidence upon a finding that no privilege protects the evidence sought, unless the court finds that to do so would be clearly contrary to the public interest. If a military judge is appointed in the proceeding, such judge shall hold the summary hearing outside the presence of the military court and the public, and may require the prosecuting attorney to disclose the purpose of the testimony or evidence. The witness shall be entitled to be represented by counsel at the summary hearing.

(n) A witness who, in compliance with a military court order described above, testifies or produces evidence that the witness would have been privileged to withhold but for the military court order, may be prosecuted or subjected to any penalty or forfeiture for any matter about which the witness testified or produced evidence unless the prosecution, penalty or forfeiture is prohibited by section 12, Article I of the Oregon Constitution. The testimony of the witness or evidence produced or information derived from the testimony or evidence may not be used against the witness in any criminal prosecution. However, the witness may nevertheless be prosecuted or subjected to penalty for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order. If a person refuses to testify after being ordered to testify as provided in this section, the person shall be subject to penalty for contempt of court for failure to comply with the order.

(o) The provisions of ORS 136.623 to 136.637 shall apply to military courts of this state, with the following additional definitions:

(1) "Grand jury" includes but is not limited to the person or body conducting an investigation described under article 32 of this code; and

(2) "Seal of the county" includes but is not limited to the signature of the officer

servicing as summary courts-martial, provost courts or the president or military judge of other military courts.

Annotation to Article 46

State Finance Office refers to that office located within the Oregon Military Department. Oregon Rules for Courts-Martial (ORCM) 703 contains the requisite format for a subpoena. Article 46 incorporates many provisions from Oregon Revised Statutes 136.555 - 136.637 and ORCP 55's requirement to concurrently serve a subpoena and payment for witness and mileage fees. Those provisions of ORS chapter 136 that go beyond the scope of Article 46 are omitted.

Article 47. Refusal to appear or testify

(a) Any person not subject to this code is guilty of an offense against the State when the person

(1) has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial, court of inquiry, commission or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a criminal court of the State; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce.

(b) Any person who commits an offense described in section (a) of this article shall be tried before the circuit court or judge thereof of the county where the offense occurred, and exclusive jurisdiction is conferred upon those courts for such purpose. Upon conviction, such a person shall be punished by a fine of not more than \$2,500, or imprisonment for not more than six months, or both.

(c) The district attorney of the county in which the offense occurred, upon certification of the facts by the military court, court of inquiry or board, shall prosecute any person who commits the offense described in section (a) of this article. The fine shall be deposited in the General Fund of the State Treasury, to be available for general governmental expenses.

The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

Annotation to Article 47

See also ORS 398.224, Refusal to appear or testify, which contains similar language.

Article 48. Contempts

(a) A military judge may punish for contempt any person who commits contempt of court as defined in ORS 33.015.

(b) A person who violates this section may be punished for contempt not to exceed the maximum sanction provided for such contempt in ORS 33.105.

(c) A military court shall have the contempt power possessed by a civilian court as provided under ORS 33.015 to 33.155. For the purpose of such sections:

(1) The military court shall appoint a judge advocate to represent the defendant when such appointment is required by law;

(2) A judge advocate shall be deemed the equivalent of a district attorney; and

(3) The appeal route for appeal of any conviction of contempt shall be as provided for appeal from the punitive provisions of this code.

(d) A person found in contempt under this code and ordered confined may be confined in a county jail upon written order of the military judge.

(e) A person ordered confined under this section may be delivered to the civilian authority by a military or civilian law enforcement authority.

The county jail may not charge the Oregon Military Department or the state for the costs of a person's confinement under this code.

Annotation to Article 48

See also ORS 398.226, Contempt, which contains the same language.

Article 49. Depositions

(a) At any time after charges have been signed as provided in article 30 of this code, any party may take oral or written depositions unless the military judge or summary court-martial officer hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause.

(b) 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.

(c) Depositions may 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.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be played in evidence before any military court, if it appears —

(1) that the witness resides or is beyond the State in which the court is ordered to sit, or beyond one hundred (100) miles from the place of trial or hearing;

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

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

Article 50. Admissibility of records of courts of inquiry

(a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party

before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

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

(c) Such testimony may also be read in evidence before a court of inquiry.

Article 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this article and charge them to find the accused —

- (1) guilty;
- (2) not guilty; or
- (3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused —

- (1) guilty;
- (2) not guilty; or
- (3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of article 52 of this code, the accused shall be found not guilty only by reason of lack of mental responsibility if —

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

Article 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in article 52 of this code, beginning with the junior in rank.

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

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

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

(3) 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

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

(d) Subsections (a), (b), and (c) 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 of decision is filed, it will be sufficient if the findings of fact appear therein.

Article 52. Number of votes required

(a) No person may be convicted of an offense except as provided in article 45(b) of this code or by the concurrence of two-thirds (2/3) of the members present at the time the vote is taken.

(b) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote 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.

