

CHAPTER 192A

UNIFORM CODE OF MILITARY JUSTICE

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## GENERAL PROVISIONS

### 192A.01 SHORT TITLE AND NUMBERING.

Subdivision 1. This chapter may be cited as the Minnesota Code of Military Justice.

Subd. 2. [Repealed, 1978 c 552 s 48]

**History:** 1963 c 661 s 192A.01

### 192A.015 DEFINITIONS.

In this chapter, unless the context otherwise requires:

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

(2) "Active state duty" means the same as state active service defined in section 190.05, subdivision 5a,

(3) "Code" means this chapter;

(4) "Commanding officer" means a commissioned officer who is in command of any unit;

(5) "Commissioned officer" includes a commissioned warrant officer;

(6) "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;

(7) "Enlisted member" means a person in an enlisted grade;

(8) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or rule;

(9) "In federal service" and "not in federal service" mean the same as those terms are used and construed in federal laws and regulations;

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

(11) "Military" refers to any or all of the armed forces of the United States or any state;

(12) "Military court" means a court-martial, a court of inquiry;

(13) "Officer" means commissioned or warrant officer;

(14) "Rank" means the order of precedence among members of the state military forces;

(15) "Shall" is used in a mandatory sense;

(16) "State judge advocate" means the commissioned officer responsible for supervising the administration of the military justice in the state military forces and appointed pursuant to section 192A.04;

(17) "State military forces" means the national guard of the state, as defined in United States Code, title 32, section 101(3) and any other military force organized under the laws of the state;

(18) "Superior commissioned officer" means a commissioned officer superior in rank and command.

**History:** 1963 c 661 s 192A.015; 1978 c 552 s 1; 1983 c 193 s 8; 1985 c 248 s 70

### 192A.02 PERSONS SUBJECT TO THIS CODE.

Subdivision 1. **Applicability.** This code applies to all members of the state military forces in active service as defined by section 190.05, subdivision 5.

Subd. 2. **Military service in Minnesota.** This code also applies to all persons in the military while they are serving within this state and while they are under the command of a commissioned officer of the state military forces

Subd. 3. **Concurrent jurisdiction.** The provisions of this chapter conferring jurisdiction over persons shall not be construed as depriving military commissions or other military tribunals of concurrent jurisdiction in respect to offenders or offenses that by statute or by law of war may be tried by such military commissions or other military tribunals.

**History:** 1963 c 661 s 192A.02; 1978 c 552 s 2; 1983 c 193 s 9

### 192A.025 JURISDICTION TO TRY CERTAIN PERSONNEL.

Subdivision 1 Each person discharged from the state military forces who is later charged with having fraudulently obtained the discharge is, subject to section 192A.235, subject to trial by court-martial on that charge and is after apprehension subject to this code while in the custody of the military for that trial. Upon conviction of that charge the person is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

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

**History:** 1963 c 661 s 192A.025; 1986 c 444,

### 192A.03 DISMISSAL OF COMMISSIONED OFFICER.

Subdivision 1. Any commissioned officer, dismissed by order of the governor, may make a written application for trial by court-martial, setting forth, under oath, that the dismissal was wrongful. The governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue

Subd. 2. If the governor fails to convene a general court-martial within six months from the presentation of an application for trial under this code, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

Subd. 3. If a discharge is substituted for a dismissal under this code, the governor alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the governor, that former officer would have attained had there been no dismissal. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

Subd. 4 If an officer is discharged from the organized militia by administrative action or by board proceedings under law, or is dropped from the rolls by order of the governor, the officer has no right to trial under this section.

**History:** 1963 c 661 s 192A.03; 1986 c 444

#### 192A.035 TERRITORIAL APPLICABILITY OF THE CODE.

Subdivision 1. This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

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

**History:** 1963 c 661 s 192A.035

#### 192A.04 JUDGE ADVOCATES AND LEGAL OFFICERS.

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

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

Subd. 3. The state judge advocate or assistant state judge advocates shall make frequent inspections in the field in supervision of the administration of military justice.

Subd. 4. [Repealed, 1978 c 552 s 48]

Subd. 5. [Repealed, 1978 c 552 s 48]

**History:** 1963 c 661 s 192A.04; 1986 c 444

### APPREHENSION AND RESTRAINT

#### 192A.045 APPREHENSION.

Subdivision 1. Apprehension is the taking of a person into custody.

Subd. 2. Any person authorized by this code, or by rules issued under it, or any peace officer, may apprehend persons subject to this code upon reasonable belief that an offense has been committed and that the person apprehended committed it.

Subd. 3. If any person subject to this code misses a movement to, or is absent without official leave from, annual field training or active state duty, such person may be apprehended and delivered to the person's commanding officer. Apprehension may be made by military police personnel or by any civil peace officer pursuant to a warrant issued by a military judge upon a finding of probable cause.

Subd. 4. 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.

**History:** 1963 c 661 s 192A.045; 1978 c 552 s 3; 1985 c 248 s 70; 1986 c 444

#### 192A.05 APPREHENSION OF DESERTERS.

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state military forces and deliver the deserter into

the custody of the state military forces. If an offender is apprehended outside the state, the offender's return to the area must be in accordance with normal extradition procedures or reciprocal agreement.

**History:** 1963 c 661 s 192A.05, 1986 c 444

#### **192A.055 IMPOSITION OF RESTRAINT.**

Subdivision 1. Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within certain specified limits. Confinement is the physical restraint of a person.

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

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

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

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

**History:** 1963 c 661 s 192A.055; 1986 c 444

#### **192A.06 RESTRAINT OF PERSONS CHARGED WITH OFFENSES.**

Any person subject to this code charged with an offense under this code may be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. Any person subject to this code placed in arrest or confinement prior to trial shall immediately be informed of the specific wrong of which the person is accused and shall be tried or shall have the charges dismissed and shall be released.

