

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the Wisconsin code of military justice.

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*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. Chapter 322 of the statutes is created to read:

3 **CHAPTER 322**  
4 **CODE OF MILITARY JUSTICE**  
5 **SUBCHAPTER I**  
6 **GENERAL PROVISIONS**

7 **322.01 Article 1. Definitions.**

8 (1) In this code, unless the context otherwise requires:

9 (a) "Accuser" means a person who signs and swears to charges, any person who  
10 directs that charges nominally be signed and sworn to by another, and any other

1 person who has an interest other than an official interest in the prosecution of the  
2 accused.

3 (b) “Cadet,” “candidate,” or “midshipman” means a person who is enrolled in  
4 or attending a state military academy, a regional training institute, or any other  
5 formal education program for the purpose of becoming a commissioned officer in a  
6 state military force.

7 (c) “Classified information” means any of the following:

8 1. Any information or material that has been determined by an official of the  
9 United States or any state subject to law, an Executive order, or regulation to require  
10 protection against unauthorized disclosure for reasons of national or state security.

11 2. Any restricted data, as defined in (section 11 (y) of the Atomic Energy Act  
12 of 1954,) 42 U.S.C. 2014(y).

\*\*\*NOTE: I don”t think we need the material in the parenthesis.

13 (d) “Code” means this chapter.

14 (e) “Commanding officer” includes only commissioned officers of the state  
15 military forces and shall include officers in charge only when administering  
16 nonjudicial punishment under s 322.15. The term ‘commander’ has the same  
17 meaning as ‘commanding officer’ unless the context otherwise requires.

18 (f) “Convening authority” includes, in addition to the person who convened the  
19 court, a commissioned officer commanding for the time being or a successor in  
20 command to the convening authority.

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

1 (h) “Duty status other than state active duty” means any other type of duty  
2 including Unit Training Assemblies/drills but excludes duty not in federal service  
3 and not full-time duty in the active service of the state; under an order issued by  
4 authority of law and includes travel to and from duty.

5 (i) “Enemy” includes organized forces of the enemy in time of war, any hostile  
6 body that U.S. or state forces may be opposing, such as a rebellious mob or band of  
7 renegades, and includes civilians as well as members of military organizations.  
8 Enemy is not restricted to the enemy government or its armed forces.

9 (j) “Enlisted member” means a person in an enlisted grade.

10 (k) “Forfeiture” means a permanent loss of entitlement to pay or allowances  
11 and any forfeiture under this code shall *not be considered a forfeiture for purposes of*  
12 (be exempt from) Article X, Section 2 of the Wisconsin Constitution.

\*\*\*NOTE: Use the language in italics?

13 (L) “Judge advocate” means a commissioned officer of the organized state  
14 military forces who is a member in good standing of the bar of the highest court of  
15 a state, and is any of the following:

16 1. Certified or designated as a judge advocate in the Judge Advocate General’s  
17 Corps of the Army, Air Force, Navy, or the Marine Corps or designated as a law  
18 specialist as an officer of the Coast Guard, or a reserve component of one of these.

19 2. Certified as an non-federally recognized judge advocate, under regulations  
20 promulgated subject to this provision, by the senior judge advocate of the commander  
21 of the force in the state military force of which the accused is a member, as competent  
22 to perform military justice duties required by this code. If there is no judge advocate  
23 available, then certification may be made by the senior judge advocate of the

1 commander of another force in the state military forces, as the convening authority  
2 directs.

3 (m) “Military court” means a court–martial or a court of inquiry under (article  
4 135) *s. 322.135*.

5 (n) “Military judge” means an official of a general or special court–martial  
6 detailed in accordance with (article 26 of this code) *s. 322.26*.

7 (o) “Military offenses” means those offenses prescribed under articles 77,  
8 Principals; 78, Accessory after the fact; 80, Attempts; 81, Conspiracy; 82,  
9 Solicitation; 83, Fraudulent enlistment, appointment, or separation; 84, Unlawful  
10 enlistment, appointment, or separation; 85, Desertion; 86, Absence without leave;  
11 87, Missing movement; 88, Contempt toward officials; 89, Disrespect towards  
12 superior commissioned officer; 90, Assaulting or willfully disobeying superior  
13 commissioned officer; 91, Insubordinate conduct toward warrant officer,  
14 noncommissioned officer, or petty officer; 92, Failure to obey order or regulation; 93,  
15 Cruelty and maltreatment; 94, Mutiny or sedition; 95, Resistance, flight, breach of  
16 arrest, and escape; 96, Releasing prisoner without proper authority; 97, Unlawful  
17 detention; 98, Noncompliance with procedural rules; 99, Misbehavior before the  
18 enemy; 100, Subordinate compelling surrender; 101, Improper use of countersign;  
19 102, Forcing a safeguard; 103, Captured or abandoned property; 104, Aiding the  
20 enemy; 105, Misconduct as prisoner; 107, False official statements; 108, Military  
21 property — Loss, damage, destruction, or wrongful disposition; 109, Property other  
22 than military property — Waste, spoilage, or destruction; 110, Improper hazarding  
23 of vessel; 111, (Drunken or reckless operation of a vehicle, aircraft, or vessel; 112,  
24 Drunk on duty; 112a, Wrongful use, or possession of controlled substances; 113,  
25 Misbehavior of sentinel; 114, Dueling; 115, Malingering; 116, Riot or breach of peace;

1 117, Provoking speeches or gestures; 120, Rape or carnal knowledge; 121, Larceny  
2 and wrongful appropriation; 122, Robbery; 123, Forgery; 124, Maiming; 126, Arson;  
3 127, Extortion; 128, Assault; 129, Burglary; 130, Housebreaking; 131, Perjury; 132,  
4 Frauds against the government; 133, Conduct unbecoming an officer and a  
5 gentleman; and 134, General article; of this code *s. 322.77, 322.78, 322.80 to 322.105*  
6 *, 322.107 to 322.112, 322.112a, 322.113 to 322.117, 322.120 to 322.124, and 322.126*  
7 *to 322.134 ,.*

8 (p) “National security” means the national defense and foreign relations of the  
9 United States.

\*\*\*NOTE: I don’t understand this definition?

10 (q) “Non–military offenses” mean offenses which are in the state’s civilian  
11 penal statute and are not offenses in this code.

12 (r) “Officer” means a commissioned or warrant officer.

13 (s) “Officer in charge” means a member of the naval militia, the Navy, the  
14 Marine Corps, or the Coast Guard as designated by appropriate authority.

15 (t) “Record,” when used in connection with the proceedings of a court–martial,  
16 means any of the following:

17 1. An official written transcript, written summary, or other writing relating to  
18 the proceedings.

19 2. An official audiotape, videotape, digital image or file, or similar material  
20 from which sound, or sound and visual images, depicting the proceedings may be  
21 reproduced.

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

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

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

7 (x) “State military forces” means the National Guard (of the State), as defined  
8 in (Chapter) 321.01 and Title 32 U.S.C. §§ 502, 503, 904, the state defense force, the  
9 organized Naval Militia of the State, and any other military force organized under  
10 the Constitution and laws of the State, not to include the unorganized militia, state  
11 guard, or home guard, when not in a status subjecting them to exclusive jurisdiction  
12 under chapter 47 of title 10, United States Code *10 USC ch. 47*. The unorganized  
13 militia, state defense force, state national guard, home guard or any other name of  
14 any state force that does not meet this definition nevertheless shall be part of the  
15 “state military forces” under this code.

16 (y) “Superior commissioned officer” means a commissioned officer superior in  
17 rank or command.

18 (z) “Unit training assembly” means an assembly for drill and instruction which  
19 may consist of a single ordered formation of a company, battery, squadron, or  
20 detachment, or, when authorized by the commander, a series of ordered formations  
21 of those organizations.

22 **322.02 Article 2. Persons subject to this code; jurisdiction.**

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

1           **(2)** “Subject matter jurisdiction is established if a nexus exists between an  
2 offense under this code and the state military force. Courts–martial have primary  
3 jurisdiction of military offenses as defined in s. 322.01. A proper civilian court has  
4 primary jurisdiction of a non–military offense when an act or omission violates both  
5 this code and local criminal law, foreign or domestic. In this case, a court–martial  
6 may be initiated only after the civilian authority has declined to prosecute or  
7 dismissed the charge, provided jeopardy has not attached. Jurisdiction over  
8 attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be  
9 determined by the underlying offense.

10           **322.03 Article 3. Jurisdiction to try certain personnel.**

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

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

20           **322.05 Article 5. Territorial applicability of the code.**

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

1           **(2)** Courts–martial and courts of inquiry, as defined in s. 322.135 of the  
2 Wisconsin Manual for Courts–Martial, may be convened and held in units of a state  
3 military force while those units are serving outside the state with the same  
4 jurisdiction and powers as to persons subject to this code as if the proceedings were  
5 held inside the state, and offenses committed outside the state may be tried and  
6 punished either inside or outside the state.

7           **322.06 Article 6. Judge advocates.**

8           **(1)** The senior force judge advocates in each of the state’s military forces or that  
9 judge advocate’s delegates shall make frequent inspections in the field in supervision  
10 of the administration of military justice in that force.

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

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

18   SUBCHAPTER II

19   APPREHENSION AND RESTRAINT

20           **322.07 Article 7. Apprehension.**

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

22           **(2)** Any person authorized by this code or by the Uniform Code of Military  
23 Justice, or by regulations issued under either, to apprehend persons subject to this  
24 code, any marshal of a court–martial appointed subject to the provisions of this code,  
25 and any peace officer or civil officer having authority to apprehend offenders under



1 the laws of the United States or of a state, may do so upon probable cause that an  
2 offense has been committed and that the person apprehended committed it.

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

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

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

14 **322.08 Article 9. Imposition of restraint.**

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

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

24 (3) A commissioned officer, a warrant officer, or a civilian subject to this code  
25 or to trial there under may be ordered into arrest or confinement only by a

1 commanding officer to whose authority the person is subject, by an order, oral or  
2 written, delivered in person or by another commissioned officer. The authority to  
3 order persons into arrest or confinement may not be delegated.

