

**CHAPTER 192A**  
**UNIFORM CODE OF MILITARY JUSTICE**

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## GENERAL PROVISIONS

### 192A.01 SHORT TITLE.

Subdivision 1. **Citation.** 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 [Repealed, 1978 c 552 s 48]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 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 or temporarily commanding, or a successor in command;

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

(8) "Federal active service" has the meaning given in section 190.05, subdivision 5c;

(9) "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;

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

(11) "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;

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

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

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

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

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

(17) "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;

(18) "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;

(19) "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; 2002 c 308 s 1

## **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. **Primary and concurrent military jurisdiction.** (a) Courts-martial have primary jurisdiction of purely military offenses listed in section 192A.021. Except for crimes designated as purely military offenses in section 192A.021, a proper civilian tribunal has primary jurisdiction over an act or omission that violates both this code and local criminal law, foreign or domestic. In such cases a court-martial may be initiated only after the civilian authority has declined or dismissed charges, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, and accessory crimes must be determined by the underlying offense pursuant to section 192A.021.

(b) If an act or omission is subject to trial by court-martial and prosecution by one or more civil tribunals, foreign or domestic, the determination of which nation, state, or agency will exercise jurisdiction is a matter for the nations, states, and agencies concerned, and is not a right of the suspect or accused.

(c) 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.

Subd. 4. **Presumption of jurisdiction.** The jurisdiction of the military courts and boards established by this code are presumed and the burden of proof rests on any person seeking to challenge those courts or boards of jurisdiction in any action or proceeding.

**History:** 1963 c 661 s 192A.02; 1978 c 552 s 2; 1983 c 193 s 9; 2002 c 308 s 2,3

## **192A.021 PURELY MILITARY OFFENSES.**

Purely military offenses include the offenses contained in the following sections: 192A.39 (Principles), 192A.395 (Accessory after the fact), 192A.405 (Attempts), 192A.41 (Conspiracy), 192A.415 (Solicitation), 192A.42 (Fraudulent enlistment, appointment, or separation), 192A.425 (Unlawful enlistment, appointment, or separation), 192A.43 (Desertion), 192A.435 (Absent without leave), 192A.44 (Missing movement), 192A.445 (Contempt towards officials), 192A.45 (Disrespect towards superior commissioned officer), 192A.455 (Assaulting or willfully disobeying superior commissioned officer), 192A.46 (Insubordinate conduct toward warrant officer or noncommissioned officer), 192A.465 (Failure to obey order or rule), 192A.47 (Cruelty

and maltreatment), 192A.475 (Mutiny or sedition), 192A.48 (Resistance, breach of arrest, and escape), 192A.495 (Noncompliance with procedural rules), 192A.50 (Misbehavior before the enemy), 192A.51 (Improper use of countersign), 192A.515 (Forcing a safeguard), 192A.525 (Aiding the enemy), 192A.54 (Military property; loss, damage, destruction, or wrongful disposition), 192A.55 (Improper hazarding of vessel), 192A.56 (Drunk on duty; sleeping on post; leaving post before relief), 192A.57 (Malingering), 192A.60 (Conduct unbecoming an officer), and 192A.605 (General article).

**History:** 2002 c 308 s 4

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

Subdivision 1. **Fraudulent discharge.** Each person discharged from the state military forces not in federal active service 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. **Deserters.** No person who has deserted from the state military forces not in federal active service may be relieved from 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; 2002 c 308 s 5

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

Subdivision 1. **Application for court-martial.** 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. **Substitution of discharge.** 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. **Reappointment by governor.** 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. **No right to trial.** 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 CODE.**

Subdivision 1. **Code.** 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.** 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. **State judge advocate.** 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. **Assistants.** 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. **Field inspections.** 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. [Repealed, 2002 c 308 s 71]

Subd. 2. **Who may act; probable cause.** Any person authorized by this code, or by rules issued under it, or any licensed peace officer, may apprehend persons subject to this code upon probable cause to believe that an offense has been committed and that the person apprehended committed it.

Subd. 3. **Absence without leave.** 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 licensed peace officer pursuant to a warrant issued by a military judge upon a finding of probable cause.