Annotation to Article 52

See also 398.234, Number of votes required, which is consistent with article 52.

Article 53. Court to announce action

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

Article 54. Record of trial

(a) Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection. Any other electronic or video recording or photography of a court-martial proceeding is prohibited.

(b)

(1) A complete verbatim record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction; and

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations.

(c) Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner as may be prescribed by regulations. Any electronic or video recording of a summary court-martial shall be conducted by the Public Affairs Office of the Oregon Military Department. The convening authority is the approval authority for all electronic or video recording of a summary court-martial and any request for such a recording must be made five (5) days before the day the summary court-martial commences. All other electronic or video recording or photography of a court-martial proceeding is prohibited.

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

CHAPTER VIII. SENTENCES

Article 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

Article 56. Maximum limits

(a) The punishment which a court-martial may direct for an offense may not exceed such limits as prescribed by this code, but in no instance may a sentence exceed more than ten (10) years for a military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial of any military offense for which an accused may receive a sentence of confinement for more than one (1) year is a felony offense. Except for convictions by a

summary court-martial, all other military offenses are misdemeanors. Any conviction by a summary court-martial is not a criminal conviction.

(b) The limits of punishment for violations of the punitive articles prescribed herein shall be lesser of the sentences prescribed by the manual for courts-martial of the United States in effect on July 1, 2007.

Article 56a. [Reserved]

Article 57. Effective date of sentences

(a) 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.

(b) 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 or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

Article 57a. Deferment of sentences

(a) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in that person's sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(b)

(1) In any case in which a court-martial sentences an accused referred to in paragraph (2) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the state military forces by a State, the United States, or a foreign country referred to in that paragraph.

(2) Paragraph (1) applies to a person subject to this code who —

(A) while in the custody of a State, the United States, or a foreign country is temporarily returned by that State, the United States, or a foreign country to the state military forces for trial by court-martial; and

(B) after the court-martial, is returned to that State, the United States, or a foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In this subsection, the term “State” includes the District of Columbia and any Commonwealth, Territory, or possession of the United States.

(c) In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under article 67(a) of this code is pending, The Adjutant General may defer further service of the sentence to confinement while that review is pending.

Article 58. Execution of confinement

(a) A sentence of confinement adjudged by a court-martial, whether the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

(b) The omission of ‘hard labor’ as a sentence authorized under this code does not deprive the state confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

(c) No place of confinement may require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law.

Article 58a. Sentences: reduction in enlisted grade upon approval

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes —

- (1) a dishonorable or bad-conduct discharge; or
- (2) confinement;

reduces that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a) (1) or (2), the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances.

Article 58b. Sentences: forfeiture of pay and allowances during confinement

(a)

(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this article shall take effect on the date determined under article 57(a) of this code and may be deferred as provided by that article. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds (2/3) of all pay due that member during such period.

(2) A sentence covered by this article is any sentence that includes —

- (A) confinement for more than six (6) months; or

(B) confinement for six (6) months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under article 60 of this code may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six (6) months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a) (2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

CHAPTER IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Article 59. Error of law; lesser included offense

(a) 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.

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

Article 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)

(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within ten (10) days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of a judge advocate under subsection (d). In a summary court-martial case, such a submission shall be made within seven (7) days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this article, for good cause, may extend the applicable period under paragraph (1) for not more than an additional twenty (20) days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive the right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the

purposes of subsection (c) (2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)

(1) The authority under this article to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. If it is impractical for the convening authority to act, the convening authority shall forward the case to a person exercising general court-martial jurisdiction who may take action under this article.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this article. Such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in that person's sole discretion may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in the person's sole discretion may —

(A) dismiss any charge or specification by setting aside a finding of guilty thereto;
or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this article on any court-martial case in which there is a finding of guilt, the convening authority or other person taking action under this article shall obtain and consider the written recommendation of a judge advocate. The convening authority or other person taking action under this article shall refer the record of trial to the judge advocate, and the judge advocate shall use such record in the preparation of the recommendation. The recommendation of the judge advocate shall include such matters as may be prescribed by regulation and shall be served on the accused, who may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)

(1) The convening authority or other person taking action under this article, in the person's sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision —

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this code; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this article if that person disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, that person shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

Annotation to Article 60

Subparagraph (d) requires that the convening authority consider the recommendation of a judge advocate in any courts-martial with a guilty finding. Deletion of the term "staff" lifts the requirement of a recommendation by only one particular judge advocate, who may or may not be available. In some cases the next judge advocate in the chain of command may be the State Judge Advocate who has separate review responsibility under Article 64 and, therefore, should not draft the recommendation. This also provides for cross use of Army and Air Guard judge advocates when manpower resources are an issue.

Article 61. Withdrawal of appeal

(a) In each case subject to appellate review under this code, the accused may file with the convening authority a statement expressly withdrawing the right of the accused to such appeal. Such a withdrawal shall be signed by both the accused and his defense counsel and must be filed in accordance with appellate procedures as provided by law.