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

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

9 **322.10 Article 10. Restraint of persons charged with offenses.**

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

16 **322.11 Article 11. Place of confinement; reports and receiving of**  
17 **prisoners.**

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

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

1           **(3)** Every person authorized to receive prisoners subject to sub. (1) to whose  
2 charge a prisoner is committed shall, within 24 hours after that commitment or as  
3 soon as the person is released from guard, report to the commanding officer of the  
4 prisoner the name of the prisoner, the offense charged against the prisoner, and the  
5 name of the person who ordered or authorized the commitment.

6           **322.12** Article 12. **Confinement with enemy prisoners prohibited.** No  
7 member of a state military force may be placed in confinement in immediate physical  
8 association with enemy prisoners or other foreign nationals not members of the  
9 armed forces.

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

16           **322.14** Article 14. **Delivery of offenders to civil authorities.**

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

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

## 1 SUBCHAPTER III

## 2 NON-JUDICIAL PUNISHMENT

3 **322.15 Article 15. Commanding officer's non-judicial punishment.**

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

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

12 (a) Admonition.

13 (b) Reprimand.

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

16 (d) Forfeiture of (pay of) not more than 7 days' pay.

17 (e) Fine of not more than 7 days' pay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 13           1. Mitigate reduction in grade to forfeiture of pay.
- 14           2. Mitigate arrest in quarters to restriction.
- 15           3 Mitigate extra duties to restriction.

16           **(8)** The mitigated punishment shall not be for a greater period than the  
17 punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the  
18 amount of the forfeiture shall not be greater than the amount that could have been  
19 imposed initially under this section by the officer who imposed the punishment  
20 mitigated.

21           **(9)** A person punished under this section who considers the punishment unjust  
22 or disproportionate to the offense may, through the proper channel, appeal to the  
23 next superior authority within 15 days after the punishment is either announced or  
24 sent to the accused, as the commander may determine. The appeal shall be promptly  
25 forwarded and decided, but the person punished may in the meantime be required

1 to undergo the punishment adjudged. The superior authority may exercise the same  
2 powers with respect to the punishment imposed as may be exercised under sub. (7)  
3 by the officer who imposed the punishment. Before acting on an appeal from a  
4 punishment, the authority that is to act on the appeal may refer the case to a judge  
5 advocate for consideration and advice.

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

13 **(11)** Whenever a punishment of forfeiture of pay is imposed under this section,  
14 the forfeiture may apply to pay accruing before, on, or after the date that punishment  
15 is imposed.

16 **(12)** Regulations may prescribe the form of records to be kept of proceedings  
17 under this section and may prescribe that certain categories of those proceedings  
18 shall be in writing.

#### 19 20 SUBCHAPTER IV

#### 21 COURT-MARTIAL JURISDICTION

#### 22 **322.16 Article 16. Courts-martial classified.**

23 **(1)** The three kinds of courts-martial in the state military forces are as follows:

24 (a) General courts-martial, consisting of any of the following:

25 1. A military judge and not less than 5 members.

1           2 Only a military judge, if before the court is assembled the accused, knowing  
2 the identity of the military judge and after consultation with defense counsel,  
3 requests orally on the record or in writing a court composed only of a military judge  
4 and the military judge approves.

5           (b) Special courts–martial, consisting of any of the following:

6           1. A military judge and not less than 3 members. An accused may waive twelve  
7 members and proceed to a special court–martial with not less than six members.

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

10          (c) Summary courts–martial, consisting of 1 commissioned officer.

11          **322.17** Article 17. **Jurisdiction of courts–martial in general.** Each  
12 component of the state military forces has court–martial jurisdiction over all  
13 members of the particular component who are subject to this code. Additionally, the  
14 state military forces have court–martial jurisdiction over all members subject to this  
15 code.

16          **322.18** Article 18. **Jurisdiction of general courts–martial.** Subject to s.  
17 322.17, general courts–martial have jurisdiction to try persons subject to this code  
18 for any offense made punishable by this code, and may, under limitations as the  
19 governor may prescribe, adjudge any punishment not forbidden by this code.

20          **322.19** Article 19. **Jurisdiction of special courts–martial.** Subject to s.  
21 322.17, special courts–martial have jurisdiction to try persons subject to this code for  
22 any offense made punishable by this code, and may, under limitations as the  
23 governor may prescribe, adjudge any punishment not forbidden by this code except  
24 dishonorable discharge, dismissal, confinement for more than one year, forfeiture of  
25 pay exceeding two–thirds pay per month, or forfeiture of pay for more than one year.



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**322.20 Article 20. Jurisdiction of summary courts–martial.**

**(1)** Subject to s. 322.17, summary courts–martial have jurisdiction to try persons subject to this code, except officers, cadets, candidates, and midshipmen, for any offense made punishable by this code under limitations as the governor may prescribe.

**(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. If objection to trial by summary court–martial is made by an accused, trial by special or general court–martial may be ordered, as may be appropriate. Summary courts–martial may, under limitations as the governor may prescribe, adjudge any punishment not forbidden by this code except dismissal, dishonorable or bad–conduct discharge, confinement for more than one month, restriction to specified limits for more than two months, or forfeiture of more than two–thirds of one month’s pay.

SUBCHAPTER V

APPOINTMENT AND COMPOSITION

OF COURTS–MARTIAL

**322.22 Article 22. Who may convene general courts–martial.**

- (1)** General courts–martial may be convened by any of the following:
- (a) The governor.
  - (b) The adjutant general.
  - (c) The commanding general officer of any force of the state military forces.
  - (d) The commanding officer of a division or a separate brigade.
  - (e) The commanding officer of a separate wing.

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

4           **322.23 Article 23. Who may convene special courts–martial.**

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

6           (a) Any person who may convene a general court–martial.

7           (b) The commanding officer of a garrison, fort, post, camp, station, Air National  
8 Guard base, or naval base or station.

9           (c) The commanding officer of a brigade, regiment, detached battalion, or  
10 corresponding unit of the Army National Guard.

11           (d) The commanding officer of a wing, group, separate squadron, or  
12 corresponding unit of the Air National Guard.

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

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

18           **322.24 Article 24. Who may convene summary courts–martial.**

19           (1) Summary courts–martial may be convened by any of the following:

20           (a) Any person who may convene a general or special court–martial.

21           (b) The commanding officer of a detached company or other detachment, or  
22 corresponding unit of the Army National Guard.

23           (c) The commanding officer of a detached squadron or other detachment, or  
24 corresponding unit of the Air National Guard.

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

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

8 **322.25 Article 25. Who may serve as a member on courts-martial.**

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

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

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

1 convening authority shall make a detailed written statement, to be appended to the  
2 record, stating why they could not be obtained.

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

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

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

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

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

18 **322.26 Article 26. Military judge of a general or special court-martial.**

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

22 (2) A military judge shall be qualified as follows:

23 (a) A commissioned officer of an organized state military force.

24 (b) A member in good standing of the bar of the highest court of a State or a  
25 member of the bar of a Federal court for at least 5 years.

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

3 (3) In the instance when a military judge is not a member of the bar of the  
4 highest court of the State, the military judge shall be deemed admitted on motion,  
5 subject to filing with the senior force judge advocate of the same force as the accused  
6 setting forth the qualifications provided in subsection (2).

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

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

17 (6) The military judge of a court–martial may not consult with the members  
18 of the court except in the presence of the accused, trial counsel, and defense counsel  
19 nor vote with the members of the court.

20 **322.27 Article 27. Detail of trial counsel and defense counsel.**

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

23 (2) No person who has acted as investigating officer, military judge, witness or  
24 court member in any case may act later as trial counsel, assistant trial counsel, or,  
25 unless expressly requested by the accused, as defense counsel or assistant or

1 associate defense counsel in the same case. No person who has acted for the  
2 prosecution may act later in the same case for the defense nor may any person who  
3 has acted for the defense act later in the same case for the prosecution.

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

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

7 (b) In the case of trial counsel, a member in good standing of the bar of the  
8 highest court of the State of Wisconsin.

9 (4) In the instance when a defense counsel is not a member of the bar of the  
10 highest court of the State, the defense counsel shall be deemed admitted on motion,  
11 subject to filing with the military judge setting forth the qualifications that counsel  
12 is all of the following:

13 (a) Commissioned officer of the armed forces of the United States or a  
14 component thereof.

15 (b) Member in good standing of the bar of the highest court of a state.

16 (c) Certified as a judge advocate in the Judge Advocate General's Corps of the  
17 Army, Air Force, Navy, or the Marine Corps, or a judge advocate as defined in this  
18 code.

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

21 **322.28 Article 28. Detail or employment of reporters and interpreters.**

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

1           **322.29 Article 29. Absent and additional members.**

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

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

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

21           **(4)** If the military judge of a court–martial composed of a military judge only  
22 is unable to proceed with the trial because of physical disability, as a result of a  
23 challenge, or for other good cause, the trial shall proceed, subject to any applicable  
24 conditions of s. 322.16 (1) (b) or (2) (b), after the detail of a new military judge as if  
25 no evidence had previously been introduced, unless a verbatim record of the evidence

1 previously introduced or a stipulation is read in court in the presence of the new  
2 military judge, the accused, and counsel for both sides.

### 3 SUBCHAPTER VI

#### 4 PRE-TRIAL PROCEDURE

##### 5 **322.30 Article 30. Charges and specifications.**

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

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

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

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

##### 16 **322.31 Article 31. Compulsory self-incrimination prohibited.**

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

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



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

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

7           **322.32 Article 32. Investigation.**

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

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

23           **(3)** If an investigation of the subject matter of an offense has been conducted  
24 before the accused is charged with the offense, and if the accused was present at the  
25 investigation and afforded the opportunities for representation, cross-examination,

1 and presentation prescribed in sub. (2), no further investigation of that charge is  
2 necessary under this section unless it is demanded by the accused after the accused  
3 is informed of the charge. A demand for further investigation entitles the accused  
4 to recall witnesses for further cross-examination and to offer any new evidence in  
5 the accused's own behalf.

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

10 (a) Present at the investigation;

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

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

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

16 **322.33 Article 33. Forwarding of charges.** When a person is held for trial  
17 by general court-martial, the commanding officer shall within eight days after the  
18 accused is ordered into arrest or confinement, if practicable, forward the charges,  
19 together with the investigation and allied papers, to the person exercising general  
20 court-martial jurisdiction. If that is not practicable, the commanding officer shall  
21 report in writing to that person the reasons for delay.