Subd. 4. **Quarrels, frays, and disorders.** 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; 2002 c 308 s 6,7

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

Any licensed peace 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; 2002 c 308 s 8

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

Subdivision 1. **Definition.** "Pretrial restraint" means any restraint on a person's liberty which is imposed before and during disposition of offenses and may consist of conditions on liberty, restriction, or confinement.

For the purposes of this section:

(1) "conditions on liberty" are imposed by orders directing a person to do or refrain from doing specified acts;

(2) "restriction" is the restraint of a person by oral or written orders directing the person to remain within specified limits; and

(3) "confinement" is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of offenses.

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

Subd. 3. **Commissioned officers or warrant officers.** 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 pretrial restraint may not be delegated.

Subd. 4. **Probable cause.** No person may be ordered apprehended or into pretrial restraint except for probable cause.

Subd. 5. **Authority to secure alleged offenders.** 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; 2002 c 308 s 9

**192A.06** [Repealed, 2002 c 308 s 71]

**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 RECEIVING PRISONERS.**

Subdivision 1. **Requirement.** 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 or facility.

Subd. 2. [Repealed by amendment, 2002 c 308 s 10]

**History:** 1963 c 661 s 192A.07; 1986 c 444; 2002 c 308 s 10

**192A.075** [Repealed, 2002 c 308 s 71]

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

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

Subd. 2. **Sequence of sentences.** 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; 2002 c 308 s 11

**NONJUDICIAL PUNISHMENT**

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

Subdivision 1. **Disciplinary punishments.** 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:
  - (i) withholding of privileges for not more than two consecutive weeks;
  - (ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or
  - (iii) 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:



- (i) withholding of privileges for not more than two consecutive weeks;
- (ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;
- (iii) extra duties for not more than 14 days, which need not be consecutive, holidays included;
- (iv) reduction to the next inferior grade by the commander with promotion authority or higher command; or
- (v) forfeiture of not more than four days pay or a fine in an equivalent amount.

Subd. 2. **Governor's limitations.** 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. **Demand for court-martial.** 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.

Subd. 4. **Appeal.** 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 imposes 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. **Related serious offenses.** The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial or prosecution by civilian authorities for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section. Whether an offense is serious depends on several factors including, but not limited to, the nature of the offense; the circumstances surrounding its commission; and the defendant's age, rank, duty assignment, records, and experience. If the soldier declines nonjudicial punishment and the matter is referred to trial by summary court-martial, jurisdiction must be determined pursuant to section 192A.02, subdivision 3, paragraph (a). 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. **Forfeiture of pay.** 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. **Definition.** For purposes of this section, "consecutive" means time on duty as a member of the state military forces not in federal active service.

**History:** 1963 c 661 s 192A.085; 1978 c 552 s 5; 1985 c 248 s 70; 1986 c 444; 2002 c 308 s 12-15

## COURTS-MARTIAL JURISDICTION

### 192A.09 MEMBERS OF STATE MILITARY FORCES NOT IN FEDERAL ACTIVE SERVICE.

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

(1) general courts-martial, consisting of:

(i) a military judge and not less than five members; or

(ii) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) special courts-martial, consisting of:

(i) a military judge and not less than three members; or

(ii) 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; 2002 c 308 s 16

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

Each force of the state military forces not in federal active service 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; 2002 c 308 s 17

### 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) confinement for not more than 200 days or 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; or

(6) any combination of these punishments.

**History:** 1963 c 661 s 192A.10; 1978 c 552 s 7; 1986 c 444; 2002 c 308 s 18

### 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 or warrant 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) confinement of not more than 90 days or 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; or
- (6) any combination of these punishments.

**History:** 1963 c 661 s 192A.105; 1978 c 552 s 8; 1986 c 444; 2002 c 308 s 19

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

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

Subd. 2. **Objection to form.** 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. **Punishment options.** A summary court-martial may adjudge the following punishments:

- (1) a reprimand;
- (2) confinement of not more than 15 days or 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; or
- (5) any combination of these punishments.