(b) The accused may withdraw an appeal at any time in accordance with appellate procedures as provided by law.

Article 62. Appeal by the State

(a)

(1) In a trial by court-martial in which a punitive discharge may be adjudged, the State may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial so long as it is not made in reconsideration:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the State to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within seventy-two (72) hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this article shall be diligently prosecuted as provided by law.

(b) An appeal under this article shall be forwarded to the court prescribed in article 67 of this code. In ruling on an appeal under this article, that court may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this article shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

Article 63. Rehearings

Each rehearing under this code shall take place before a court-martial composed of members not members 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 approved, 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. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

Article 64. Review by the State Judge Advocate

(a) Each general and special court-martial case in which there has been a finding of guilty that is not reviewed under article 67 shall be reviewed by the State Judge Advocate, or a designee. The State Judge Advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, witness, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The State Judge Advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether —

- (A) the court had jurisdiction over the accused and the offense;
- (B) the charge and specification stated an offense; and

- (C) the sentence was within the limits prescribed as a matter of law.
 - (2) A response to each allegation of error made in writing by the accused.
 - (3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.
- (b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the convening authority, if —
- (1) the judge advocate who reviewed the case under article 60(d) of this code recommends corrective action and the State Judge Advocate concurs; or
 - (2) such action is otherwise required by regulation.
- (c)
- (1) The convening authority may —
 - (A) disapprove or approve the findings or sentence, in whole or in part;
 - (B) remit, commute, or suspend the sentence in whole or in part;
 - (C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or
 - (D) dismiss any or all charges.
 - (2) If a rehearing is recommended but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.
 - (3) If the opinion of the State Judge Advocate, or designee, in the State Judge Advocate's or designee's review under subsection (a) is that corrective action is required as a matter of law and if the convening authority does not take action within ten days of the State Judge Advocate's review that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Armed Forces Court of Appeals for Oregon, under article 67 of this code, for review and action as deemed appropriate.
- (d) The State Judge Advocate, or a designee, may review any case in which there has been a finding of not guilty of all charges and specifications. The State Judge Advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The State Judge Advocate's review shall be limited to questions of subject matter jurisdiction.
- (e) The record of trial and related documents in each case reviewed under subsection (d) shall be sent for action to the convening authority.
- (1) The convening authority may —
 - (A) when subject matter jurisdiction is found to be lacking, void the court-martial *ab initio*, with or without prejudice to the Government, as the convening authority deems appropriate; or
 - (B) return the record of trial and related documents to the State Judge Advocate for appeal by the Government as provided by law.

Annotation to Article 64

This article provides for the first level of legal review above the convening authority level of a court-martial. The review includes procedural and substantive analysis of the merits of the case for consideration by the State Judge Advocate. The State Judge Advocate may designate another judge advocate to complete the review due to a conflict of interest as listed in paragraph (a) or for other good cause. If the State Judge Advocate or designee recommends corrective action as a matter of law, and the convening authority does not take action that is at least as favorable as recommended by the State Judge Advocate or designee, the Armed Forces Court of Appeals for Oregon shall act as final review authority. Review of not guilty verdicts is authorized, but the review is limited to questions of subject matter jurisdiction.

Article 65. Disposition of records after review by the convening authority

Except as otherwise required by this code, all records of trial and related documents shall be transmitted and disposed of as prescribed by regulation and provided by law.

Article 66. Review by Armed Forces Court of Appeals for Oregon

(a) Upon petition in accordance with applicable military rules of appellate procedure, the Adjutant General shall refer to the Armed Forces Court of Appeals for Oregon (AFCAO) the record in each case of trial by special or general court-martial—

(1) in which the Government, under article 62 of this code, has raised an allegation of error;

(2) in which the accused has raised an allegation of error and the right to appellate review has not been waived or an appeal has not been withdrawn under article 61 of this code;

(3) the convening authority has failed to take corrective action under article 64(c) of this code; or

(4) in which the sentence, as approved, extends to dismissal of a commissioned officer, cadet, candidate or midshipman, or dishonorable discharge, or confinement for one year or more.

(b) In a case referred to it, the AFCAO may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it 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.

(c) If the AFCAO sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(d) The Adjutant General shall, unless there is to be further action by the Governor, instruct the convening authority to take action in accordance with the decision of the AFCAO. If the AFCAO has ordered a rehearing but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(e) The Adjutant General shall promulgate rules of procedure for any appeal to or review by the AFCAO.

(f) No member of the AFCAO shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member, an effectiveness, fitness, or efficiency report, or any other report documents 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 shall be retained for duty.

(g) No member of the AFCAO shall be eligible to review the record of any trial if such member served as investigating officer in the case or acted as a witness or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

(h) Each Member of the AFCAO shall comply with the Oregon Code of Judicial Conduct to the same extent as municipal court judges.

Annotation to Article 66

ORS 398.420 establishes the Armed Forces Court of Appeals for Oregon, its procedures and the requirements for its judges.