22 **322.34 Article 34. Advice of judge advocate and reference for trial.**

23 (1) Before directing the trial of any charge by general court-martial, the  
24 convening authority shall refer it to a judge advocate for consideration and advice.  
25 The convening authority may not refer a specification under a charge to a general

1 court-martial for trial unless the convening authority has been advised in writing  
2 by a judge advocate that all the following conditions are met:

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

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

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

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

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

11 (b) Recommending action that the convening authority take regarding the  
12 specification.

13 **(3)** If the specification is referred for trial, the recommendation of the judge  
14 advocate shall accompany the specification.

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

19 **322.35 Article 35. Service of charges.** The trial counsel shall serve or caused  
20 to be served upon the accused a copy of the charges. No person may, against the  
21 person's objection, be brought to trial before a general court-martial case within a  
22 period of five days after the service of charges upon the accused, or in a special  
23 court-martial, within a period of three days after the service of charges upon the  
24 accused.

## 1 SUBCHAPTER VII

## 2 TRIAL PROCEDURE

3 **322.36** Article 36. **Governor may prescribe regulations.** Pretrial, trial,  
4 and post-trial procedures, including modes of proof, for courts-martial cases arising  
5 under this code, and for courts of inquiry, may be prescribed by the governor by  
6 regulations, or as otherwise provided by law, which shall apply the principles of law  
7 and the rules of evidence generally recognized in military criminal cases in the courts  
8 of the armed forces but which may not be contrary to or inconsistent with this code.

9 **322.37** Article 37. **Unlawfully influencing action of court.**

10 **(1)** No authority convening a general, special, or summary court-martial, nor  
11 any other commanding officer, or officer serving on the commanding officer's staff,  
12 may censure, reprimand, or admonish the court or any member, the military judge,  
13 or counsel, with respect to the findings or sentence adjudged by the court or with  
14 respect to any other exercise of its or their functions in the conduct of the proceedings.  
15 No person subject to this code may attempt to coerce or, by any unauthorized means,  
16 influence the action of a court-martial or court of inquiry or any member, in reaching  
17 the findings or sentence in any case, or the action of any convening, approving, or  
18 reviewing authority with respect to their judicial acts. The foregoing provisions of  
19 the subsection shall not apply with respect to the any of the following:

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

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

1           **(2)** In the preparation of an effectiveness, fitness, or efficiency report, or any  
2 other report or document used in whole or in part for the purpose of determining  
3 whether a member of the state military forces is qualified to be advanced in grade,  
4 or in determining the assignment or transfer of a member of the state military forces,  
5 or in determining whether a member of the state military forces should be retained  
6 on active status, no person subject to this code may, in preparing any report, do any  
7 of the following:

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

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

12           **322.38 Article 38. Duties of trial counsel and defense counsel.**

13          **(1)** The trial counsel of a general or special court-martial shall be a member  
14 in good standing of the State bar and shall prosecute in the name of the State, and  
15 shall, under the direction of the court, prepare the record of the proceedings.

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

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

20          (c) The accused may be represented by:

21           1. Military counsel detailed under s. 322.27.

22           2. Military counsel of the accused's own selection if that counsel is reasonably  
23 available as determined under paragraph (7).

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

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

7 (f) The accused is not entitled to be represented by more than one military  
8 counsel. However, the person authorized under regulations prescribed under s.  
9 322.27 to detail counsel, in that person's sole discretion may do any of the following:

10 1. Detail additional military counsel as assistant defense counsel.

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

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

17 (3) In any court-martial proceeding resulting in a conviction, the defense  
18 counsel may:

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

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

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

24 **322.39 Article 39. Sessions.**

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

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

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

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

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

13           **(2)** These proceedings shall be conducted in the presence of the accused, the  
14 defense counsel, and the trial counsel and shall be made a part of the record. These  
15 proceedings may be conducted notwithstanding the number of court members and  
16 without regard to s. 322.29.

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

22           **322.40 Article 40. Continuances.** The military judge of a court-martial or  
23 a summary court-martial may, for reasonable cause, grant a continuance to any  
24 party for time, and as often, as may appear to be just.

25           **322.41 Article 41. Challenges.**

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

7           (b) If exercise of a challenge for cause reduces the court below the minimum  
8 number of members required by s. 322.16, all parties shall, notwithstanding s.  
9 322.29, either exercise or waive any challenge for cause then apparent against the  
10 remaining members of the court before additional members are detailed to the court.  
11 However, peremptory challenges shall not be exercised at that time.

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

15           (b) If exercise of a peremptory challenge reduces the court below the minimum  
16 number of members required by s. 322.16 of this code, the parties shall,  
17 notwithstanding s. 322.29 of this code, either exercise or waive any remaining  
18 peremptory challenge, not previously waived, against the remaining members of the  
19 court before additional members are detailed to the court.

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

24           **322.42** Article 42. **Oaths or Affirmations.**



1           **(1)** Before performing their respective duties, military judges, general and  
2 special courts–martial members, trial counsel, defense counsel, reporters, and  
3 interpreters shall take an oath or affirmation in the presence of the accused to  
4 perform their duties faithfully. The form of the oath or affirmation, the time and  
5 place of the taking, the manner of recording the same, and whether the oath or  
6 affirmation shall be taken for all cases in which these duties are to be performed or  
7 for a particular case, shall be as prescribed in regulation or as provided by law. These  
8 regulations may provide that an oath or affirmation to perform faithfully the duties  
9 as a military judge, trial counsel, or defense counsel may be taken at any time by any  
10 judge advocate or other person certified or designated to be qualified or competent  
11 for the duty, and if an oath or affirmation is taken, it need not again be taken at the  
12 time the judge advocate or other person is detailed to that duty.

13           **(2)** Each witness before a court–martial shall be examined under oath or  
14 affirmation.

15           **322.43 Article 43. Statute of limitations.**

16           **(1)** Except as otherwise provided in this section, a person charged with any  
17 offense is not liable to be tried by court–martial or punished under s. 322.15 of this  
18 code if the offense was committed more than three years before the receipt of sworn  
19 charges and specifications by an officer exercising court–martial jurisdiction over  
20 the command or before the imposition of punishment under s. 322.15 of this code.

21           **(2)** Periods in which the accused is absent without authority or fleeing from  
22 justice shall be excluded in computing the period of limitation prescribed in this  
23 section.

24           **(3)** Periods in which the accused was absent from territory in which the State  
25 has the authority to apprehend him, or in the custody of civil authorities, or in the

1 hands of the enemy, shall be excluded in computing the period of limitation  
2 prescribed in this section.

3 (4) When the United States is at war based on Congressional declaration or by  
4 Presidential declaration under the Global War on Terror, the running of any statute  
5 of limitations is suspended until two years after the termination of hostilities, as  
6 proclaimed by the President or by a joint resolution of Congress, and is applicable to  
7 any offense under this code under any of the following circumstances:

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

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

13 (c) Committed in connection with the negotiation, procurement, award,  
14 performance, payment, interim financing, cancellation, or other termination or  
15 settlement, of any contract, subcontract, or purchase order which is connected with  
16 or related to the prosecution of the war, or with any disposition of termination  
17 inventory by any war contractor or Government agency.

18 (5) (a) If charges or specifications are dismissed as defective or insufficient for  
19 any cause and the period prescribed by the applicable statute of limitations has  
20 expired, or will expire within 180 days after the date of dismissal of the charges and  
21 specifications, trial and punishment under new charges and specifications are not  
22 barred by the statute of limitations if the conditions specified in paragraph (2) are  
23 met.

24 (b) The conditions referred to in paragraph (1) are that the new charges and  
25 specifications satisfy all of the following:

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

3           2. Allege the same acts or omissions that were alleged in the dismissed charges  
4 or specifications, or allege acts or omissions that were included in the dismissed  
5 charges or specifications.

6           **322.44 Article 44. Former jeopardy.**

7           **(1)** No person may, without his or her consent, be tried a second time for the  
8 same offense.

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

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

16           **322.45 Article 45. Pleas of the accused.**

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

23           **(2)** With respect to any charge or specification to which a plea of guilty has been  
24 made by the accused and accepted by the military judge or by a court–martial  
25 without a military judge, a finding of guilty of the charge or specification may be

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

5 **322.46 Article 46. Opportunity to obtain witnesses and other evidence.**

6 The trial counsel, the defense counsel, and the court-martial shall have equal  
7 opportunity to obtain witnesses and other evidence as prescribed by regulations and  
8 provided by law. Process issued in court-martial cases to compel witnesses to appear  
9 and testify and to compel the production of other evidence shall apply the principles  
10 of law and the rules of courts-martial generally recognized in military criminal cases  
11 in the courts of the armed forces of the United States, but which may not be contrary  
12 to or inconsistent with this code. Process shall run to any part of the United States,  
13 or the Territories, Commonwealths, and possessions, and may be executed by civil  
14 officers as prescribed by the laws of the place where the witness or evidence is located  
15 or of the United States.

16 **322.47 Article 47. Refusal to appear or testify.**

17 **(1)** Any person not subject to this code who may be punished by the military  
18 court in the same manner as a court of the State, if all of the following apply to that  
19 person:

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

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

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

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

6 **322.48 Article 48. Contempt.** A military judge may punish for contempt any  
7 person who uses any menacing word, sign, or gesture in its presence, or who disturbs  
8 its proceedings by any riot or disorder. A person subject to this code may be punished  
9 for contempt by confinement not to exceed 30 days or a fine of \$100, or both. A person  
10 not subject to this code may be punished for contempt by a military court in the same  
11 manner as a court of the State.

12 **322.49 Article 49. Depositions.**

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

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

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

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

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

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

8 **322.50 Article 50. Admissibility of records of courts of inquiry.**

9 (1) In any case not extending to the dismissal of a commissioned officer, the  
10 sworn testimony, contained in the duly authenticated record of proceedings of a court  
11 of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise  
12 admissible under the rules of evidence, be read in evidence by any party before a  
13 court-martial if the accused was a party before the court of inquiry and if the same  
14 issue was involved or if the accused consents to the introduction of evidence.