**History:** 1963 c 661 s 192A.11; 1978 c 552 s 9; 1986 c 444; 2002 c 308 s 20,21

### **192A.111 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; 2002 c 308 s 70

### **192A.115 GOVERNOR'S APPROVAL OF DISMISSAL OR DISHONORABLE DISCHARGE.**

In the state military forces not in federal active 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; 2002 c 308 s 22

### **192A.12 PROCEDURAL REQUIREMENTS FOR DISHONORABLE DISCHARGE, BAD CONDUCT DISCHARGE, OR DISMISSAL.**

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 active service, general courts-martial may be convened by the governor.

**History:** 1963 c 661 s 192A.13; 1978 c 552 s 11; 2002 c 308 s 23

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

In the state military forces not in federal active 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; 2002 c 308 s 24

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

In the state military forces not in federal active 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 battalion, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of a military judge. Summary 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.14; 1978 c 552 s 12; 2002 c 308 s 25

**192A.145** [Repealed, 2002 c 308 s 71]

### 192A.15 MILITARY JUDGE SYSTEM.

Subdivision 1. **Establishment.** 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. **Qualifications of military judge.** 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. **Detail.** A military judge must be detailed to all courts-martial and be designated by the adjutant general, or the adjutant general's designee, for detail by the convening authority.

Subd. 4. **Conflicts of interest.** 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. **Limitations.** 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, if any, 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; 2002 c 308 s 26,27

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

Subdivision 1. **Who may be detailed.** For each general, special, or summary court-martial or posttrial review 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 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. 1a. **Right to counsel.** The accused has the right to be represented before a general, special, and summary court-martial by military defense counsel or by civilian counsel if provided by the accused at the accused's own expense. Should the accused have personally selected civilian counsel, the military 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. 2. **Qualifications of counsel.** Trial counsel or defense counsel detailed for a general, special, or summary 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; 2002 c 308 s 28

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

The convening authority of a general, special, or summary 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 shall detail or employ certified interpreters, as necessary, who shall interpret for the court.

**History:** 1963 c 661 s 192A.16; 1978 c 552 s 17; 2002 c 308 s 29

**192A.165** [Repealed, 2002 c 308 s 71]

**192A.17** [Repealed, 2002 c 308 s 71]

**192A.175** [Repealed, 2002 c 308 s 71]

**192A.18** [Repealed, 2002 c 308 s 71]

**192A.185** [Repealed, 2002 c 308 s 71]

**192A.19** [Repealed, 2002 c 308 s 71]

**192A.195** [Repealed, 2002 c 308 s 71]

## 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 UNLAWFUL COMMAND INFLUENCE.

Subdivision 1. **General prohibitions.** (a) No convening authority or commander may censure, reprimand, admonish, or otherwise retaliate against any member, military judge, counsel, or witness involved in the investigation, prosecution, or defense of military actions, punitive or administrative.

(b) No person subject to the code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member of a court-martial or other military tribunal, in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to that authority's judicial acts.

(c) This subdivision does not prohibit general instructional or informational courses in military justice if the courses are designed solely for the purpose of instructing personnel of a command in the substantive and procedural aspects of courts-martial.

(d) This subdivision does not prohibit statements and instructions given in open session by the military judge or counsel.

(e) This subdivision does not prohibit professional supervision by senior judge advocates regarding adherence to local and military standards of professional conduct and responsibility.

(f) This subdivision does not prohibit appropriate action against a person for an offense committed while detailed as a military judge, counsel, or member of a court-martial, or while serving as individual counsel.

Subd. 2. **Prohibitions concerning evaluations.** (a) 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 armed forces is qualified to be advanced in grade, in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the code may:

(1) consider or evaluate the performance of duty of the person as a member of a court-martial or administrative hearing; or

(2) give a less favorable rating or evaluation of a defense counsel because of the zeal with which the counsel represented an accused.

(b) For general, special, and summary courts-martial, neither the convening authority nor any member of the convening authority's staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge, which relates to the performance of duty as a military judge. When the military judge is normally rated or the military judge's report is

reviewed by the convening authority, the manner in which the military judge will be rated or evaluated upon the performance of duty as a military judge may be as prescribed in regulations of the National Guard concerned which must ensure the absence of any command influence in the rating or evaluation of the military judge's judicial performance.