**History:** 1963 c 661 s 192A.06; 1978 c 552 s 4; 1986 c 444

#### **192A.065 CONFINEMENT IN JAILS.**

Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons designated by the governor or by such person as the governor may authorize to act.

**History:** 1963 c 661 s 192A.065; 1986 c 444

#### **192A.07 REPORTS AND RECEIVING OF PRISONERS.**

Subdivision 1. No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under section 192A.065 may refuse to receive or keep any prisoner committed to the charge of that official, when the committing person furnishes and signs a statement of the offense charged against the prisoner.

Subd. 2. Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under section 192A.065, to whose charge a prisoner is committed, shall, within 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.

**History:** 1963 c 661 s 192A.07; 1986 c 444

**192A.075 PUNISHMENT PROHIBITED BEFORE TRIAL.**

Subject to section 192A.305, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending, nor shall the arrest or confinement imposed be any more rigorous than the circumstances require to insure that person's presence, but that person may be subjected to minor punishment during that period for infractions of discipline.

**History:** 1963 c 661 s 192A.075; 1986 c 444

**192A.08 DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES.**

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

Subd. 2. When delivery under this section 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 military custody for the completion of the sentence.

**History:** 1963 c 661 s 192A.08; 1985 c 248 s 70; 1986 c 444

**NONJUDICIAL PUNISHMENT****192A.085 COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT.**

Subdivision 1. Under such rules as the governor may prescribe any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) Upon an officer of the command:

(a) Withholding of privileges for not more than two consecutive weeks;

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

(c) If imposed by the governor, the commanding officer of a force of the state military forces, or the commanding general of a division, a forfeiture of not more than 15 days pay or a fine in an equivalent amount.

(2) Upon other military personnel of the command:

(a) Withholding of privileges for not more than two consecutive weeks;

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

(c) Extra duties for not more than 14 days, which need not be consecutive, and for not more than two hours per day, holidays included;

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

(e) If imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days; or

(f) A forfeiture of not more than four days pay or a fine in an equivalent amount.

Subd. 2. The governor may, by rule, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

Subd. 3. Punishment may not be imposed upon any person subject to this code if such person, before imposition of such punishment, has demanded trial by court-martial in lieu of such punishment, except in the case of a person attached to or embarked on a vessel.

Subd. 4. A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished shall not in the meantime be required to undergo the punishment adjudged. The officer who im-

poses the punishment, the successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. Before acting on an appeal from a punishment of a fine or forfeiture of pay or reduction in grade, the authority who is to act on the appeal shall refer the matter to the authority's judge advocate for advice and counsel.

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

Subd. 6. Whenever a punishment of forfeiture of pay is imposed under this section, the forfeiture may apply to pay accruing on or after the date that punishment is imposed and to any pay accrued before that date.

Subd. 7. For purposes of this section, "consecutive" means time on active state duty or duty status other than active state duty excluding any intervening period or periods when the person concerned is not on such duty.

**History:** 1963 c 661 s 192A.085; 1978 c 552 s 5; 1985 c 248 s 70; 1986 c 444

## COURTS-MARTIAL JURISDICTION

### 192A.09 COURTS-MARTIAL OF STATE MILITARY FORCES NOT IN FEDERAL SERVICE; COMPOSITION; JURISDICTION; POWERS AND PROCEEDINGS.

In the state military forces not in federal service, there shall be three types of courts-martial:

(1) General courts-martial, consisting of:

- (a) A military judge and not less than five 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; and

(2) Special courts-martial, consisting of:

- (a) A military judge and not less than three 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; and

(3) Summary courts-martial, consisting of a military judge

**History:** 1963 c 661 s 192A.09; 1978 c 552 s 6

### 192A.095 JURISDICTION OF COURTS-MARTIAL IN GENERAL.

Each force of the state military forces has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with rules prescribed by the governor.

**History:** 1963 c 661 s 192A.095; 1985 c 248 s 70

### 192A.10 JURISDICTION OF GENERAL COURTS-MARTIAL.

Subject to section 192A.095 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 of the following punishments:

- (1) A reprimand;
- (2) A fine of not more than \$200;
- (3) Forfeiture of not more than 48 days pay;
- (4) Dismissal, bad conduct discharge, or dishonorable discharge;

- (5) Reduction in rank of an enlisted member to any lower enlisted rank including the lowest enlisted rank;
- (6) Confinement of not more than six months; or
- (7) Any combination of these punishments.

**History:** 1963 c 661 s 192A.10; 1978 c 552 s 7; 1986 c 444

#### **192A.105 JURISDICTION OF SPECIAL COURTS–MARTIAL.**

Subject to section 192A.095 special courts–martial have jurisdiction to try persons subject to this code, except commissioned officers, for any offense for which they may be punished under this code. A special court–martial may adjudge the following punishments:

- (1) A reprimand;
- (2) A fine of not more than \$100;
- (3) Forfeiture of not more than 24 days pay;
- (4) Reduction in rank of an enlisted member to any lower enlisted rank including the lowest enlisted grade;
- (5) A bad conduct discharge;
- (6) Confinement of not more than 90 days; or
- (7) Any combination of these punishments.

**History:** 1963 c 661 s 192A.105, 1978 c 552 s 8; 1986 c 444

#### **192A.11 JURISDICTION OF SUMMARY COURTS–MARTIAL.**

Subdivision 1. Subject to section 192A.095 summary courts–martial have jurisdiction to try persons subject to this code, except officers, for any offense made punishable by this code.

Subd. 2. No person with respect to whom summary courts–martial have jurisdiction may be brought to trial before a summary court–martial if that person objects thereto, unless under section 192A.085 that person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court–martial is made by an accused who has not been permitted to refuse punishment under section 192A.085, trial shall be ordered by special or general court–martial, as may be appropriate.