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

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

18  
19 **322.505 Article 50a. Defense of lack of mental responsibility.**

20 (1) The accused has an affirmative defense of lack of mental responsibility in  
21 a trial by court-martial if, at the time of the commission of the acts constituting the  
22 offense, the accused, as a result of a mental disease or defect, lacked substantial  
23 capacity either to appreciate the wrongfulness of his or her conduct or to conform his  
24 or her conduct to the requirements of the law. Mental disease or defect does not  
25 otherwise constitute a defense.

1           **(2)** The accused has the burden of proving the defense of lack of mental  
2 responsibility to a reasonable certainty by the greater weight of the credible  
3 evidence.

4           **(3)** Whenever lack of mental responsibility of the accused with respect to an  
5 offense is properly at issue, the military judge shall instruct the members of the  
6 military court as to the defense of lack of mental responsibility under this section and  
7 charge them to find the accused any one of the following:

8           (a) Guilty.

9           (b) Not guilty.

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

11          **(4)** Sub. (3) does not apply to a court-martial composed of a military judge only.  
12 In the case of a court-martial composed of a military judge only or a summary  
13 court-martial officer, whenever lack of mental responsibility of the accused with  
14 respect to an offense is properly at issue, the military judge or summary  
15 court-martial officer shall find the accused of any of the following:

16          (a) Guilty.

17          (b) Not guilty.

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

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

21          (a) A majority of the members of the court-martial present at the time the vote  
22 is taken determines that the defense of lack of mental responsibility has been  
23 established.

1 (b) In the case of a court-martial composed of a military judge only or a  
2 summary court-martial officer, the military judge or summary court-martial officer  
3 determines that the defense of lack of mental responsibility has been established.  
4

5 **322.51 Article 51. Voting and rulings.**

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

10 (2) The military judge shall rule upon all questions of law and all interlocutory  
11 questions arising during the proceedings. Any ruling made by the military judge  
12 upon any question of law or any interlocutory question other than the factual issue  
13 of mental responsibility of the accused is final and constitutes the ruling of the court.  
14 However, the military judge may change the ruling at any time during the trial.  
15 Unless the ruling is final, if any member objects, the court shall be cleared and closed  
16 and the question decided by a voice vote as provided in s. 322.52, beginning with the  
17 junior in rank.

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

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

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



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

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

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

12 **322.52 Article 52. Number of votes required.**

13 **(1)** No person may be convicted of an offense except as provided in s. 322.45 (b)  
14 or s. 322.51 (d) or by the concurrence of 2/3 of the members present at the time the  
15 vote is taken.

16 **(2)** All other questions to be decided by the members of a general or special  
17 court-martial shall be determined by a majority vote, but a determination to  
18 reconsider a sentence, with a view toward decreasing it, may be made by any lesser  
19 vote which indicates that the reconsideration is not opposed by the number of votes  
20 required for that finding or sentence. A tie vote on a challenge disqualifies the  
21 member challenged. A tie vote on a motion relating to the question of the accused's  
22 mental responsibility is a determination against the accused. A tie vote on any other  
23 question is a determination in favor of the accused.

24 **322.53 Article 53. Court to announce action.** A court-martial shall  
25 announce its findings and sentence to the parties as soon as determined.

1           **322.54 Article 54. Record of trial.**

2           **(1)** Each general and special court–martial shall keep a separate record of the  
3 proceedings in each case brought before it, and the record shall be authenticated by  
4 the signature of the military judge. If the record cannot be authenticated by the  
5 military judge by reason of his or her death, disability, or absence, it shall be  
6 authenticated by the signature of the trial counsel or by that of a member, if the trial  
7 counsel is unable to authenticate it by reason of his death, disability, or absence. In  
8 a court–martial consisting of only a military judge, the record shall be authenticated  
9 by the court reporter under the same conditions which would impose a duty on a  
10 member under this subsection.

11           **(2)** A complete verbatim record of the proceedings and testimony shall be  
12 prepared in each general and special court–martial case resulting in a conviction,  
13 and in all other court–martial cases, the record shall contain matters as may be  
14 prescribed by regulations.

15           **(3)** Each summary court–martial shall keep a separate record of the  
16 proceedings in each case, and the record shall be authenticated in the manner as may  
17 be prescribed by regulations.

18           **(4)** A copy of the record of the proceedings of each general and special  
19 court–martial shall be given to the accused as soon as it is authenticated.

20                                   SUBCHAPTER VIII

21                                   SENTENCES

22           **322.55 Article 55. Cruel and unusual punishments prohibited.**  
23 Punishment by flogging, or by branding, marking, or tattooing on the body, or any  
24 other cruel or unusual punishment may not be adjudged by a court–martial or

1 inflicted upon any person subject to this code. The use of irons, single or double,  
2 except for the purpose of safe custody, is prohibited.

3 **322.56 Article 56. Maximum limits.**

4 (1) The punishment which a court-martial may direct for an offense may not  
5 exceed ten years confinement.

6 (2) A conviction by a general court-martial of any military offense for which  
7 an accused may receive a sentence of confinement for more than 1 year is a felony  
8 offense.

9 (3) Except for convictions by a summary court-martial, all other offenses are  
10 misdemeanors.

11 (4) A conviction by a summary court-martial is not a criminal conviction.

12 (5) The limits of punishment for violations of the punitive sections under  
13 Subchapter X shall be prescribed by the governor according to sections 18, 19, and  
14 20, but under no instance shall any punishment exceed that authorized by this code.

15 **322.57 Article 57. Effective date of sentences.**

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

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

1           **(3)** All other sentences of courts–martial are effective on the date ordered  
2           executed.

3           **322.575 Article 57a. Deferment of sentences.**

4           **(1)** On application by an accused who is under sentence to confinement that  
5           has not been ordered executed, the convening authority or, if the accused is no longer  
6           under that person’s jurisdiction, the person exercising general court–martial  
7           jurisdiction over the command to which the accused is currently assigned, may in  
8           that person’s sole discretion defer service of the sentence to confinement. The  
9           deferment shall terminate when the sentence is ordered executed. The deferment  
10          may be rescinded at any time by the person who granted it or, if the accused is no  
11          longer under that person’s jurisdiction, by the person exercising general  
12          court–martial jurisdiction over the command to which the accused is currently  
13          assigned.

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

19          (b) Paragraph (a) applies to a person subject to this code who meets all of the  
20          following:

21                1. While in the custody of a State, the United States, or a foreign country is  
22                temporarily returned by that State, the United States, or a foreign country to the  
23                state military forces for trial by court–martial.

1           2. After the court-martial, is returned to that state, the United States, or a  
2 foreign country under the authority of a mutual agreement or treaty, as the case may  
3 be.

4           **(3)** In any case in which a court-martial sentences an accused to confinement  
5 and the sentence to confinement has been ordered executed, but in which review of  
6 the case under s. 322.67 (1) is pending, the adjutant general may defer further  
7 service of the sentence to confinement while that review is pending.

8           **(4)** A sentence of confinement shall address work release privileges.

9           **322.58 Article 58. Conditions of confinement.**

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

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

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

21          **322.585 Article 58a. Sentences: reduction in enlisted grade upon**  
22 **approval.**

23          **(1)** A court-martial sentence of an enlisted member in a pay grade above E-1,  
24 as approved by the convening authority, that includes a dishonorable or bad-conduct

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

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

7 **322.587 Article 58b. Sentences: forfeiture of pay and allowances during**  
8 **confinement.**

9 (1) A court-martial sentence described in sub. (2) shall result in the forfeiture  
10 of pay, or of pay and allowances, due that member during any period of confinement  
11 or parole. The forfeiture subject to this section shall take effect on the date  
12 determined under s. 322.57 (1) and may be deferred as provided by that section. The  
13 pay and allowances forfeited, in the case of a general court-martial, shall be all pay  
14 and allowances due that member during the period and, in the case of a special  
15 court-martial, shall be two-thirds of all pay due that member during the period.

16 (2) A sentence covered by this section is any sentence that includes any of the  
17 following:

18 (a) Confinement for more than six months.

19 (b) Confinement for six months or less and a dishonorable or bad-conduct  
20 discharge or dismissal.

21 (3) In a case involving an accused who has dependents, the convening  
22 authority or other person acting under s. 322.60 may waive any or all of the  
23 forfeitures of pay and allowances required by subs. (1) for a period not to exceed 6  
24 months. Any amount of pay or allowances that, except for a waiver under this

1 subsection, would be forfeited shall be paid, as the convening authority or other  
2 person taking action directs, to the dependents of the accused.

3 **(4)** If the sentence of a member who forfeits pay and allowances under subs.  
4 (1) is set aside or disapproved or, as finally approved, does not provide for a  
5 punishment referred to in subs. (1) (b), the member shall be paid the pay and  
6 allowances that the member would have been paid, except for the forfeiture, for the  
7 period during which the forfeiture was in effect.

## 8 SUBCHAPTER IX

### 9 POST-TRIAL PROCEDURE AND

### 10 REVIEW OF COURTS-MARTIAL

#### 11 **322.59 Article 59. Error of law; lesser included offense.**

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

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

#### 18 **322.60 Article 60. Action by the convening authority.**

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

21 **(2)** The accused may submit to the convening authority matters for  
22 consideration by the convening authority with respect to the findings and the  
23 sentence. Any submission shall be in writing. Except in a summary court-martial  
24 case, a submission shall be made within ten days after the accused has been given  
25 an authenticated record of trial and, if applicable, the recommendation of a judge

1 advocate under subs. (9). In a summary court–martial case, a submission shall be  
2 made within seven days after the sentence is announced.

3 **(3)** If the accused shows that additional time is required for the accused to  
4 submit matters, the convening authority or other person taking action under this  
5 section, for good cause, may extend the applicable period for not more than an  
6 additional 20 days.

7 **(4)** In a summary court–martial case, the accused shall be promptly provided  
8 a copy of the record of trial for use in preparing a submission.

9 **(5)** The accused may waive the right to make a submission to the convening  
10 authority under sub. (1). A waiver must be made in writing and may not be revoked.  
11 The time within which the accused may make a submission under this subsection  
12 shall be deemed to have expired upon the submission of a waiver to the convening  
13 authority.

14 **(6)** The authority under this section to modify the findings and sentence of a  
15 court–martial is a matter of command prerogative involving the sole discretion of the  
16 convening authority. If it is impractical for the convening authority to act, the  
17 convening authority shall forward the case to a person exercising general  
18 court–martial jurisdiction who may take action under this section.