**History:** 1963 c 661 s 192A.205; 1978 c 552 s 22; 1986 c 444; 2002 c 308 s 30

**192A.21** [Repealed, 2002 c 308 s 71]

**192A.215** [Repealed, 2002 c 308 s 71]

**192A.22** [Repealed, 2002 c 308 s 71]

**192A.225** [Repealed, 2002 c 308 s 71]

**192A.23** [Repealed, 2002 c 308 s 71]

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

Subdivision 1. **No limitation.** 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. [Repealed, 2002 c 308 s 71]

Subd. 3. **Three-year limitation.** Except as otherwise provided in subdivision 1, 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 three years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under section 192A.085.

Subd. 4. **Excluded periods.** 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; 2002 c 308 s 31

#### **192A.24 FORMER JEOPARDY.**

Subdivision 1. **General principle.** 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. **Finality of conviction.** 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. **Trial defined.** 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** [Repealed, 2002 c 308 s 71]

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

Subdivision 1. **Equal opportunity.** 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. **Powers of military judge.** 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. **Service of process.** Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence may be executed and served in any part of the state as prescribed by law.

**History:** 1963 c 661 s 192A.25; 1978 c 552 s 29; 1979 c 50 s 21; 1985 c 248 s 70; 2002 c 308 s 32

**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** [Repealed, 2002 c 308 s 71]

**192A.27** [Repealed, 2002 c 308 s 71]

**192A.275** [Repealed, 2002 c 308 s 71]



**192A.28 GROUNDS FOR CONVICTION.**

Subdivision 1. **Requirement.** No person may be convicted of an offense except:

- (1) pursuant to a proper plea which has been duly accepted by the court;
- (2) pursuant to a finding of guilty by the trial judge in a summary court-martial or where the defense has properly waived a trial by members; or
- (3) by the concurrence of two-thirds of the members present at the time the vote is taken.

Subd. 2. [Repealed by amendment, 2002, c 308 s 33]

Subd. 3. [Repealed by amendment, 2002, c 308 s 33]

**History:** 1963 c 661 s 192A.28; 1978 c 552 s 32; 2002 c 308 s 33

**192A.285** [Repealed, 2002 c 308 s 71]

**192A.29** [Repealed, 2002 c 308 s 71]

**192A.295** [Repealed, 2002 c 308 s 71]

**192A.30** [Renumbered 192A.111]

**192A.305** [Repealed, 2002 c 308 s 71]

**SENTENCES****192A.31 EXECUTION OF CONFINEMENT.**

Subdivision 1. **Location; conditions.** 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.

Subd. 2. [Repealed, 2002 c 308 s 71]

Subd. 3. **Receiving and confining persons.** 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; 2002 c 308 s 34

**192A.315** [Repealed, 2002 c 308 s 71]

**192A.32** [Repealed, 2002 c 308 s 71]

**192A.325** [Repealed, 2002 c 308 s 71]

**192A.33** [Repealed, 2002 c 308 s 71]

**192A.335** [Repealed, 2002 c 308 s 71]

**192A.34** [Repealed, 2002 c 308 s 71]

**192A.345** [Repealed, 2002 c 308 s 71]

**192A.35** [Repealed, 2002 c 308 s 71]

**192A.355** [Repealed, 2002 c 308 s 71]

**192A.36** [Repealed, 2002 c 308 s 71]

**192A.365** [Repealed, 2002 c 308 s 71]

**192A.37** [Repealed, 2002 c 308 s 71]

**192A.375** [Repealed, 2002 c 308 s 71]

**192A.38** [Repealed, 2002 c 308 s 71]

## JURISDICTION OF COURTS-MARTIAL

### 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 an offense under this code may be surrendered to civil authorities for process in accordance with civil law.

**History:** 1978 c 552 s 45; 2002 c 308 s 35

## PUNITIVE ARTICLES

### 192A.385 PERSONS TO BE TRIED OR PUNISHED.

Subdivision 1. **Duty status required.** 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 as a member of the state military forces not in federal active service.