Subd. 3. A summary court–martial may adjudge the following punishments:

- (1) A reprimand;
- (2) A fine of not more than \$25;
- (3) Forfeiture of not more than 12 days pay;
- (4) Reduction in rank of an enlisted member to any lower enlisted rank including the lowest enlisted grade;
- (5) Confinement of not more than 15 days;
- (6) Any combination of these punishments.

**History:** 1963 c 661 s 192A.11; 1978 c 552 s 9; 1986 c 444

#### **192A.115 SENTENCES OF DISMISSAL OR DISHONORABLE DISCHARGE TO BE APPROVED BY THE GOVERNOR.**

In the organized militia not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor.

**History:** 1963 c 661 s 192A.115

#### **192A.12 COMPLETE RECORD OF PROCEEDINGS AND TESTIMONY IF DISHONORABLE DISCHARGE, BAD CONDUCT DISCHARGE, OR DISMISSAL ADJUDGED.**

A dishonorable discharge, bad conduct discharge, or dismissal may not be adjudged by any court–martial unless a complete record of the proceedings and testimony before the court has been made, qualified counsel has been detailed to represent the accused, and a military judge has presided over the trial.

**History:** 1963 c 661 s 192A.12; 1978 c 552 s 10

192A.125 [Repealed, 1978 c 552 s 48]

### APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

#### 192A.13 WHO MAY CONVENE GENERAL COURTS-MARTIAL.

In the state military forces not in federal service, general courts-martial may be convened by the governor.

**History:** 1963 c 661 s 192A.13; 1978 c 552 s 11

#### 192A.135 WHO MAY CONVENE SPECIAL COURTS-MARTIAL.

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

**History:** 1963 c 661 s 192A.135

#### 192A.14 WHO MAY CONVENE SUMMARY COURTS-MARTIAL.

In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of a military judge. The proceedings shall be informal.

**History:** 1963 c 661 s 192A.14; 1978 c 552 s 12

#### 192A.145 WHO MAY SERVE ON COURTS-MARTIAL.

Subdivision 1. Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

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

Subd. 3. (1) Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but the enlisted member shall serve as a member of a court only if, before the conclusion of a session called by the military judge, under section 192A.215 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 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 of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

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

Subd. 4. (1) 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 person being tried in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members 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 is eligible to serve as a member of a general or special court-martial when

the member is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case

**History:** 1963 c 661 s 192A.145; 1978 c 552 s 13,14; 1986 c 444

### 192A.15 MILITARY JUDGE SYSTEM.

Subdivision 1. There is hereby established a military judge system for the state military forces. The military judge system shall be in the military department under the command of the adjutant general. It shall consist of at least two military judges, a number of legal clerks equal to the number of judges and such additional military staff as is necessary.

Subd. 2. A military judge shall be a commissioned officer of the state military forces who has been a member of the bar of this state for at least six years, who has served as a member of the judge advocate generals corps for not less than three years, and who is certified to be qualified for such duty by the state judge advocate.

Subd. 3. The military judge to be detailed to a court-martial shall be designated by the adjutant general, or the adjutant general's designee, for detail by the convening authority. A military judge may be detailed generally to act as summary court officer.

Subd. 4. No person is eligible to act as a military judge in a case if that person is the accuser or a witness for the prosecution or has acted as investigating officer or counsel in the same case.

Subd. 5. The military judge of a general or special court-martial may not consult with the members of the court except in the presence of the accused, trial counsel and defense counsel, nor may the military judge vote with the members of the court.

**History:** 1963 c 661 s 192A.15; 1978 c 552 s 15; 1986 c 444

### 192A.155 DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL.

Subdivision 1. For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as considered appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

Subd. 2. Trial counsel or defense counsel detailed for either a general court-martial or a special court-martial:

(1) Must be a person who is a member of the bar of the highest court of the state, or a member of the bar of a federal court; and

(2) Must be certified as competent to perform such duties by the state judge advocate.

**History:** 1963 c 661 s 192A.155; 1978 c 552 s 16; 1986 c 444

### 192A.16 DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS.

The convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. The convening authority of a military court may detail or employ interpreters, as necessary, who shall interpret for the court.

**History:** 1963 c 661 s 192A.16; 1978 c 552 s 17

### 192A.165 ABSENT AND ADDITIONAL MEMBERS.

Subdivision 1. 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, except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

Subd. 2. A general court-martial, other than a general court-martial composed of a military judge only, shall be composed of at least five regular members and one alternate member selected as described for regular members. Whenever a general court-martial is reduced below five members, the trial may not proceed unless the convening authority details new

members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides and such procedure is consented to by the accused and defense counsel. If not consented to, the convening authority may order a new trial.

Subd. 3. A special court-martial, other than a special court-martial consisting of a military judge only, shall be composed of at least three regular members and one alternate member selected as described for regular members. Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three 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 and such procedure is consented to by the accused and defense counsel. If not consented to, the convening authority may order a new trial.

Subd. 4. No person is eligible to act as a military judge in a case if that person is the accuser, a witness for the prosecution, a counsel, or has acted as investigating officer in the same case.

**History:** 1963 c 661 s 192A.165; 1978 c 552 s 18; 1986 c 444

### PRETRIAL PROCEDURE

#### 192A.17 CHARGES AND SPECIFICATIONS.

Subdivision 1. Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

(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.

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

**History:** 1963 c 661 s 192A.17; 1986 c 444

#### 192A.175 COMPULSORY SELF-INCRIMINATION PROHIBITED.

Subdivision 1. No person subject to this code may compel any person to make self-incriminating statements or acts or to answer any question the answer to which may tend to be self-incriminating.

Subd. 2. No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person:

(1) of the nature of the accusation;

(2) that no statement regarding the offense need be made; and

(3) that any statement the person makes may be used as evidence against the person in a trial by court-martial.