19 **(7)** Action on the sentence of a court–martial shall be taken by the convening  
20 authority or by another person authorized to act under this section. Action may be  
21 taken only after consideration of any matters submitted by the accused under sub.(2)  
22 or after the time for submitting matters expires, whichever is earlier. The convening  
23 authority or other person taking action, in that person’s sole discretion may approve,  
24 disapprove, commute, or suspend the sentence in whole or in part.



1           **(8)** Action on the findings of a court–martial by the convening authority or  
2 other person acting on the sentence is not required. However, person, in the person’s  
3 sole discretion may do any of the following:

4           (a) Dismiss any charge or specification by setting aside a finding of guilty.

5           (b) Change a finding of guilty to a charge or specification to a finding of guilty  
6 to an offense that is a lesser included offense of the offense stated in the charge or  
7 specification.

8           **(9)** Before acting under this section on any general or special court–martial  
9 case in which there is a finding of guilt, the convening authority or other person  
10 taking action under this section shall obtain and consider the written  
11 recommendation of a judge advocate. The convening authority or other person  
12 taking action under this section shall refer the record of trial to the judge advocate,  
13 and the judge advocate shall use the record in the preparation of the  
14 recommendation. The recommendation of the judge advocate shall include matters  
15 as may be prescribed by regulation and shall be served on the accused, who may  
16 submit any matter in response. Failure to object in the response to the  
17 recommendation or to any matter attached to the recommendation waives the right  
18 to object.

19           **(10)** The convening authority or other person taking action under this section,  
20 in the person’s sole discretion, may order a proceeding in revision or a rehearing.

21           **(11)** A proceeding in revision may be ordered if there is an apparent error or  
22 omission in the record or if the record shows improper or inconsistent action by a  
23 court–martial with respect to the findings or sentence that can be rectified without  
24 material prejudice to the substantial rights of the accused. In no case, however, may  
25 a proceeding in revision perform any of the following:

1           (a) Reconsider a finding of not guilty of any specification or a ruling which  
2 amounts to a finding of not guilty;

3           (b) Reconsider a finding of not guilty of any charge, unless there has been a  
4 finding of guilty under a specification laid under that charge, which sufficiently  
5 alleges a violation of some section of this code; or

6           (c) Increase the severity of the sentence unless the sentence prescribed for the  
7 offense is mandatory.

8           **(12)** A rehearing may be ordered by the convening authority or other person  
9 taking action under this section if that person disapproves the findings and sentence  
10 and states the reasons for disapproval of the findings. If a person disapproves the  
11 findings and sentence and does not order a rehearing, that person shall dismiss the  
12 charges. A rehearing as to the findings may not be ordered where there is a lack of  
13 sufficient evidence in the record to support the findings. A rehearing as to the  
14 sentence may be ordered if the convening authority or other person taking action  
15 under this subsection disapproves the sentence.

16           **322.61 Article 61. Withdrawal of appeal.**

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

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

24           **322.62 Article 62. Appeal by the State.**

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

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

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

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

10          (d) An order or ruling which imposes sanctions for nondisclosure of classified  
11 information.

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

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

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

22          **(3)** An appeal under this section shall be diligently prosecuted as provided by  
23 law.

1           **(4)** An appeal under this section shall be forwarded to the court prescribed in  
2 s. 322.675. In ruling on an appeal under this section, that court may act only with  
3 respect to matters of law.

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

8           **322.63 Article 63. Rehearings.** Each rehearing under this code shall take  
9 place before a court–martial composed of members not members of the court–martial  
10 which first heard the case. Upon a rehearing the accused may not be tried for any  
11 offense of which he was found not guilty by the first court–martial, and no sentence  
12 in excess of or more severe than the original sentence may be approved, unless the  
13 sentence is based upon a finding of guilty of an offense not considered upon the merits  
14 in the original proceedings, or unless the sentence prescribed for the offense is  
15 mandatory. If the sentence approved after the first court–martial was in accordance  
16 with a pretrial agreement and the accused at the rehearing changes a plea with  
17 respect to the charges or specifications upon which the pretrial agreement was  
18 based, or otherwise does not comply with the pretrial agreement, the approved  
19 sentence as to those charges or specifications may include any punishment not in  
20 excess of that lawfully adjudged at the first court–martial.

21           **322.64 Article 64. Review by the State Senior Force Judge Advocate.**

22           **(1)** Each general and special court–martial case in which there has been a  
23 finding of guilty shall be reviewed by the senior force judge advocate, or a designee.  
24 The state senior force judge advocate, or designee, may not review a case under this  
25 subsection if that person has acted in the same case as an accuser, investigating

1 officer, member of the court, military judge, or counsel or has otherwise acted on  
2 behalf of the prosecution or defense. The senior force judge advocate's review shall  
3 be in writing and shall contain the following:

4 (a) Conclusions as to whether:

- 5 1. The court had jurisdiction over the accused and the offense.
- 6 2. The charge and specification stated an offense.
- 7 3. The sentence was within the limits prescribed as a matter of law.

8 (b) A response to each allegation of error made in writing by the accused.

9 (c) If the case is sent for action under sub. (2), a recommendation as to the  
10 appropriate action to be taken and an opinion as to whether corrective action is  
11 required as a matter of law.

12 **(2)** The record of trial and related documents in each case reviewed under sub.  
13 (1) shall be sent for action to the adjutant general, under any of the following  
14 circumstances:

15 (a) The judge advocate who reviewed the case recommends corrective action.

16 (b) The sentence approved under s. 322.60 (3) extends to dismissal, a  
17 bad-conduct or dishonorable discharge, or confinement for more than six months.

18 (c) Action is otherwise required by regulations of the adjutant general.

19 **(3)** The adjutant general may do any of the following:

- 20 1. Disapprove or approve the findings or sentence, in whole or in part;
- 21 2. Remit, commute, or suspend the sentence in whole or in part;
- 22 3. Except where the evidence was insufficient at the trial to support the  
23 findings, order a rehearing on the findings, on the sentence, or on both; or
- 24 4. Dismiss the charges.

1           (4) If a rehearing is ordered but the convening authority finds a rehearing  
2 impracticable, the convening authority shall dismiss the charges.

3           (5) If the opinion of the senior force judge advocate, or designee, in the senior  
4 force judge advocate’s review under sub. (1) is that corrective action is required as  
5 a matter of law and if the adjutant general does not take action that is at least as  
6 favorable to the accused as that recommended by the judge advocate, the record of  
7 trial and action thereon shall be sent to the governor for review and action as deemed  
8 appropriate.

9           (6) The senior force judge advocate, or a designee, may review any case in  
10 which there has been a finding of not guilty of all charges and specifications. The  
11 senior force judge advocate, or designee, may not review a case under this subsection  
12 if that person has acted in the same case as an accuser, investigating officer, member  
13 of the court, military judge, or counsel or has otherwise acted on behalf of the  
14 prosecution or defense. The senior force judge advocate’s review shall be limited to  
15 questions of subject matter jurisdiction.

16           (7) The record of trial and related documents in each case reviewed under sub.  
17 (4) shall be sent for action to the adjutant general.

18           (8) The adjutant general may do any of the following:

19           (a) When subject matter jurisdiction is found to be lacking, void the  
20 court-martial ab initio, with or without prejudice to the government, as the adjutant  
21 general deems appropriate.

22           (b) Return the record of trial and related documents to the senior force judge  
23 advocate for appeal by the Government as provided by law.

24           **322.65 Article 65. Disposition of records after review by the convening**  
25 **authority.** Except as otherwise required by this code, all records of trial and related

1 documents shall be transmitted and disposed of as prescribed by regulation and  
2 provided by law.

3 **322.675** Article 67a. **Review by State Appellate Authority.** Decisions of  
4 a court–martial are from a court with jurisdiction to issue felony convictions and  
5 appeals are to the Wisconsin Court of Appeals District IV and, if necessary, to the  
6 Wisconsin Supreme Court. The appellate procedures to be followed shall be those  
7 provided by Wisconsin statute.

8 **322.70** Article 70. **Appellate counsel.**

9 (1) The state senior force judge advocate shall detail a judge advocate as  
10 appellate Government counsel to represent the State in the review or appeal of cases  
11 specified in s. 322.675 of this code and before any Federal court when requested to  
12 do so by the state attorney general. Appellate Government counsel must be a  
13 member in good standing of the bar of the highest court of the State to which the  
14 appeal is taken.

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

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

20 (4) Upon the request of an accused entitled to be so represented, the state  
21 senior force judge advocate shall appoint a judge advocate to represent the accused  
22 in the review or appeal of cases specified in subsections (b) and (c) of this section.

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

25 **322.71** Article 71. **Execution of sentence; suspension of sentence.**

1           **(1)** If the sentence of the court–martial extends to dismissal or a dishonorable  
2 or bad–conduct discharge and if the right of the accused to appellate review is not  
3 waived, and an appeal is not withdrawn under s. 322.61, that part of the sentence  
4 extending to dismissal or a dishonorable or bad–conduct discharge may not be  
5 executed until there is a final judgment as to the legality of the proceedings. A  
6 judgment as to the legality of the proceedings is final in cases when review is  
7 completed by an appellate court prescribed in s. 322.675., and is deemed final by the  
8 law of state where the judgment was had.

9           **(2)** If the sentence of the court–martial extends to dismissal or a dishonorable  
10 or bad conduct discharge and if the right of the accused to appellate review is waived,  
11 or an appeal is withdrawn under s. 322.61, that part of the sentence extending to  
12 dismissal or a dishonorable or bad–conduct discharge may not be executed until  
13 review of the case by the senior force judge advocate and any action on that review  
14 under s. 322.64 is completed. Any other part of a court–martial sentence may be  
15 ordered executed by the convening authority or other person acting on the case under  
16 s. 322.60 when so approved under that section.

17           **322.72 Article 72. Vacation of suspension.**

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

24           **(2)** The record of the hearing and the recommendation of the officer having  
25 special court–martial jurisdiction shall be sent for action to the officer exercising



1 general court-martial jurisdiction over the probationer. If the officer vacates the  
2 suspension, any unexecuted part of the sentence, except a dismissal, shall be  
3 executed, subject to applicable restrictions in this code.