Subd. 2. **Determination.** Duty status may extend to any soldier while acting in the line of duty or during any consecutive duty periods. Consecutive duty periods run from the time the soldier is required to be at the assigned duty station until the soldier is dismissed from duty. Duty status may be determined by weighing factors including, but not limited to, whether the soldier:

- (1) is in uniform;
- (2) is attending a unit endorsed event;
- (3) is drilling in excess of 50 miles from the soldier's normal duty station;
- (4) is involved in an activity which is service-connected;
- (5) has been released versus dismissed from duty; and
- (6) is staying at lodging provided by the military or at military expense.

**History:** 1963 c 661 s 192A.385; 1986 c 444; 2002 c 308 s 36

**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 and shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.39; 1986 c 444; 2002 c 308 s 37

**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. **Definition of attempt.** 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. **Punishment.** 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. **Consummated offense.** 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. **Desertion or mutiny.** 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 be punished as a court-martial may direct.

Subd. 2. **Misbehavior before the enemy; sedition.** 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 be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.415; 1986 c 444; 2002 c 308 s 38

#### **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. **General rule.** Any person subject to this code 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 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;

shall be punished as a court-martial may direct.

Subd. 2. **Officers after resignation.** 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 shall be punished as a court-martial may direct.

Subd. 3. [Repealed, 2002 c 308 s 71]

**History:** 1963 c 661 s 192A.43; 1986 c 444; 2002 c 308 s 39,40

#### **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 OR NONCOMMISSIONED OFFICER.**

Any warrant officer or enlisted member who:

(1) strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of official duties;

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

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of official duties;  
shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.46; 1986 c 444; 2002 c 308 s 41

**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 individual subject to the person's orders or control shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.47; 1978 c 552 s 39; 1986 c 444; 2002 c 308 s 42

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

Subdivision 1. **Crimes defined.** 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. **Punishment.** 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 by a member of the state military forces not in federal active service shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.48; 2002 c 308 s 43

**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 allows 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; 2002 c 308 s 44

**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) engages in 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 a hostile encounter;

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.50; 1986 c 444; 2002 c 308 s 45

**192A.505** [Repealed, 2002 c 308 s 71]

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

Any person subject to this code who, during a time when the state military forces are engaged with the enemy, discloses the parole or countersign or code word 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; 2002 c 308 s 46

#### **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** [Repealed, 2002 c 308 s 71]

#### **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 the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.525; 2002 c 308 s 47

**192A.53** [Repealed, 2002 c 308 s 71]

#### **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 gross negligence damages, destroys, or loses; or

(3) willfully or through gross negligence allows 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; 2002 c 308 s 48

#### **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 OR AIRCRAFT.**

Subdivision 1. **Violation; penalty.** Any person subject to this code who willfully, wrongfully, or through gross negligence hazards or allows to be hazarded any vessel or aircraft 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. [Repealed by amendment, 2002 c 308 s 49]

**History:** 1963 c 661 s 192A.55; 2002 c 308 s 49

**192A.555 DRIVING WHILE UNDER THE INFLUENCE OR RECKLESS DRIVING.**

Any person subject to this code who drives, operates or is in physical control of any motor vehicle or aircraft while under the influence of an alcoholic beverage or controlled substance or a combination thereof or whose blood contains 0.08 percent or more by weight of alcohol or who operates said motor vehicle or aircraft in a reckless or wanton manner, shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.555; 1978 c 552 s 40; 1979 c 50 s 22; 1985 c 248 s 70; 2002 c 308 s 50; 2004 c 283 s 12

**192A.56 UNDER THE INFLUENCE OF ALCOHOL WHILE ON DUTY; SLEEPING ON POST; LEAVING POST BEFORE RELIEF.**

Any person subject to this code who is found to be under the influence of alcohol while 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; 2002 c 308 s 51

**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 not in federal active service:

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

shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.57; 2002 c 308 s 52

**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** [Repealed, 2002 c 308 s 71]

**192A.582 ASSAULT.**

Any person subject to this code who:

- (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or
- (2) intentionally inflicts or attempts to inflict bodily harm upon another;

shall be punished as a court-martial may direct.