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

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

**History:** 1963 c 661 s 192A.175; 1986 c 444

#### 192A.18 INVESTIGATION.

Subdivision 1. 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. The convening authority shall request the unit's judge advocate to appoint an investigating officer. The investigating officer shall be a member of the state military forces. This investigation shall include inquiry as to the truth of the matter set forth in the charges, and consideration of the form of charges.

Subd. 2. The accused shall be advised of the charges and of the right to be represented at that investigation by counsel. Upon the accused's request military counsel shall be provided without cost, or, if the accused prefers, civilian counsel of the accused's choice may be retained at the accused's own expense. At that investigation full opportunity shall be given to the accused to cross examine adverse witnesses if they are available and to present anything in the accused's 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 report containing the substance of the testimony taken on both sides and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline. A copy thereof shall be given to the accused.

Subd. 3. If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross examination, and presentation prescribed in subdivision 2, no further investigation of that charge is necessary under this section unless it is demanded by the accused after being 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 behalf of the accused.

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

**History:** 1963 c 661 s 192A.18; 1978 c 552 s 19,20; 1986 c 444

#### **192A.185 FORWARDING OF CHARGES.**

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

**History:** 1963 c 661 s 192A.185; 1986 c 444

#### **192A.19 ADVICE OF STATE JUDGE ADVOCATE AND REFERENCE FOR TRIAL.**

Subdivision 1. Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. A charge may not be referred to a general court-martial for trial unless the convening authority has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

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

**History:** 1963 c 661 s 192A.19; 1986 c 444

#### **192A.195 SERVICE OF CHARGES.**

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, over objection, be brought to trial, or be required to participate either alone or with counsel in a session called by a military judge under section 192A.215 in a general court-martial case within a period of five days after service of charges or in a special court-martial within a period of three days after service of the charges.

**History:** 1963 c 661 s 192A.195; 1978 c 552 s 21; 1986 c 444

## TRIAL PROCEDURE

**192A.20 GOVERNOR MAY PRESCRIBE RULES.**

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

**History:** 1963 c 661 s 192A.20; 1985 c 248 s 70; 1986 c 444

**192A.205 UNLAWFULLY INFLUENCING ACTION OF COURT.**

Subdivision 1. No authority convening a general, special, or summary court-martial nor any other commanding officer may censure, reprimand, or admonish the court or any member, military judge or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to judicial acts. The foregoing provisions of this subdivision 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 or counsel.

Subd. 2. In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of such a member or in determining whether such member should be retained on any type of duty or 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 (2) give a less favorable rating or evaluation of any member because of the zeal with which such member, as counsel, represented any accused before a court-martial. This section shall not apply to evaluations made by a judge advocate on the performance of that judge advocate's own staff.

**History:** 1963 c 661 s 192A.205; 1978 c 552 s 22; 1986 c 444

**192A.21 DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL.**

Subdivision 1. The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

Subd. 2. The accused has the right to be represented before a general or special court-martial by civilian counsel if provided by the accused, or by military defense counsel detailed under section 192A.155. Should the accused have civilian counsel of the accused's own selection, the defense counsel, and assistant defense counsel, if any, who were detailed shall, if the accused so desires, act as associate defense counsel; otherwise they shall be excused by the military judge.

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

Subd. 4. An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when the assistant trial counsel is qualified to be a trial counsel as required by section 192A.155, perform any duty imposed by law, rule, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

Subd. 5. An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when the assistant defense counsel is qualified to be

the defense counsel as required by section 192A.155 perform any duty imposed by law, rule, or the custom of the service upon counsel for the accused.

**History:** 1963 c 661 s 192A.21; 1978 c 552 s 23; 1985 c 248 s 70; 1986 c 444

### 192A.215 SESSIONS.

Subdivision 1. At any time after the service of charges which have been referred for trial to a general or special court-martial, the military judge may, subject to section 192A.20 of this code, call the court into session without the presence of the members for the following purposes:

(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 members of the court;

(3) If permitted by rules issued pursuant to this code, holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which may be performed by the military judge under this code or under rules prescribed pursuant to section 192A.20 of this code and which does not require the presence of the members of the court.

Subd. 2. The proceedings described in subdivision 1 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.

Subd. 3. 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.

**History:** 1963 c 661 s 192A.215; 1978 c 552 s 24; 1985 c 248 s 70

### 192A.22 CONTINUANCES.

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

**History:** 1963 c 661 s 192A.22; 1978 c 552 s 25

### 192A.225 CHALLENGES.

Subdivision 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 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.

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

**History:** 1963 c 661 s 192A.225; 1978 c 552 s 26

### 192A.23 OATHS.

Subdivision 1. Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in rules issued pursuant to this code. These rules may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

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

**History:** 1963 c 661 s 192A.23; 1978 c 552 s 27; 1985 c 248 s 70

#### 192A.235 STATUTE OF LIMITATIONS.

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

Subd. 2. Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under section 192A.585 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

Subd. 3. Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under section 192A.085 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 192A.085.

Subd. 4. Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, 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 section.

**History:** 1963 c 661 s 192A.235; 1986 c 444

#### 192A.24 FORMER JEOPARDY.

Subdivision 1. No person may, without that person's consent, be tried a second time in any military court of the state for the same offense.

Subd. 2. 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 section until the finding of guilty has become final after review of the case has been fully completed.

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

**History:** 1963 c 661 s 192A.24; 1986 c 444

#### 192A.245 PLEAS OF THE ACCUSED.

Subdivision 1. If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that 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.

Subd. 2. With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification may, if permitted by rules issued pursuant to this code, 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 proceeding shall continue as though the accused had pleaded not guilty.

**History:** 1963 c 661 s 192A.245; 1978 c 552 s 28; 1986 c 444

#### 192A.25 OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.

Subdivision 1. The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such rules as the governor may prescribe.