Article 67. Review by Oregon Supreme Court

Decisions of the Armed Forces Court of Appeals for Oregon are subject to review by the Oregon Supreme Court. Petition for review to the Oregon Supreme Court shall be within the time and in the manner provided by statute or rule for appeal from the Court of Appeals to the Supreme Court.

Article 68. [Reserved]

Article 69. [Reserved]

Article 70. Appellate counsel

(a) The State Judge Advocate shall detail a judge advocate as appellate Government counsel to represent the State in the review or appeal of cases specified in article 67 of this code and before any Federal court when requested to do so by the State Attorney General. Appellate Government counsel must be a member in good standing of the bar of the highest court of the State to which the appeal is taken.

(b) Upon an appeal by the State, an accused has the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

(c) Upon the appeal by an accused, the accused has the right to be represented by military counsel before any reviewing authority.

(d) Upon the request of an accused entitled to be so represented, the State Judge Advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subsections (b) and (c) of this article.

(e) An accused may be represented by civilian appellate counsel at no expense to the State.

Article 71. Execution of sentence; suspension of sentence

(a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn under article 61 of this code, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to

the legality of the proceedings. A judgment as to the legality of the proceedings is final in such cases when review is completed by an appellate court prescribed in article 67 of this code, and is deemed final by the law of state where the judgment was had.

(b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn under article 61 of this code, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review under article 64 of this code is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under article 60 of this code when so approved under that article.

Article 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence, which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged violation of probation. The probationer shall be represented at the hearing by military counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in this code.

(c) 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.

Article 73. Petition for a new trial

At any time within two (2) years after approval by the convening authority of a court-martial sentence the accused may petition The Adjutant General for a new trial on the grounds of newly discovered evidence or fraud on the court-martial.

Article 74. Remission and suspension

(a) 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 may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the Governor.

(b) The Adjutant General 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.

Article 75. Restoration

(a) Under such regulations as may be prescribed, 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 such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Adjutant General may substitute therefore a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Adjutant General may substitute therefore a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Adjutant General alone to such commissioned grade and with such rank as in the opinion of the Adjutant General that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the Adjutant General may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

Article 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this code, are final and conclusive. Full faith and credit hereby is requested of orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings by all departments, courts, agencies, and officers of the United States and the several states.

Article 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this article if the sentence, as approved under article 60 of this code, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under article 60 of this code or at any time after such date, and such leave may be continued until the date on which action under this article is completed or may be terminated at any earlier time.

Article 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) Persons incompetent to stand trial.

(1) Although a court-martial has discretion on whether to order a mental status examination of the accused, it nevertheless has a duty to determine if the accused is fit to proceed upon defense counsel's filing of a motion for determination of fitness to proceed.

(2) If a court-martial has reason to doubt the accused's fitness to proceed by reason of incapacity, the court-martial may order an examination of the accused's as provided in Oregon Revised Statute (ORS) 161.365.

(3) In the case of a person determined under ORS 161.360 - 161.370 to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to

conduct or cooperate intelligently in the defense of the case, the convening authority that referred charges against the person to courts-martial shall forward the matter to the Adjutant General, who shall commit the person to the custody of the Department of Human Services.

(4) The Department of Human Services shall take action in accordance with ORS 161.370.

(5)

(A) When the superintendent of a state hospital or director of a secure intensive community inpatient facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the superintendent or director shall promptly transmit a notification of that determination to the Adjutant General and the convening authority that referred charges against the person to courts-martial. The superintendent or director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the convening authority that referred charges against the person to courts-martial shall promptly take custody of the person unless the person covered by the notification is no longer subject to this code. If the person is no longer subject to this code, the convening authority shall forward the notification to the district attorney of the county in which the person is hospitalized who shall take any action within its authority that the district attorney considers appropriate regarding the person.

(C) The superintendent or director of the facility shall retain custody of and release the person in accordance with ORS 161.370, after transmitting the notifications required by subparagraph (3)(A).

(6) In the application of ORS 161.365 and 161.370 to a case under this subsection, references to the court that ordered the commitment of a person, to the clerk of such court and to the district attorney, shall be deemed to refer to the courts-martial to which the charges against the person have been referred and the trial counsel assigned. However, if the person is no longer subject to this code at a time relevant to the application of such article to the person, the state trial court with felony jurisdiction in the county where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) Persons found not guilty by reason of lack of mental responsibility.

(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the courts-martial shall, in accordance with ORS 161.325, make an order as provided in ORS 161.327 or 161.329, whichever is appropriate.

(2) A copy of the court order shall be provided to the convening authority that referred charges against the person to courts-martial.

(c) Applicability.

(1) If the status of a person as described in article 2 terminates while the person is, pursuant to this article, in the custody of the Department of Human Services, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this article establishing requirements and procedures regarding a

person no longer subject to this code shall continue to apply to that person notwithstanding the change of status.