**History:** 2002 c 308 s 53

### **192A.585 PERJURY.**

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

**History:** 1963 c 661 s 192A.585; 1978 c 552 s 41; 2002 c 308 s 54

### **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, paper, or electronic submission knowing it to contain any false or fraudulent statements;
  - (b) makes any oath to any fact or to any writing, paper, or electronic submission 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 be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.59; 1986 c 444; 2002 c 308 s 55

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

Subdivision 1. **Crimes defined.** 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. **Punishment.** 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 does or omits to do certain acts that, under the circumstances, constitute conduct unbecoming an officer shall be punished as a court-martial may direct.

**History:** 1963 c 661 s 192A.60; 1986 c 444; 2002 c 308 s 56

### **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, and all conduct of a nature to bring discredit upon the state military forces shall be punished as a court-martial may direct. However, where a crime constitutes an offense that violates both this code and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court must be determined in accordance with section 192A.02, subdivision 3, paragraph (a).

**History:** 1963 c 661 s 192A.605; 2002 c 308 s 57

## **MISCELLANEOUS PROVISIONS**

### **192A.61 COURTS OF INQUIRY.**

Subdivision 1. **Convening.** 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. **Members; counsel.** 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. **Designated parties.** 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 military counsel, or by civilian counsel at the person's own expense, to cross examine witnesses, and to introduce evidence.

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

Subd. 5. **Oath or affirmation.** 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.** Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

Subd. 7. **Findings of fact.** 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. **Record of proceedings.** 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; 2002 c 308 s 58

**192A.611** [Repealed, 2002 c 308 s 71]

#### **192A.612 SEARCH WARRANTS.**

During any period of active service under section 190.05, subdivision 5a or 5b, a military judge 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; 2002 c 308 s 59

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

Subdivision 1. **Authorized persons.** 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 adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (4) the president, military judge, trial counsel, and assistant trial counsel for all general, special, and summary courts-martial;
- (5) the president and the counsel for the court of any court of inquiry;
- (6) all officers designated to take a deposition;
- (7) all persons detailed to conduct an investigation; and
- (8) all other persons designated by rules of the governor.

Subd. 2. **On-duty requirement.** 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 as prescribed in this code.

Subd. 3. **Prima facie evidence.** 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; 2002 c 308 s 60,61

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

Sections 192A.02, 192A.025, 192A.045, 192A.065, 192A.07, 192A.08, 192A.085, 192A.155, 192A.205, 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. Failure to provide briefings to soldiers or otherwise explain this code to soldiers shall not be a defense to a court-martial proceeding, except as mitigation in sentencing.

**History:** 1963 c 661 s 192A.62; 1985 c 248 s 70; 1986 c 444; 2002 c 308 s 62

**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. **Investigating board; assessment of damages.** 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. **Unascertainable offenders.** 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. **Rights of accused.** 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 active 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; 2002 c 308 s 63

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

Subdivision 1. **Kinds of process.** Military courts may issue any process or mandate, including writs and warrants 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. **To whom directed.** Process and mandates may be directed to the provost marshal, the military police, or any licensed peace officer of the state and shall be in such form as may be prescribed by rules issued under this code.

Subd. 3. **Execution of process or mandates.** 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; 2002 c 308 s 64,65

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

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 military member and deducted from any pay or allowance due or thereafter to become due the military member, 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; 2002 c 308 s 66

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

No accused or convicted member of the state military forces 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; 2002 c 308 s 67

**192A.655 [Repealed, 2002 c 308 s 71]****192A.66 DELEGATION OF AUTHORITY BY GOVERNOR.**

Except for the power in sections 192A.115 and 192A.13, the authority vested in the governor under this code may be delegated or subdelegated.

**History:** 1963 c 661 s 192A.66; 1986 c 444; 2002 c 308 s 68

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

This chapter shall be so construed as to effectuate its general purpose and, so far as practical, to make these laws uniform with the law of the United States.

**History:** *1963 c 661 s 192A.665; 2002 c 308 s 69*