Subd. 2. The military judge of a court-martial may:

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

- (2) Issue subpoenas duces tecum and other subpoenas;
- (3) Enforce by attachment the attendance of witnesses and the production of books and papers; and
- (4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

Subd. 3. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by the laws of the state.

**History:** 1963 c 661 s 192A.25; 1978 c 552 s 29; 1979 c 50 s 21; 1985 c 248 s 70

#### **192A.255 REFUSAL TO APPEAR OR TESTIFY.**

Any person not subject to this code who:

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

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the district 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 has been legally subpoenaed to produce; is guilty of an offense against the state and a military court may punish that person in the same manner as the civil courts of the state.

**History:** 1963 c 661 s 192A.255; 1983 c 247 s 81; 1986 c 444

#### **192A.26 CONTEMPTS.**

A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100 or both.

**History:** 1963 c 661 s 192A.26

#### **192A.265 DEPOSITIONS.**

Subdivision 1. At any time after charges have been signed, as provided in section 192A.17, any party may take oral or written depositions unless the military judge or, in the event a military judge has not been detailed to the case, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

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

Subd. 3. 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.

Subd. 4. A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears:

(1) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing;

(2) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability 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.

**History:** 1963 c 661 s 192A.265; 1978 c 552 s 30

#### **192A.27 ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY.**

Subdivision 1. 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 in-

quiry 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

Subd. 2. Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

Subd. 3. Such testimony may also be read in evidence before a court of inquiry or a military board.

**History:** 1963 c 661 s 192A.27

#### 192A.275 VOTING AND RULINGS.

Subdivision 1. 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 in each case count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

Subd. 2. The military judge of a general court-martial 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 section 192A.28 beginning with the junior in rank.

Subd. 3. Before a vote is taken on the findings, the military judge of a court-martial 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 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 of establishing the guilt of the accused beyond reasonable doubt is upon the state.

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

**History:** 1963 c 661 s 192A.275; 1978 c 552 s 31; 1986 c 444

#### 192A.28 NUMBER OF VOTES REQUIRED.

Subdivision 1. No person may be convicted of an offense except as provided in section 192A.245, subdivision 2, or by the concurrence of two-thirds of the members present at the time the vote is taken.

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

Subd. 3. 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 chal-

lenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

**History:** 1963 c 661 s 192A.28; 1978 c 552 s 32

#### **192A.285 COURT TO ANNOUNCE ACTION.**

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

**History:** 1963 c 661 s 192A.285

#### **192A.29 RECORD OF TRIAL.**

Subdivision 1. Each general and special court-martial shall keep a verbatim record of the proceedings and testimony 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 the military judge's 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 the trial counsel's 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 subdivision. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting an officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by rules of the governor. 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.

Subd. 2. Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such rules as the governor may prescribe.

**History:** 1963 c 661 s 192A.29; 1978 c 552 s 33; 1985 c 248 s 70; 1986 c 444

### **SENTENCES**

#### **192A.295 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 any 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.

**History:** 1963 c 661 s 192A.295

#### **192A.30 MAXIMUM LIMITS.**

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

**History:** 1963 c 661 s 192A.30

#### **192A.305 EFFECTIVE DATE OF SENTENCES.**

Subdivision 1. Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay in addition to confinement not suspended or deferred, the forfeiture may apply to pay becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay accrued before that date.

Subd. 2. Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement. Rules prescribed by the governor may provide that sentences of confinement may not be executed until approved by designated officers.

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

Subd. 4. On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under the convening authority's jurisdiction, the officer exercising similar court-martial convening authority over the command to which the accused is currently assigned, may in the convening authority's sole discretion defer service of a sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under that officer's jurisdiction, by the officer exercising similar court-martial jurisdiction over the command to which the accused is currently assigned.

**History:** 1963 c 661 s 192A.305; 1978 c 552 s 34; 1985 c 248 s 70; 1986 c 444

### 192A.31 EXECUTION OF CONFINEMENT.

Subdivision 1. A sentence of confinement adjudged by a military court, whether or not 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 of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

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

Subd. 3. The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the governor, or by such persons as the governor may authorize to act under section 192A.065, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person, except as provided by law.

**History:** 1963 c 661 s 192A.31; 1986 c 444

## REVIEW OF COURTS-MARTIAL

### 192A.315 EXECUTION OF SENTENCE; SUSPENSION OR DEFERMENT OF SENTENCE.

Except as provided in sections 192A.12 and 192A.345 a court-martial sentence, unless suspended, may be ordered executed by the convening authority when it is approved. The convening authority shall approve the sentence or such part, amount, or commuted form of the sentence as the convening authority sees fit and may suspend or defer the execution of the sentence as approved by the convening authority.

**History:** 1963 c 661 s 192A.315; 1978 c 552 s 35; 1986 c 444

### 192A.32 INITIAL ACTION ON THE RECORD.

After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the governor.

**History:** 1963 c 661 s 192A.32

### 192A.325 GENERAL COURT-MARTIAL RECORDS.

The convening authority shall refer the record of each general court-martial to the state judge advocate, who shall submit a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

**History:** 1963 c 661 s 192A.325; 1984 c 642 s 4; 1986 c 444

**192A.33 RECONSIDERATION AND REVISION.**

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

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

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

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

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

**History:** 1963 c 661 s 192A.33

**192A.335 REHEARINGS.**

Subdivision 1. If the convening authority disapproves the findings and sentence of a court-martial the convening authority may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case the convening authority shall state the reasons for disapproval. If the findings and sentence are disapproved and a rehearing is not ordered, the charges shall be dismissed by the convening authority.

Subd. 2. Each rehearing 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 the accused was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

**History:** 1963 c 661 s 192A.335; 1986 c 444

**192A.34 APPROVAL BY THE CONVENING AUTHORITY.**

In acting on the findings and sentence of a court-martial the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as found to be correct in law and fact and as in the discretion of the commanding authority is determined to be approved. Unless indicated otherwise, approval of the sentence is approval of the findings and sentence.