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

7 **322.73** Article 73. **Petition for a new trial.** At any time within two years  
8 after approval by the convening authority of a court-martial sentence the accused  
9 may petition The adjutant general for a new trial on the grounds of newly discovered  
10 evidence or fraud on the court-martial.

11 **322.74** Article 74. **Remission and suspension.**

12 (1) Any authority competent to convene, for the command in which the accused  
13 is serving or assigned, a court of the kind that imposed the sentence may remit or  
14 suspend any part or amount of the unexecuted part of any sentence, including all  
15 uncollected forfeitures other than a sentence approved by the governor.

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

19 **322.75** Article 75. **Restoration.**

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

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

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

15           **322.76 Article 76. Finality of proceedings, findings, and sentences.** The  
16 appellate review of records of trial provided by this code, the proceedings, findings,  
17 and sentences of courts-martial as approved, reviewed, or affirmed as required by  
18 this code, and all dismissals and discharges carried into execution under sentences  
19 by courts-martial following approval, review, or affirmation as required by this code,  
20 are final and conclusive. Orders publishing the proceedings of courts-martial and  
21 all action taken subject to those proceedings are binding upon all departments,  
22 courts, agencies, and officers of the United States and the several states, subject only  
23 to action upon a petition for a new trial as provided in s. 322.73 and to action under  
24 s. 322.74.

1           **322.763** Article 76a. **Leave required to be taken pending review of**  
2 **certain court-martial convictions.** Under regulations prescribed, an accused  
3 who has been sentenced by a court-martial may be required to take leave pending  
4 completion of action under this section if the sentence, as approved under s. 322.60,  
5 includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct  
6 discharge. The accused may be required to begin leave on the date on which the  
7 sentence is approved under s. 322.60 or at any time after that date, and any leave  
8 may be continued until the date on which action under this section is completed or  
9 may be terminated at any earlier time

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11           **322.767** Article 76b **Lack of mental capacity or mental responsibility:**  
12 **commitment of accused for examination and treatment.**

13           (1) *The following applies to persons incompetent to stand trial:*

14           (a) If a person subject to a general court-martial is found to lack substantial  
15 mental capacity to understand the proceedings or assist in his or own defense and  
16 the military judge determined that the person is likely to become competent within  
17 the period specified under s. 971.14(5) (a), the court-martial convening authority for  
18 the person shall commit the person to the custody of the department of health and  
19 family services under s. 971.14(5). If the military judge determines that the  
20 defendant is not likely to become competent in the time period specified under s.  
21 971.14(5), the military judge shall suspend the general court-martial.

22           (b) The department of health and family services shall submit all reports that  
23 are required under s. 971.14(5)(b) and that pertain to a person subject to a  
24 commitment order under par. (a) to the convening authority/court-martial/military  
25 judge.

1           (c) Upon receiving a report under s. 971.17(5)(b), the convening authority or  
2 court-martial or military judge shall make a determination as to whether the person  
3 has become competent. If the convening authority or court-martial or military judge  
4 determines that the defendant has become competent, the convening authority or  
5 court-martial or military judge shall terminate the commitment to the department  
6 of health and family services and resume the general court-martial. If the convening  
7 authority or court-martial or military judge determines that the person is making  
8 sufficient progress toward becoming competent, the commitment shall continue. If  
9 the convening authority or court-martial or military judge determines that the  
10 person is not likely to become competent to proceed in the time period specified under  
11 s. 971.14(5)(a), the convening authority or court-martial or military judge shall  
12 terminate the commitment order under this subsection.

13           (d) If a person who has been restored to competency thereafter again becomes  
14 incompetent, the maximum commitment period under s. 971.14(5)(a) shall be as  
15 provided under s. 971.14(5)(d).

16           (e) If the court-martial determines under par. (a) or (d) that the person is not  
17 likely to become competent to proceed, the convening authority or court-martial or  
18 military judge may order that the person be delivered to a facility under s. 51.15(2),  
19 an approved public treatment facility under s. 51.45(2), or an appropriate medical  
20 or protective placement facility.

21           (f) If the person is discharged from the military forces while subject to a  
22 commitment order under par. (a), the convening authority/court-martial/military  
23 judge shall terminate the commitment order and may order that the person be  
24 delivered to a facility under s. 51.15(2), an approved public treatment facility under  
25 s. 51.45(2), or an appropriate medical or protective placement facility.

1           **(2)** *The following applies to persons found not guilty by reason of lack of*  
2 *mental responsibility:*

3           (a) If a court-martial finds a person not guilty by reason of mental disease or  
4 defect, the court-martial shall commit the person to the custody of the department  
5 of health and family services for a period not to exceed that described under s.  
6 971.17(1).

7           (b) Using the standard under s. 971.17(3)(a), the court-martial shall determine  
8 whether the commitment order under par. (a) shall specify institutional care or  
9 conditional release.

10          (c) The court-martial has the same authority as a circuit court has under s.  
11 971.17(2) to order the department of health and family services to conduct a  
12 predisposition investigation using the procedure in s. 972.15 or a mental  
13 examination as provided under s. 971.17 (2) (b), (c), and (e) to assist the  
14 court-martial in determining whether to place the person in institutional care or to  
15 conditionally release the person.

16          (d) If the court-martial specifies institutional care, the department of health  
17 and family services shall place the person in an institution as provided under s.  
18 971.17(3)(c). If the court-martial specifies conditional release, the department of  
19 health in family services, in conjunction with the person's county of residence, shall  
20 develop a plan for conditional release as provided under s. 971.17(3)(d).

21          (e) After the court-martial enters an order under this subsection and transfers  
22 custody of a person to the department of health and family services, the person shall  
23 be subject to s. 971.17 and the circuit court for the country in which the person is  
24 institutionalized or where the person is placed on conditional release shall have  
25 jurisdiction in proceedings under s. 971.17.

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## SUBCHAPTER X

### PUNITIVE ARTICLES

**322.77** Article 77. **Principals.** Any person who either commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission, or causes an act to be done which if directly performed by him or her would be punishable is a principal.

**322.78** Article 78. **Accessory after the fact.** Any person who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

**322.79** Article 79. **Conviction of lesser included offense.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included.

**322.80** Article 80. **Attempts.**

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

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

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

**322.81** Article 81. **Conspiracy.** Any person who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators

1 does an act to effect the object of the conspiracy, be punished as a court-martial may  
2 direct

3 **322.82 Article 82. Solicitation.**

4 (1) Any person who solicits or advises another or others to desert in violation  
5 of s. 322.85 or mutiny in violation of s. 322.94 shall, if the offense solicited or advised  
6 is attempted or committed, be punished with the punishment provided for the  
7 commission of the offense, but, if the offense solicited or advised is not committed or  
8 attempted, the person shall be punished as a court-martial may direct.

9 (2) Any person who solicits or advises another or others to commit an act of  
10 misbehavior before the enemy in violation of s. 322.99 or sedition in violation of s.  
11 322.94 shall, if the offense solicited or advised is committed, be punished with the  
12 punishment provided for the commission of the offense, but, if the offense solicited  
13 or advised is not committed, the person shall be punished as a court-martial may  
14 direct.

15 **322.83 Article 83. Fraudulent enlistment, appointment, or separation.**

16 (1) A court-martial may direct punishment on any person who does any of the  
17 following:

18 (a) Procures his own enlistment or appointment in the state military forces by  
19 knowingly false representation or deliberate concealment as to his qualifications for  
20 that enlistment or appointment and receives pay or allowances there under.

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

24 **322.84 Article 84. Unlawful enlistment, appointment, or separation.**

25 Any person who effects an enlistment or appointment in or a separation from the

1 state military forces of any person who is known to him to be ineligible for that  
2 enlistment, appointment, or separation because it is prohibited by law, regulation,  
3 or order shall be punished as a court–martial may direct.

4 **322.85 Article 85. Desertion.**

5 (1) Any member of the state military forces is guilty of desertion if he or she  
6 does any of the following:

7 (a) Without authority goes or remains absent from his unit, organization, or  
8 place of duty with intent to remain away there from permanently.

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

11 (c) Without being regularly separated from one of the state military forces  
12 enlists or accepts an appointment in the same or another one of the state military  
13 forces, or in one of the armed forces of the United States, without fully disclosing the  
14 fact that he has not been regularly separated, or enters any foreign armed service  
15 except when authorized by the United States.

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

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

24 **322.86 Article 86. Absence without leave.** A court–martial may direct  
25 punishment on any person who, without authority, does any of the following:



1           **(1)** Fails to go to his appointed place of duty at the time prescribed.

2           **(2)** Goes from that place.

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

5           **322.87** Article 87. **Missing movement.** Any person who through neglect or  
6 design misses the movement of a ship, aircraft, or unit with which he is required in  
7 the course of duty to move shall be punished as a court-martial may direct.

8           **322.88** Article 88. **Contempt toward officials.** Any commissioned officer  
9 who uses contemptuous words against the President, the Vice President, Congress,  
10 the Secretary of Defense, the Secretary of a military department, the Secretary of  
11 Homeland Security, or the governor or legislature of the State of Wisconsin shall be  
12 punished as a court-martial may direct.

13           **322.89** Article 89. **Disrespect toward superior commissioned officer.**  
14 Any person who behaves with disrespect toward his superior commissioned officer  
15 shall be punished as a court-martial may direct.

16           **322.90** Article 90. **Assaulting or willfully disobeying superior**  
17 **commissioned officer.** A court-martial may direct punishment on any person who  
18 does any of the following:

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

21           **(2)** Willfully disobeys a lawful command of his superior commissioned officer.

22           **322.91** Article 91. **Insubordinate conduct toward warrant officer,**  
23 **noncommissioned officer, or petty officer.** A court-martial may direct  
24 punishment on any warrant officer or enlisted member who does any of the following:

1           **(1)** Strikes or assaults a warrant officer, noncommissioned officer, or petty  
2 officer, while that officer is in the execution of his office.

3           **(2)** Willfully disobeys the lawful order of a warrant officer, noncommissioned  
4 officer, or petty officer.

5           **(3)** Treats with contempt or is disrespectful in language or deportment toward  
6 a warrant officer, noncommissioned officer, or petty officer, while that officer is in the  
7 execution of his office.