CHAPTER X. PUNITIVE ARTICLES

Note: The information accompanying each punitive article of the Uniform Code of Military Justice that this code also includes shall be used in the charging of any offense and the drafting of any charge and specification (i.e., text, elements, explanation, lesser-included offense, maximum punishment, and sample specifications), but only to the extent not inconsistent with this code and state law.

Article 77. Principals

Any person subject to this code who —

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

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

is a principal.

Article 78. 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 may direct.

Article 79. 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.

Article 80. Attempts

(a) 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.

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

(c) 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.

Article 81. 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 may direct.

Article 82. Solicitation

(a) Any person subject to this code who solicits or advises another or others to desert in violation of article 85 of this code or mutiny in violation of article 94 of this code shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of article 99 of this code or sedition in violation of article 94 of this code shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct.

Article 83. Fraudulent enlistment, appointment, or separation

Any person who —

(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 there under; 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;

shall be punished as a court-martial may direct.

Article 84. 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 may direct.

Article 85. Desertion

(a) Any member of the state military forces who —

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

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

(3) 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 United States, without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) 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 there from permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by confinement of not more than ten (10) years or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment as a court-martial may direct.

Article 86. Absence without leave

Any person subject to this code who, without authority —

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

shall be punished as a court-martial may direct.

Article 87. 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 may direct.

Article 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of the State shall be punished as a court-martial may direct.

Article 89. Disrespect toward superior commissioned officer

Any person subject to this code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

Article 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this code who —

- (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) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by confinement of not more than ten (10) years or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment as a court-martial may direct.

Article 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who —

- (1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

Article 92. Failure to obey order or regulation

Any person subject to this code who —

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

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

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

Article 93. 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 may direct.

Article 94. Mutiny or sedition

(a) Any person subject to this code who —

(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;

(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;

(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.

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

Article 95. Resistance, flight, breach of arrest, and escape

Any person subject to this code who —

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

Article 96. 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 may direct, whether or not the prisoner was committed in strict compliance with law.

Article 97. Unlawful detention

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 may direct.

Article 98. Noncompliance with procedural rules

Any person subject to this code who —

(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;

shall be punished as a court-martial may direct.

Article 99. [Reserved]

Article 100. [Reserved]

Article 101. [Reserved]

Article 102. Forcing a safeguard

Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

Article 103. Captured or abandoned property

(a) All persons subject to this code shall secure all public property taken for the service of the United States or the State, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this code who —

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of taken, 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

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

Article 104. [Reserved]

Article 105. [Reserved]

Article 106. [Reserved]

Article 106a. [Reserved]

Article 107. 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 made in the line of duty, knowing it to be false, or makes any other false official statement made in the line of duty, knowing it to be false, shall be punished as a court-martial may direct.

Article 108. Military property — Loss, damage, destruction, or wrongful disposition

Any person subject to this code who, without proper authority —

- (1) sells or otherwise disposes of;
- (2) willfully or through neglect damages, destroys, or loses; or
- (3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States or of any State, shall be punished as a court-martial may direct.

Annotation to Article 108

See also ORS 399.125, Repossession of military property by State.

Article 109. Property other than military property — Waste, spoilage, or destruction

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

Article 110. Improper hazarding of vessel

(a) Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or any state military forces shall suffer such punishment as a court-martial may direct.

(b) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or any state military forces shall be punished as a court-martial may direct.

Article 111. Drunken or reckless operation of vehicle, aircraft, or vessel

(a) Any person subject to this code who—

- (1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in article 112a(b) of this code; or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b), shall be punished as a court-martial may direct.

(b) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is 0.08 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis.

Article 112. Drunk on duty

Any person subject to this code other than a sentinel or lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

Article 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States or of any state military forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States [10 U.S.C. § 801 *et seq.*].

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of article 202 of the Controlled Substances Act (21 U.S.C. § 812).

Article 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post or leaves it before being regularly relieved, shall be punished, if the offense is committed in time of war, by confinement of not more than ten (10) years or other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment as a court-martial may direct.

Article 114. [Reserved]

Article 115. Malingering

Any person subject to this code who for the purpose of avoiding work, duty, or service —

- (1) feigns illness, physical disablement, mental lapse, or derangement; or
- (2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

Article 116. 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 may direct.

Article 117. Provoking speeches or gestures

Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

Article 118. Murder

Any person subject to this code who, without justification or excuse, unlawfully kills a human being, when he—

- (1) has a premeditated design to kill;
- (2) intends to kill or inflict great bodily harm;
- (3) is engaged in an act that is inherently dangerous to another and evinces a wanton disregard of human life; or
- (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravation arso66n; is already guilty of murder, and shall suffer such punishment as a court-martial may direct.