**History:** 1963 c 661 s 192A.34; 1986 c 444

**192A.345 REVIEW OF RECORDS; DISPOSITION.**

Subdivision 1. [Repealed, 1984 c 642 s 9]

Subd. 2. The entire record of all court-martial proceedings shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed as may be prescribed under rules prescribed by the governor in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate shall then be sent to the state judge advocate for review.

Subd. 3. [Repealed, 1984 c 642 s 9]

Subd. 4. The state judge advocate shall review the record of trial in each case sent as provided under subdivision 2. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

Subd. 5. The state judge advocate shall take final action in any case reviewable by the state judge advocate.

Subd. 6. In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The state judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the state judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the state judge advocate 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. On setting aside the findings and sentence, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, the state judge advocate may order a rehearing. On setting aside the findings and sentence without ordering a rehearing, the state judge advocate shall order that the charges be dismissed.

Subd. 7. In a case reviewable by the state judge advocate under this section, the state judge advocate shall instruct the convening authority to act in accordance with the state judge advocate's decision on the review. If the state judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the charges may be dismissed by the convening authority.

Subd. 8. The state judge advocate may, and if requested by the accused, shall order one or more courts of military review each composed of not less than three commissioned officers of the state military forces, active or retired, each of whom must be a member of the bar of the highest court of the state and shall have served not less than three years as a judge advocate. Each court of military review shall review the record of any trial by court-martial referred to it by the state judge advocate which referral shall be made if requested by the accused. Courts of military review have the same authority on review as the state judge advocate has under this section.

**History:** 1963 c 661 s 192A.345; 1978 c 552 s 36,37, 1984 c 642 s 5,6; 1985 c 248 s 70; 1986 c 444

#### **192A.35 ERROR OF LAW; LESSER INCLUDED OFFENSE.**

Subdivision 1. A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

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

**History:** 1963 c 661 s 192A.35

#### **192A.355 REVIEW COUNSEL.**

Subdivision 1. Upon the final review of a sentence of a general court-martial or of a sentence to a bad conduct discharge, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate and before the state judge advocate.

Subd. 2. Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section 192A.155, to represent the accused before the reviewing authority, before the staff judge advocate and before the state judge advocate, in the review of cases specified in subdivision 1.

Subd. 3. An accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate and before the state judge advocate if the counsel is provided by the accused.

**History:** 1963 c 661 s 192A.355; 1978 c 552 s 38; 1986 c 444

#### **192A.36 VACATION OF SUSPENSION.**

Subdivision 1. 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 the alleged violation of probation. The probationer shall be represented at the hearing by counsel if the probationer so desires.

Subd. 2. The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subdivision 1. If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

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

**History:** 1963 c 661 s 192A.36; 1986 c 444

### **192A.365 PETITION FOR A NEW TRIAL.**

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

**History:** 1963 c 661 s 192A.365

### **192A.37 REMISSION AND SUSPENSION.**

Subdivision 1. A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

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

**History:** 1963 c 661 s 192A.37

### **192A.375 RESTORATION.**

Subdivision 1. Under such rules as the governor may prescribe, 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 a new trial or rehearing.

Subd. 2. If a previously executed sentence of dishonorable or bad conduct discharge is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

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

**History:** 1963 c 661 s 192A.375; 1985 c 248 s 70; 1986 c 444

### **192A.38 FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES.**

The proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this code, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in section 192A.365.

**History:** 1963 c 661 s 192A.38

**192A.384 OFFENSES SUBJECT TO COURT-MARTIAL.**

The jurisdiction of courts-martial shall be limited to violations of the punitive articles in this code. Any person subject to this code who is charged with the commission of an offense which is not a military offense under this code may be surrendered to civil authorities for process in accordance with civil law.

**History:** 1978 c 552 s 45

**PUNITIVE ARTICLES****192A.385 PERSONS TO BE TRIED OR PUNISHED.**

No person may be tried or punished for any offense provided for in sections 192A.39 to 192A.605 unless it was committed while that person was in a duty status.

**History:** 1963 c 661 s 192A.385; 1986 c 444

**192A.39 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 that person would be punishable by this code;

is a principal.

**History:** 1963 c 661 s 192A.39; 1986 c 444

**192A.395 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 the offender's apprehension, trial, or punishment shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.395; 1986 c 444

**192A.40 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.

**History:** 1963 c 661 s 192A.40

**192A.405 ATTEMPTS.**

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

Subd. 2. 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.

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

**History:** 1963 c 661 s 192A.405

**192A.41 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.

**History:** 1963 c 661 s 192A.41

**192A.415 SOLICITATION.**

Subdivision 1. Any person subject to this code who solicits or advises another or others to desert in violation of section 192A.43 or mutiny in violation of section 192A.475 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.

Subd. 2. 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 section 192A.50 or sedition in violation of section 192A.475 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.

**History:** 1963 c 661 s 192A.415; 1986 c 444

**192A.42 FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION.**

Any person who:

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

(2) Procures that person's own separation from the state military forces by knowingly false representation or deliberate concealment as to that person's eligibility for that separation;

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.42; 1986 c 444

**192A.425 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 that person to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, rule, or order shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.425; 1985 c 248 s 70; 1986 c 444

**192A.43 DESERTION.**

Subdivision 1. Any member of the state military forces who:

(1) Without authority goes or remains absent from that member's unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits that member's 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 that member has not been regularly separated;

is guilty of desertion.