8           **322.92 Article 92. Failure to obey order or regulation.** A court-martial  
9 may direct punishment on any person who does any of the following:

10           **(1)** Violates or fails to obey any lawful general order or regulation.

11           **(2)** Having knowledge of any other lawful order issued by a member of the state  
12 military forces, which it is his duty to obey, fails to obey the order.

13           **(3)** Is derelict in the performance of his duties.

14           **322.93 Article 93. Cruelty and maltreatment.** Any person who is guilty of  
15 cruelty toward, or oppression or maltreatment of, any person subject to his orders  
16 shall be punished as a court-martial may direct

17           **322.94 Article 94. Mutiny or sedition.**

18           **(1)** A court-martial may direct punishment on any person who does any of the  
19 following:

20           **(a)** With intent to usurp or override lawful military authority, refuses, in  
21 concert with any other person, to obey orders or otherwise do his duty or creates any  
22 violence or disturbance is guilty of mutiny.

23           **(b)** With intent to cause the overthrow or destruction of lawful civil authority,  
24 creates, in concert with any other person, revolt, violence, or other disturbance  
25 against that authority is guilty of sedition.

1 (c) Fails to do his utmost to prevent and suppress a mutiny or sedition being  
2 committed in his presence, or fails to take all reasonable means to inform his superior  
3 commissioned officer or commanding officer of a mutiny or sedition which he or she  
4 knows or has reason to believe is taking place, is guilty of a failure to suppress or  
5 report a mutiny or sedition.

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

9 **322.95 Article 95. Resistance, flight, breach of arrest, and escape.** A  
10 court-martial may direct punishment on any person who does any of the following:

11 (1) Resists apprehension.

12 (2) Flees from apprehension.

13 (3) Breaks arrest.

14 (4) Escapes from custody or confinement.

15 **322.96 Article 96. Releasing prisoner without proper authority.** Any  
16 person who, without proper authority, releases any prisoner committed to his charge,  
17 or who through neglect or design causes any prisoner to escape, shall be punished  
18 as a court-martial may direct, whether or not the prisoner was committed in strict  
19 compliance with law.

20 **322.97 Article 97. Unlawful detention.** Any person who, except as provided  
21 by law or regulation, apprehends, arrests, or confines any person shall be punished  
22 as a court-martial may direct.

23 **322.98 Article 98. Noncompliance with procedural rules.** A  
24 court-martial may direct punishment on any person who does any of the following:

1           **(1)** Is responsible for unnecessary delay in the disposition of any case of a  
2 person accused of an offense under this code.

3           **(2)** Knowingly and intentionally fails to enforce or comply with any provision  
4 of this code regulating the proceedings before, during, or after trial of an accused.

5           **322.99** Article 99. **Misbehavior before the enemy.** A court-martial may  
6 direct punishment on any person who before or in the presence of the enemy does any  
7 of the following:

8           **(1)** Runs away.

9           **(2)** Shamefully abandons, surrenders, or delivers up any command, unit,  
10 place, or military property which it is his duty to defend.

11           **(3)** Through disobedience, neglect, or intentional misconduct endangers the  
12 safety of any command, unit, place, or military property.

13           **(4)** Casts away his arms or ammunition.

14           **(5)** Is guilty of cowardly conduct.

15           **(6)** Quits his place of duty to plunder or pillage.

16           **(7)** Causes false alarms in any command, unit, or place under control of the  
17 armed forces of the United States or the state military forces.

18           **(8)** Willfully fails to do his utmost to encounter, engage, capture, or destroy any  
19 enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty  
20 so to encounter, engage, capture, or destroy.

21           **(9)** Does not afford all practicable relief and assistance to any troops,  
22 combatants, vessels, or aircraft of the armed forces belonging to the United States  
23 or their allies, to the State, or to any other state, when engaged in battle.

24           **322.100** Article 100. **Subordinate compelling surrender.** Any person who  
25 compels or attempts to compel the commander of any of the state military forces of

1 the State, or of any other state, place, vessel, aircraft, or other military property, or  
2 of any body of members of the armed forces, to give it up to an enemy or to abandon  
3 it, or who strikes the colors or flag to an enemy without proper authority, shall be  
4 punished as a court-martial may direct.

5 **322.101 Article 101. Improper use of countersign.** Any person who in time  
6 of war discloses the parole or countersign to any person not entitled to receive it or  
7 who gives to another, who is entitled to receive and use the parole or countersign, a  
8 different parole or countersign from that which, to his knowledge, he or she was  
9 authorized and required to give, shall be punished as a court-martial may direct.

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11 **322.102 Article 102. Forcing a safeguard.** Any person who forces a  
12 safeguard shall be punished as a court-martial may direct. Forcing a safeguard  
13 means to perform any act in violation of the protection of a detachment, guard, or  
14 detail posted by a commander for protection.

15 **322.103 Article 103. Captured or abandoned property.**

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

20 **(2)** A court-martial may direct punishment on any person subject to this code  
21 who does any of the following:

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

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

1 (c) Engages in looting or pillaging.

2 **322.104** Article 104. **Aiding the enemy.** A court-martial may direct  
3 punishment on any person who does any of the following:

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

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

9 **322.105** Article 105. **Misconduct as prisoner.** A court-martial may direct  
10 punishment on any person who, while in the hands of the enemy in time of war does  
11 any of the following:

12 (1) For the purpose of securing favorable treatment by his captors acts without  
13 proper authority in a manner contrary to law, custom, or regulation, to the detriment  
14 of others of whatever nationality held by the enemy as civilian or military prisoners.

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

17 **322.107** Article 107. **False official statements.** Any person who, with intent  
18 to deceive, signs any false record, return, regulation, order, or other official document  
19 made in the line of duty, knowing it to be false, or makes any other false official  
20 statement made in the line of duty, knowing it to be false, shall be punished as a  
21 court-martial may direct.

22 **322.108** Article 108. **Military property — Loss, damage, destruction, or**  
23 **wrongful disposition.** A court-martial may direct punishment on any person who,  
24 without proper authority, does any of the following:

1           **(1)** Sells or otherwise disposes of any military property of the United States,  
2 the State, or of any state.

3           **(2)** Willfully or through neglect damages, destroys, or loses any military  
4 property of the United States, the State, or of any state.

5           **(3)** Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or  
6 wrongfully disposed of any military property of the United States, the State, or of any  
7 state.

8           **322.109** Article 109. **Property other than military property — Waste,**  
9 **spoilage, or destruction.** Any person who willfully or recklessly wastes, spoils, or  
10 otherwise willfully and wrongfully destroys or damages any property other than  
11 military property of the United States, the State, or of any state, shall be punished  
12 as a court-martial may direct.

13           **322.110** Article 110. **Improper hazarding of vessel.**

14           **(1)** Any person who willfully and wrongfully hazards or suffers to be hazarded  
15 any vessel of the armed forces of the United States, this State, or any other state  
16 military forces shall suffer punishment as a court-martial may direct.

17           **(2)** Any person who negligently hazards or suffers to be hazarded any vessel  
18 of the armed forces of the United States, the State, or any other state, state military  
19 forces shall be punished as a court-martial may direct.

20           **322.111** Article 111. **Drunken or reckless operation of a vehicle, aircraft,**  
21 **or vessel.** Any person who violates s. 30.68, 30.681, 114.09, 346.62, 346.63 (1) or (2),  
22 940.25, or 940.09 where the offense involved the use of a vehicle, shall be punished  
23 as the court-martial may direct.

24           **322.112** Article 112. **Drunk on duty.** Any person other than a sentinel or  
25 lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

1           **322.1125** Article 112a. **Wrongful use, possession, etc., of controlled**  
2 **substances.**

3           **(1)** Any person who wrongfully uses, possesses, manufactures, distributes,  
4 imports into the customs territory of the United States, exports from the United  
5 States, or introduces into an installation, vessel, vehicle, or aircraft used by or under  
6 the control of the armed forces of the United States, the State, or of any other state,  
7 state military forces a substance described in sub. (2) shall be punished as a  
8 court-martial may direct.

9           **(2)** The substances referred to in sub. (1) are the following:

10           **(a)** Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,  
11 methamphetamine, phencyclidine, barbituric acid, and marijuana and any  
12 compound or derivative of any of these substances.

13           **(b)** Any substance not specified in par. (a) that is listed on a schedule of  
14 controlled substances prescribed by the President for the purposes of the Uniform  
15 Code of Military Justice of the armed forces of the United States, 10 U.S.C. § 801 et  
16 seq.

17           **(c)** Any other substance not specified in par. (a) or contained on a list prescribed  
18 by the President under par. (b) that is listed in schedules I through V of section 202  
19 of the Controlled Substances Act, 21 U.S.C. § 812.

20           **322.113** Article 113. **Misbehavior of sentinel.** Any sentinel or look-out who  
21 is found drunk or sleeping upon his post or leaves it before being regularly relieved,  
22 shall be punished, if the offense is committed in time of war, by confinement of not  
23 more than 10 years or other punishment as a court-martial may direct, but if the  
24 offense is committed at any other time, by punishment as a court-martial may direct.



1           **322.114** Article 114. **Dueling.** Any person who fights or promotes, or is  
2 concerned in or connives at fighting a duel, or who, having knowledge of a challenge  
3 sent or about to be sent, fails to report the fact promptly to the proper authority, shall  
4 be punished as a court-martial may direct.

5           **322.115** Article 115. **Malingering.** A court-martial may direct punishment  
6 on any person who for the purpose of avoiding work, duty, or service does any of the  
7 following:

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

9           **(2)** Intentionally inflicts self-injury.

10          **322.116** Article 116. **Riot or breach of peace.** Any person who causes or  
11 participates in any riot or breach of the peace shall be punished as a court-martial  
12 may direct.

13          **322.117** Article 117. **Provoking speeches or gestures.** Any person who uses  
14 provoking or reproachful words or gestures towards any other person subject to this  
15 code shall be punished as a court-martial may direct.

16          **322.120** Article 120. **Rape and carnal knowledge.**

17          **(1)** Any person who commits an act of sexual intercourse, by force and without  
18 consent, is guilty of rape and shall be punished as a court-martial may direct.