Article 119. Manslaughter

(a) Any person subject to this code who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this code who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

- (1) by culpable negligence; or
- (2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of article 118 of this code, directly affecting the person; is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

Article 120. Rape, sexual assault, and other sexual misconduct

(a) Rape. Any person subject to this chapter who causes another person of any age to engage in a sexual act by—

- (1) using force against that other person;
- (2) causing grievous bodily harm to any person;
- (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;
- (4) rendering another person unconscious; or
- (5) administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby

substantially impairs the ability of that other person to appraise or control conduct; is guilty of rape and shall be punished as a court-martial may direct.

(b) Rape of a child. Any person subject to this chapter who—

(1) engages in a sexual act with a child who has not attained the age of 12 years; or

(2) engages in a sexual act under the circumstances described in subsection (a) with a child who has attained the age of 12 years; is guilty of rape of a child and shall be punished as a court-martial may direct.

(c) Aggravated sexual assault. Any person subject to this chapter who—

(1) causes another person of any age to engage in a sexual act by—

(A) threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

(B) causing bodily harm; or

(2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of—

(A) appraising the nature of the sexual act;

(B) declining participation in the sexual act; or

(C) communicating unwillingness to engage in the sexual act;

is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.

(d) Aggravated sexual assault of a child. Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

(e) Aggravated sexual contact. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(f) Aggravated sexual abuse of a child. Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct.

(g) Aggravated sexual contact with a child. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a child) had the sexual contact been a sexual act, is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

(h) Abusive sexual contact. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(i) Abusive sexual contact with a child. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act, is guilty of abusive sexual contact with a child and shall be punished as a court-martial may direct.

(j) Indecent liberty with a child. Any person subject to this chapter who engages in indecent liberty in the physical presence of a child—

(1) with the intent to arouse, appeal to, or gratify the sexual desire of any person; or

(2) with the intent to abuse, humiliate, or degrade any person; is guilty of indecent liberty with a child and shall be punished as a court-martial may direct.

(k) Indecent act. Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(l) Forcible pandering. Any person subject to this chapter who compels another person to engage in an act of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(m) Wrongful sexual contact. Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(n) Indecent exposure. Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonable be expected to be viewed by people other than member of the actor's family or household, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(o) Age of child.

(1) Twelve years. In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 12 years. It is not an affirmative defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) Sixteen years. In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative defense that the accused reasonably believed that the child had attained the age of 16 years.

(p) Proof of threat. In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(q) Marriage.

(1) In general. In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure), it is an affirmative defense that the accused and the other person when they engaged in the sexual act, sexual contact, or sexual conduct were married to each other.

(2) Definition. For purposes of this subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

(3) Exception. Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(r) Consent and mistake of fact as to consent. Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative defense, in a prosecution under any other subsection, except they are an affirmative defense for the sexual conduct in issue in a prosecution under subsection (a) (rape),

subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

(s) Other affirmative defenses not precluded. The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

(t) Definitions. In this section:

(1) Sexual act. The term “sexual act” means—

(A) contact between the penis and the vulva, and for purposes of this subparagraph, contact involving the penis occurs upon penetration, however slight; or

(B) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) Sexual contact. The term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) Grievous bodily harm. The term “grievous bodily harm” means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

(4) Dangerous weapon or object. The term “dangerous weapon or object” means—

(A) any firearm, loaded or not, and whether operable or not;

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

(5) Force. The term “force” means action to compel submission of another or to overcome or prevent another’s resistance by—

(A) the use or display of a dangerous weapon or object;

(B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

(C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

(6) Threatening or placing that other person in fear. The term “threatening or placing that other person in fear” under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to death, grievous bodily harm, or kidnapping.

(7) Threatening or placing that other person in fear.

(A) In general. The term “threatening or placing that other person in fear” under paragraph (1)(A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a

reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

(B) Inclusions. Such lesser degree of harm includes—

(i) physical injury to another person or to another person's property; or

(ii) a threat—

(I) to accuse any person of a crime;

(II) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule; or

(III) through the use or abuse of military position, rank, or authority to affect or threaten to affect, either positively or negatively, the military or civilian career of some person.

(8) Bodily harm. The term "bodily harm" means any offensive touching of another, however slight.

(9) Child. The term "child" means any person who has not attained the age of 16 years.

(10) Lewd act. The term "lewd act" means—

(A) the intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(B) intentionally causing another person to touch, not through the clothing, the genitalia of any person with intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(11) Indecent liberty. The term "indecent liberty" means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one's genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child's consent is not relevant.

(12) Indecent conduct. The term "indecent conduct" means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing, or making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of—

(A) that other person's genitalia, anus, or buttocks, or (if that other person is female) that person's areola or nipple; or

(B) that other person while that other person is engaged in a sexual act, sodomy (under section 925 (article 125) of this chapter), or sexual contact.

(13) Act of prostitution. The term "act of prostitution" means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.

(14) Consent. The term "consent" means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by

itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to sexual activity if—

(A) under 16 years of age; or

(B) substantially incapable of—

(i) appraising the nature of the sexual conduct at issue due to—

(I) mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

(II) mental disease or defect that renders the person unable to understand the nature of the sexual conduct at issue;

(ii) physically declining participation in the sexual conduct at issue; or

(iii) physically communicating willingness to engage in the sexual conduct at issue.