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

Subd. 3. Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.43; 1986 c 444

**192A.435 ABSENCE WITHOUT LEAVE.**

Any person subject to this code who, without authority:

(1) Fails to go to that person's appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Is absent or remains absent from an assigned unit, organization, or place of duty at which the person is required to be at the time prescribed;  
shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.435; 1986 c 444

#### **192A.44 MISSING MOVEMENT.**

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

**History:** 1963 c 661 s 192A.44; 1986 c 444

#### **192A.445 CONTEMPT TOWARDS OFFICIALS.**

Any person subject to this code who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.445

#### **192A.45 DISRESPECT TOWARDS SUPERIOR COMMISSIONED OFFICER.**

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

**History:** 1963 c 661 s 192A.45; 1986 c 444

#### **192A.455 ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER.**

Any person subject to this code who:

(1) Strikes that person's superior commissioned officer or draws or lifts up any weapon or offers any violence against that superior commissioned officer while that officer is in the execution of official duties; or

(2) Willfully disobeys a lawful command of that person's superior commissioned officer;

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.455; 1986 c 444

#### **192A.46 INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER, NON-COMMISSIONED 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 official duties;

(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 official duties;

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.46; 1986 c 444

#### **192A.465 FAILURE TO OBEY ORDER OR RULE.**

Any person subject to this code who:

(1) Violates or fails to obey any lawful general order or rule;

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

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

**History:** 1963 c 661 s 192A.465; 1985 c 248 s 70; 1986 c 444

#### **192A.47 CRUELTY AND MALTREATMENT.**

Any person subject to this code who acts cruelly, oppressively or maltreats any person subject to the person's orders shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.47; 1978 c 552 s 39; 1986 c 444

#### **192A.475 MUTINY OR SEDITION.**

Subdivision 1. 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 that person's 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 the utmost to prevent and suppress a mutiny or sedition being committed in that person's presence, or fails to take all reasonable means to inform a superior commissioned officer or commanding officer of a mutiny or sedition which that person knows or has reason to believe is taking place is guilty of a failure to suppress or report a mutiny or sedition.

Subd. 2. 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.

**History:** 1963 c 661 s 192A.475; 1986 c 444

#### **192A.48 RESISTANCE, BREACH OF ARREST, AND ESCAPE.**

Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.48

#### **192A.485 RELEASING PRISONER WITHOUT PROPER AUTHORITY.**

Any person subject to this code who, without proper authority, releases any prisoner committed to that person's 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.

**History:** 1963 c 661 s 192A.485; 1986 c 444

#### **192A.49 UNLAWFUL DETENTION OF ANOTHER.**

Any person subject to this code who, except as provided by law or rule, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.49; 1985 c 248 s 70

#### **192A.495 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.

**History:** 1963 c 661 s 192A.495

#### **192A.50 MISBEHAVIOR BEFORE THE ENEMY.**

Any person subject to this code who before or in the presence of the enemy:

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

**History:** 1963 c 661 s 192A.50; 1986 c 444

#### **192A.505 SUBORDINATE COMPELLING SURRENDER.**

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

**History:** 1963 c 661 s 192A.505

#### **192A.51 IMPROPER USE OF COUNTERSIGN.**

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to that person's knowledge, the person was authorized and required to give, shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.51, 1986 c 444

#### **192A.515 FORCING A SAFEGUARD.**

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

**History:** 1963 c 661 s 192A.515

#### **192A.52 CAPTURED OR ABANDONED PROPERTY.**

Subdivision 1. All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

Subd. 2. Any person subject to this code who:

- (1) Fails to carry out the duties prescribed in subdivision 1;
  - (2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby that person receives or expects any profit, benefit, or advantage personally or to another directly or indirectly connected with that person; or
  - (3) Engages in looting or pillaging;
- shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.52; 1986 c 444

**192A.525 AIDING THE ENEMY.**

Any person subject to this code who:

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

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

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.525

**192A.53 MISCONDUCT OF A PRISONER.**

Any person subject to this code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by that person's captors acts without proper authority in a manner contrary to law, custom, or rule, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.53; 1985 c 248 s 70, 1986 c 444

**192A.535 FALSE OFFICIAL STATEMENTS.**

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

**History:** 1963 c 661 s 192A.535; 1985 c 248 s 70

**192A.54 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 damaged, destroyed, sold, or wrongfully disposed of;

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

**History:** 1963 c 661 s 192A.54

**192A.545 PROPERTY OTHER THAN MILITARY PROPERTY; WASTE, SPOILAGE, OR DESTRUCTION.**

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

**History:** 1963 c 661 s 192A.545

**192A.55 IMPROPER HAZARDING OF VESSEL.**

Subdivision 1. 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 of the state military forces shall be punished as a court-martial may direct.

Subd. 2. 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 of the state military forces shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.55

**192A.555 DRUNKEN OR RECKLESS DRIVING.**

Any person subject to this code who drives, operates or is in actual physical control of any vehicle or aircraft while under the influence of an alcoholic beverage or narcotic drug or a combination thereof or whose blood contains 0.10 percent or more by weight of alcohol or who operates said vehicle or aircraft in a reckless or wanton manner, shall be punished as a court-martial may direct. Chemical and other tests for intoxication shall be made only in accordance with rules issued under this code.

**History:** 1963 c 661 s 192A.555; 1978 c 552 s 40; 1979 c 50 s 22; 1985 c 248 s 70

**192A.56 DRUNK ON DUTY; SLEEPING ON POST; LEAVING POST BEFORE RELIEF.**

Any person subject to this code who is found drunk on duty or sleeping upon an assigned post, or who leaves that post before being regularly relieved, shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.56; 1986 c 444

**192A.565 [Repealed, 1978 c 552 s 48]****192A.57 MALINGERING.**

Any person subject to this code who for the purpose of avoiding work, duty, or service in the state military forces:

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

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.57

**192A.575 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.

**History:** 1963 c 661 s 192A.575

**192A.58 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.

**History:** 1963 c 661 s 192A.58

**192A.585 PERJURY.**

Any person subject to this code who willfully gives false testimony under oath in the course of a judicial proceeding on the issue under inquiry shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.585; 1978 c 552 s 41

**192A.59 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 to any fact or to any writing or other paper knowing the oath to be false; or

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

(3) 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 that person 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.