19          **(2)** A court-martial may direct punishment on any person subject to this  
20 chapter who, under circumstances not amounting to rape, commits an act of sexual  
21 intercourse with a person who is not that person's spouse, and who has not attained  
22 the age of sixteen years; is guilty of carnal knowledge and shall be punished as a  
23 court-martial may direct.

24          **(3)** Penetration, however slight, is sufficient to complete either of these  
25 offenses.

1           **(1)** (a) In a prosecution under sub. (2), it is an affirmative defense if all of the  
2 following conditions are established:

3           1. The person with whom the accused committed the act of sexual intercourse  
4 had at the time of the alleged offense attained the age of twelve years.

5           2. The accused reasonably believed that that person had at the time of the  
6 alleged offense attained the age of sixteen years.

7           **(2)** The accused has the burden of proving a defense under par. (a) by a  
8 preponderance of the evidence.

9           **322.121** Article 121. **Larceny and wrongful appropriation.**

10          **(1)** Any person who wrongfully takes, obtains, or withholds, by any means,  
11 from the possession of the owner or of any other person any money, personal property,  
12 or section of value of any kind if any of the following apply:

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

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

19          **(2)** Any person found guilty of .....*violating sub. (1)* (larceny or wrongful  
20 appropriation) shall be punished as a court-martial may direct.

\*\*\*NOTE: I think the italics are what belongs here.

21          **322.122** Article 122. **Robbery.** Any person who with intent to steal takes  
22 anything of value from the person or in the presence of another, against his will, by  
23 means of force or violence or fear of immediate or future injury to his person or  
24 property or to the person or property of a relative or member of his family or of anyone

1 in his company at the time of the robbery, is guilty of robbery and shall be punished  
2 as a court-martial may direct.

3 **322.123** Article 123. **Forgery.** A court-martial may direct punishment on any  
4 person who, with intent to defraud who does any of the following:

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

8 (2) Utters, offers, issues, or transfers a writing, known by him to be so made  
9 or altered; is guilty of forgery.

10 **322.1235** Article 123a. **Making, drawing, or uttering check, draft, or**  
11 **order without sufficient funds.** A court-martial may direct punishment on any  
12 person who does any of the following:

13 (1) Procurement of any section or thing of value, with intent to defraud.

14 (2) Payment of any past due obligation, or for any other purpose, with intent  
15 to deceive; makes, draws, utters, or delivers any check, draft, or order for the  
16 payment of money upon any bank or other depository, knowing at the time that the  
17 maker or drawer has not or will not have sufficient funds in, or credit with, the bank  
18 or other depository for the payment of that check, draft, or order in full upon its  
19 presentment. The making, drawing, uttering, or delivering by a maker or drawer of  
20 a check, draft, or order, payment of which is refused by the drawee because of  
21 insufficient funds of the maker or drawer in the drawee's possession or control, is  
22 prima facie evidence of his intent to defraud or deceive and of his knowledge of  
23 insufficient funds in, or credit with, that bank or other depository, unless the maker  
24 or drawer pays the holder the amount due within five days after receiving notice,  
25 orally or in writing, that the check, draft, or order was not paid on presentment.

1           **(3)** In this section, the word “credit” means an arrangement or understanding,  
2 express or implied, with the bank or other depository for the payment of that check,  
3 draft, or order.

4           **322.124** Article 124. **Maiming.** Any person who, with intent to injure,  
5 disfigure, or disable, inflicts on the person of another an injury which does any of the  
6 following:

7           **(1)** Seriously disfigures his person by a mutilation.

8           **(2)** Destroys or disables any member or organ of his body.

9           **(3)** Seriously diminishes his physical vigor by the injury of any member or  
10 organ; is guilty of maiming and shall be punished as a court–martial may direct.

11           **322.126** Article 126. **Arson.**

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

16           **(2)** Any person who willfully and maliciously burns or sets fire to the property  
17 of another, except as provided in sub. (1), is guilty of simple arson and shall be  
18 punished as a court–martial may direct.

19           **322.127** Article 127. **Extortion.** Any person who communicates threats to  
20 another person with the intention thereby to obtain anything of value or any  
21 acquittance, advantage, or immunity is guilty of extortion and shall be punished as  
22 a court–martial may direct.

23           **322.128** Article 128. **Assault.**

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

4           **(2)** A court–martial may direct punishment on any person who does any of the  
5           following:

6           (a) Commits an assault with a dangerous weapon or other means or force likely  
7           to produce death or grievous bodily harm.

8           (b) Commits an assault and intentionally inflicts grievous bodily harm with or  
9           without a weapon; is guilty of aggravated assault.

\*\*\*NOTE: I don't understand the wording in par. (b).

10           **322.129** Article 129. **Burglary.** Any person who, with intent to commit an  
11           offense punishable under sections 120–128, breaks and enters, in the nighttime, the  
12           dwelling house of another, is guilty of burglary and shall be punished as a  
13           court–martial may direct.

14           **322.130** Article 130. **Housebreaking.** Any person subject to this chapter who  
15           unlawfully enters the building or structure of another with intent to commit a  
16           criminal offense is guilty of housebreaking and shall be punished as a court–martial  
17           may direct.

18           **322.131** Article 131. **Perjury.** A court–martial may direct punishment on any  
19           person who in a judicial proceeding or in a course of justice willfully and corruptly  
20           does any of the following:

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

1           **(2)** In any declaration, certificate, verification, or statement under penalty or  
2 perjury as permitted under 28 USC 1746, subscribes any false statement material  
3 to the issue or matter of inquiry.

\*\*\*\*NOTE: I changed the format of the USC reference.

4           **322.132** Article 132. **Frauds against the government.** A court-martial may  
5 direct punishment on any person who does any of the following knowing it to be false  
6 or fraudulent:

7           **(1)** For the purpose of obtaining the approval, allowance, or payment of any  
8 claim against the United States, the State, or of any state, or any officer:

9           (a) Makes or presents a claim.

10          (b) Makes or uses any writing or other paper.

11          (c) Makes any oath, affirmation or certification to any fact or to any writing or  
12 other paper.

13          **(2)** For the purpose of defrauding the United States, the State, or of any state,  
14 or any officer:

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

17          (b) Delivers to any person having authority to receive it, any amount less than  
18 that for which he receives a certificate or receipt.

19          (c) Makes or delivers to any person, a writing without having full knowledge  
20 of the truth of the statements contained therein.

21          **322.133** Article 133. **Conduct unbecoming an officer and a gentleman.**  
22 Any commissioned officer, cadet, candidate, or midshipman who is convicted of  
23 conduct unbecoming an officer and a gentleman shall be punished as a court-martial  
24 may direct.



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

3           **(6)** Witnesses may be summoned to appear and testify and be examined before  
4 courts of inquiry, as provided for courts–martial.

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

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

13           **322.136** Article 136. **Authority to administer oaths and to act as notary.**

14           **(1)** The following persons may administer oaths for the purposes of military  
15 administration, including military justice:

16           (a) All judge advocates.

17           (b) All summary courts–martial.

18           (c) All adjutants, assistant adjutants, acting adjutants, and personnel  
19 adjutants.

20           (d) All commanding officers of the naval militia.

21           (e) All other persons designated by regulations of the armed forces of the  
22 United States or by statute.

23           **(2)** The following persons may administer oaths necessary in the performance  
24 of their duties:



1 (a) The president, military judge, and trial counsel for all general and special  
2 courts-martial.

3 (b) The president and the counsel for the court of any court of inquiry.

4 (c) All officers designated to take a deposition.

5 (d) All persons detailed to conduct an investigation.

6 (e) All recruiting officers.

7 (f) All other persons designated by regulations of the armed forces of the  
8 United States or by statute.

9 (3) The signature without seal of any of the above persons, together with the  
10 title of his office, is prima facie evidence of the person's authority.

11 **322.137** Article 137. **Articles to be available.** The code and the manual for  
12 courts-martial shall be made available to a member of the state military forces, upon  
13 request by the member, for the member's personal examination.

14 **322.138** Article 138. **Complaints of wrongs.** Any member of the state  
15 military forces who believes himself wronged by a commanding officer, and who,  
16 upon due application to that commanding officer, is refused redress, may complain  
17 to any superior commissioned officer, who shall forward the complaint to the officer  
18 exercising general court-martial jurisdiction over the officer against whom it is  
19 made. The officer exercising general court-martial jurisdiction shall examine into  
20 the complaint and take proper measures for redressing the wrong complained of; and  
21 shall, as soon as possible, send to the adjutant general a true statement of that  
22 complaint, with the proceedings.

23 **322.139** Article 139. Redress of injuries to property.

24 (1) Whenever complaint is made to any commanding officer that willful  
25 damage has been done to the property of any person or that the person's property has

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

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

17           **322.140** Article 140. **Delegation by the governor.** The governor may  
18      delegate any authority vested in the governor under this code, and provide for the  
19      sub-delegation of any authority, except the power given the governor by s. 322.22 of  
20      this code.

21           **322.141** Article 141. **Payment of fees, costs, and expenses.** The fees and  
22      authorized travel expenses of all witnesses, experts, victims, court reporters, and  
23      interpreters, fees for the service of process, the costs of collection, apprehension,  
24      detention and confinement, and all other necessary expenses of prosecution and the

1 administration of military justice, not otherwise payable by any other source, shall  
2 be paid by the Wisconsin National Guard.

3 **322.142 Article 142. Payment of fines and disposition.**

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

8 (a) By cash or money order.

9 (b) By retention of any pay or allowances due or to become due the person fined  
10 from any state or the United States.

11 (c) By garnishment or levy, together with costs, on the wages, goods, and  
12 chattels of a person delinquent in paying a fine, as provided by law.

13 (2) Any sum so received or retained shall be deposited with the Wisconsin  
14 National Guard or to where the court so directs.

15 (3) Nothing in this code shall be construed to prohibit restitution.

16 **322.143 Article 143. Uniformity of interpretation.** This code shall be so  
17 construed as to effectuate its general purpose to make it uniform, so far as practical,  
18 with the Uniform Code of Military Justice, chapter 47 of title 10, United States Code.

19 **322.144 Article 144. Immunity for action of military courts.** All persons  
20 acting under the provisions of this code, whether as a member of the military or as  
21 a civilian, shall be immune from any personal liability for any of the acts or omissions  
22 which they did or failed to do as part of their duties under this code.

23 **SECTION 2. Initial applicability.**