(15) Mistake of fact as to consent. The term “mistake of fact as to consent” means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable, the ignorance or mistake must have been based on information, or lack of it, that would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused’s state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(16) Affirmative defense. The term “affirmative defense” means any special defense that, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the affirmative defense did not exist.

Article 121. Larceny and wrongful appropriation

(a) 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—

(1) 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

(2) 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.

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

Article 122. Robbery

Any person subject to this code who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

Article 123. Forgery

(a) Any person subject to this code who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

Article 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

(a) Any person subject to this code who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive; makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment; shall be punished as a court-martial may direct.

(b) The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment.

(c) In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

Article 124. Maiming

Any person subject to this code who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

Article 125. Sodomy

(a) Any person subject to this code who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

Article 126. Arson

(a) Any person subject to this code who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this code who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a) of this article, is guilty of simple arson and shall be punished as a court-martial may direct.

Article 127. Extortion

Any person subject to this code who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

Article 128. Assault

(a) Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this code who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

Article 129. Burglary

Any person subject to this code who, with intent to commit an offense punishable under articles 118-128, breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

Article 130. Housebreaking

Any person subject to this code who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

Article 131. Perjury

Any person subject to this code who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under Oregon Revised Statute 45.010(6), subscribes any false statement material to the issue or matter of inquiry;
is guilty of perjury and shall be punished as a court-martial may direct.

Article 132. Frauds against the government

Any person subject to this code —

(1) who, 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 thereof, for approval or payment, any claim against the United States, the State, or any officer thereof;

(2) who, 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, affirmation or certification to any fact or to any writing or other paper knowing the oath, affirmation or certification 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) who, 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 United States 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) who, 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 United States 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;

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

Article 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

Article 134. General article

(a) 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 shall be taken cognizance of by a court-martial and punished at the discretion of a military court. However, where a crime constitutes an offense that violates both this code and the criminal laws of the state where the offense occurs or criminal

laws of the United States, jurisdiction of the military court must be determined in accordance with article 2 of this code.

(b) Any person subject to this code who commits any enumerated offense punishable under article 134, UCMJ, shall, upon conviction, be punished as a court-martial may direct.

Annotation to Article 134

This article expressly includes as OCMJ offenses the enumerated punitive provisions (paragraphs 61-113) under article 134, UCMJ.

Article 134a. Unlawful wearing of uniform or insignia

Any person subject to this code who wears, when on or off duty, any uniform or any device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or regulation, duly promulgated, prescribed for the use of the organized militia, without the permission of the commanding officer is guilty of unlawful wearing of uniform or insignia and shall be punished as a court-martial may direct.

Annotation to Article 134a

Article 134a brings into the OCMJ, as an offense, ORS 399.155's prohibition on the unlawful wearing of uniform or insignia by a militia member.

CHAPTER XI. MISCELLANEOUS PROVISIONS

Article 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter of concern to the state military forces may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry.

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

(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code 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.

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

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

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

(g) 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.

(h) 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.

Article 136. Authority to administer oaths

(a) The following persons may administer oaths for the purposes of military administration, including military justice:

- (1) All judge advocates.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (4) All commanding officers of the organized militia.
- (5) All other persons designated by regulations of the armed forces of the United States or by statute.

(b) The following persons may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, and trial counsel for all general and special courts-martial.
- (2) The president and the counsel for the court of any court of inquiry.
- (3) All officers designated to take a deposition.
- (4) All persons detailed to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces of the United States or by statute.

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

Article 137. [Reserved]

Article 138. Complaints of wrongs

Any member of the state military forces who believes himself wronged by a commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and shall, as soon as possible, send to The Adjutant General a true statement of that complaint, with the proceedings had thereon.

Annotation to Article 138

See also ORS 399.205 for a similar complaints of wrongs provision: Any member of the organized militia who is wronged by the commanding officer, and who, upon due application to that commanding officer, is refused redress,

may complain to any superior commissioned officer, who shall forward the complaint to the Governor or Adjutant General.

Article 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, that person may, under such regulations prescribed, convene a board to investigate the complaint. The board shall consist of from one (1) to three (3) commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by that officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for payment to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

Article 140. [Reserved]

Article 141. Payment of fees, costs, and expenses

(a) The Adjutant General shall have authority to pay all expenses incurred in the administration of state military justice, including the fees and authorized travel expenses of all witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention and confinement, and all other reasonable and necessary expenses of prosecution and the administration of military justice from any fund appropriated to the Oregon Military Department.

Article 142. Payment of fines or damages and disposition thereof

(a) Fines imposed by a military court or through imposition of non-judicial punishment may be paid to the State and delivered to the court or imposing officer, or to a person executing their process. Fines may be collected in the following manner:

- (1) By cash or money order;
- (2) By retention of any pay or allowances due or to become due the person fined from any state or the United States;
- (3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying a fine, as provided by law; or
- (4) Registered and filed as a foreign judgment in accordance with ORS 24.115.