**History:** 1963 c 661 s 192A.59; 1986 c 444

### 192A.595 LARCENY AND WRONGFUL APPROPRIATION.

Subdivision 1. Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person or from the state or United States any money, personal property, or article of value of any kind:

(1) With intent permanently to deprive or defraud another person or the state or United States of the use and benefit of property or to appropriate it to personal 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 or the state or United States of the use and benefit of property or to appropriate it to personal use or the use of any person other than the owner, is guilty of wrongful appropriation.

Subd. 2. Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.595; 1978 c 552 s 42; 1986 c 444

### 192A.60 CONDUCT UNBECOMING AN OFFICER.

Any commissioned officer who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.60; 1986 c 444

### 192A.605 GENERAL ARTICLE.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault, burglary or housebreaking, jurisdiction of which is reserved to civil courts.

**History:** 1963 c 661 s 192A.605

## MISCELLANEOUS PROVISIONS

### 192A.61 COURTS OF INQUIRY.

Subdivision 1. Courts of inquiry to investigate any matter may be convened by the governor or by any other person designated by the governor for that purpose, whether or not the persons involved have requested such an inquiry.

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

Subd. 3. Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed by or for the state military forces 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.

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

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

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

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

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

**History:** 1963 c 661 s 192A.61; 1978 c 552 s 43

#### 192A.611 STAFF JUDGE ADVOCATES.

Subdivision 1. Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, or with the state judge advocate.

Subd. 2. No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate to any reviewing authority upon the same case.

**History:** 1978 c 552 s 46

#### 192A.612 SEARCH WARRANTS.

During any period of active service under section 190.05, subdivision 5a or 5b, a military judge, designated as the summary court officer during such service, is authorized to issue search warrants, directed to a member of the military police of the state military forces, to search any person, place, or vehicle within the confines of the property or premises being used for such active service or any person or vehicle pursued therefrom. No search warrant shall be issued except upon probable cause, supported by affidavit or sworn testimony naming and describing the person and particularly describing the property or thing to be seized and particularly describing the place to be searched.

**History:** 1978 c 552 s 47; 1984 c 642 s 7

#### 192A.615 AUTHORITY TO ADMINISTER OATHS.

Subdivision 1. The following members of the state military forces may administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

- (1) The state judge advocate and all assistant state judge advocates;
- (2) Staff judge advocates and acting or assistant staff judge advocates;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (5) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (6) The president and the counsel for the court of any court of inquiry;

- (7) All officers designated to take a deposition;
- (8) All persons detailed to conduct an investigation; and
- (9) All other persons designated by rules of the governor.

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

Subd. 3. The signature without seal of any such person together with the title of the person's office, is prima facie evidence of the authority to administer oaths.

**History:** 1963 c 661 s 192A.615; 1978 c 552 s 44; 1985 c 248 s 70; 1986 c 444

#### 192A.62 SECTIONS TO BE EXPLAINED.

Sections 192A.02, 192A.025, 192A.045 to 192A.085, 192A.145, 192A.155, 192A.205, 192A.295, 192A.385 to 192A.595, and 192A.62 to 192A.63 shall be carefully explained to every enlisted member at the time of the member's enlistment or transfer or induction into, or at the time of the member's order to duty in or with any of the state military forces or within 30 days thereafter. They shall also be explained annually to each unit of the state military forces. A complete text of this code and of the rules prescribed by the governor thereunder shall be made available to any member of the state military forces, upon the member's request, for personal examination.

**History:** 1963 c 661 s 192A.62; 1985 c 248 s 70; 1986 c 444

#### 192A.625 COMPLAINTS OF WRONGS.

Any member of the state military forces having a belief of being 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 governor or adjutant general.

**History:** 1963 c 661 s 192A.625; 1986 c 444

#### 192A.63 REDRESS OF INJURIES TO PROPERTY.

Subdivision 1. Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that property has been wrongfully taken by members of the state military forces, the commanding officer may, subject to such rules as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, 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 the commanding officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subdivision 3, on any disbursing officer for the payment by the commanding officer to the injured parties of the damages so assessed and approved.

Subd. 2. 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 paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

Subd. 3. Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses, to cross examine adverse witnesses, and to appeal to the next higher commander.

**History:** 1963 c 661 s 192A.63; 1985 c 248 s 70; 1986 c 444

#### 192A.635 EXECUTION OF PROCESS AND SENTENCE.

In the state military forces not in federal service the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

**History:** 1963 c 661 s 192A.635

**192A.64 PROCESS OF MILITARY COURTS.**

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

Subd. 2. Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by rules issued under this code.

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

**History:** 1963 c 661 s 192A.64; 1985 c 248 s 70

**192A.645 PAYMENT OF FINES AND DISPOSITION THEREOF.**

Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due the delinquent, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine. The proceeds of all such fines shall be disposed of in accordance with section 192.68. All moneys so deposited with the adjutant general are appropriated for the purposes stated.

**History:** 1963 c 661 s 192A.645; 1965 c 41 s 2; 1986 c 444

**192A.65 IMMUNITY FOR ACTION OF MILITARY COURTS.**

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

**History:** 1963 c 661 s 192A.65

**192A.655 PRESUMPTION OF JURISDICTION.**

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

**History:** 1963 c 661 s 192A.655

**192A.66 DELEGATION OF AUTHORITY BY THE GOVERNOR.**

Except for the power in sections 192A.115 and 192A.13, the authority vested in the governor under this code may be delegated, and provisions made for the subdelegation of any such authority.

**History:** 1963 c 661 s 192A.66; 1986 c 444

**192A.665 UNIFORMITY OF INTERPRETATION.**

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and, so far as practical, to make that law uniform with the law of the United States.

**History:** 1963 c 661 s 192A.665