(b) Any sum so received or retained shall be delivered to the State Treasurer and deposited in the General Fund in the State Treasury, to be available for general governmental expenses.

(c) Damages assessed and approved under article 139 shall be paid promptly to the owner of the injured property and delivered to the commanding officer who convened the investigating board. Damages may be collected in the following manner:

- (1) By cash or money order;
- (2) By retention of any pay or allowances due or to become due the person against whom damages were assessed and approved from any state or the United States;
- (3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying damages, as provided by law.

Article 143. Uniformity of interpretation

This code shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice, chapter 47 of title 10, United States Code.

Article 143a. Use of AR 27-10, AFI 51-201 and AFI 51-202

Army Regulation (AR) 27-10, Military Justice, Air Force Instruction (AFI) 51-201, Administration of Military Justice, and AFI 51-202, Non-judicial Punishment, may be used to effectuate the purpose and provisions of this code, but only to the extent not inconsistent with this code and state law.

Article 143b. Administrative Action Not Precluded

Nothing in this code precludes administrative action against a person subject to this code for an offense, military or non-military, as allowed by law or regulation.

Article 144. Immunity for action of military courts

All persons acting under the provisions of this code, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions which they did or failed to do as part of their duties under this code.

Article 145. Severability

The provisions of this code are hereby declared to be severable and if any provision of this code or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this code.

Article 146. Short Title

This regulation may be cited as the "Oregon Code of Military Justice (OCMJ)."

Article 147. Time of taking effect

This revised regulation takes effect upon 01 February 2010.

Article 148. Statutory Oregon Military Justice Code provisions superseded

Upon repeal by the Oregon State Legislature, this regulation, pursuant to ORS 396.125 and 398.128, will supersede the following state statutes: ORS 398.002, 398.004, 398.006, 398.008,

398.010, 398.052, 398.054, 398.056, 398.062, 398.065, 398.066, 398.068, 398.083, 398.102, 398.104, 398.106, 398.108, 398.110, 398.112, 398.114, 398.116, 398.126, 398.128, 398.130, 398.132, 398.135, 398.136, 398.138, 398.140, 398.162, 398.164, 398.166, 398.168, 398.170, 398.172, 398.202, 398.204, 398.206, 398.209, 398.210, 398.212, 398.214, 398.216, 398.218, 398.220, 398.222, 398.228, 398.230, 398.232, 398.236, 398.238, 398.254, 398.256, 398.258, 398.272, 398.274, 398.276, 398.278, 398.280, 398.282, 398.284, 398.286, 398.288, 398.290, 398.292, 398.294, 398.296, 398.302, 398.304, 398.306, 398.308, 398.310, 398.312, 398.314, 398.316, 398.318, 398.320, 398.322, 398.324, 398.326, 398.328, 398.330, 398.332, 398.334, 398.336, 398.338, 398.340, 398.342, 398.344, 398.346, 398.348, 398.350, 398.352, 398.354, 398.356, 398.358, 398.360, 398.362, 398.366, 398.368, 398.370, 398.372, 398.374, 398.375, 398.378, 398.380, 398.384, 398.386, 398.388, 398.391, 398.393, 398.395, 398.397, 398.399, 398.400, 398.402, 398.404, 398.410, 398.412, and 398.414. All other statutes in Chapter 398 remain in full force and effect. Additionally, this regulation supersedes all existing directives, rules, regulations, orders, pamphlets made using the statutory OCMJ as its basis, and all such directives, rules, regulations, orders, and pamphlets hereby are repealed.

Appendix A

References

AR 27-10

Military Justice

AFI 51-201

Administration of Military Justice

AFI 51-202

Administration of Non-judicial Punishment

Chapter 47, Title 10, United States Code

Uniform Code of Military Justice

Chapter 396, Oregon Revised Statutes

Militia Generally

Chapter 398, Oregon Revised Statutes

Military Justice

Chapter 399, Oregon Revised Statutes

Organized Militia

Glossary

Section I

Abbreviations

ADOS

Active Duty for Operational Support

ADSW

Active Duty for Special Work

AFCAO

Armed Forces Court of Appeals for Oregon

AGR

Active Guard Reserve

AFI

Air Force Instruction

ANG

Air National Guard

AR
Army Regulation

ARNG
Army National Guard

DOD
Department of Defense

DSG
Drill Status Guard

GCMCA
General Court-Martial Convening Authority

MCM
Manual for Court-Martial

NJP
Non-judicial Punishment

OCMJ
Oregon Code of Military Justice

OIC
Officer-in-Charge

ORANG
Oregon Air National Guard

ORARNG
Oregon Army National Guard

ORCM
Oregon Rules for Court-Martial

ORCP
Oregon Rules of Civil Procedure

ORS
Oregon Revised Statute

UCMJ
Uniform Code of Military Justice