



OFFICE OF THE GOVERNOR  
TERRITORY OF GUAM

OFFICE OF THE SPEAKER

Date: 5-1-95  
Time: 10:50 am  
Received By: Artenef B. Torres  
Print Name: Artenef B.

APR 28 1995


The Honorable Don Parkinson  
Speaker  
Twenty-Third Guam Legislature  
424 West O'Brien Drive  
Julale Center - Suite 222  
Agana, Guam 96910

REFERRED TO  
LEGISLATIVE SECRETARY  
#120  
RECEIVED BY ACE  
Date & Time: 5-1-95 12:30  
PRINT NAME Artenef B.

Dear Speaker Parkinson:

Enclosed please find a copy of Substitute Bill No. 28 (LS), "AN ACT TO REPEAL AND REENACT ARTICLE 7 OF CHAPTER 63, TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE GUAM NATIONAL GUARD CODE OF MILITARY JUSTICE", which I have signed into law today as **Public Law 23-12**.

Very truly yours,

  
Madeleine Z. Bordallo  
Acting Governor of Guam

Attachment

230389



OFFICE OF THE GOVERNOR  
TERRITORY OF GUAM

OFFICE OF THE SPEAKER

Date: 5-1-95  
Time: 10:00 am  
Received By: Artene B. Torres  
Print Name: Artene B. Torres

APR 28 1995


The Honorable Don Parkinson  
Speaker  
Twenty-Third Guam Legislature  
424 West O'Brien Drive  
Julale Center - Suite 222  
Agana, Guam 96910

REFERRED TO  
LEGISLATIVE SECRETARY  
#120  
RECEIVED BY APL  
Date & Time: 5-1-95 12:30  
PRINT NAME: Brigitte

Dear Speaker Parkinson:

Enclosed please find a copy of Substitute Bill No. 28 (LS), "AN ACT TO REPEAL AND REENACT ARTICLE 7 OF CHAPTER 63, TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE GUAM NATIONAL GUARD CODE OF MILITARY JUSTICE", which I have signed into law today as **Public Law 23-12**.

Very truly yours,

  
Madeleine Z. Bordallo  
Acting Governor of Guam

Attachment  
230389


TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

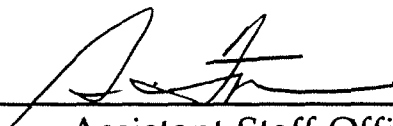
This is to certify that Substitute Bill No. 28 (LS), "AN ACT TO REPEAL AND REENACT ARTICLE 7 OF CHAPTER 63, TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE GUAM NATIONAL GUARD CODE OF MILITARY JUSTICE," was on the 10th day of April, 1995, duly and regularly passed.

  
\_\_\_\_\_  
DON PARKINSON  
Speaker

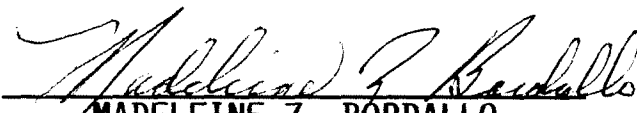
Attested:

  
\_\_\_\_\_  
JUDITH WON PAT-BORJA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 17th day of April,  
1995, at 11:35 o'clock A.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
MADELEINE Z. BORDALLO  
Acting Governor of Guam

Date: April 28, 1995

Public Law No. 23-12

TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) REGULAR SESSION

Bill No. 28 (LS)

As amended and substituted by  
the Committee on Federal and  
Foreign Affairs.

Introduced by:

F. E. Santos  
H. A. Cristobal  
T. C. Ada  
M.C. Charfauros  
L. Leon Guerrero  
V. C. Pangelinan  
A. L. G. Santos  
J. Won Pat-Borja  
E. Barrett-Anderson  
A. C. Blaz  
M. Forbes  
C. Leon Guerrero  
J. P. Aguon  
J. S. Brown  
F. P. Camacho  
A. C. Lamorena V  
T. S. Nelson  
S. L. Orsini  
D. Parkinson  
J. T. San Agustin  
A. R. Unpingco

AN ACT TO REPEAL AND REENACT ARTICLE 7 OF CHAPTER  
63, TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE  
GUAM NATIONAL GUARD CODE OF MILITARY JUSTICE.

1

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

1           Section 1. Article 7 of Chapter 63, Title 10, Guam Code Annotated, is  
2 repealed and reenacted to read:

3                           "ARTICLE 7.

4                           **Guam National Guard Code of Military Justice.**

5                                   **SUBARTICLE I.**

6   **GENERAL PROVISIONS.**

7           §63700. **Name.** This Article shall be known and may be cited as the  
8 "Guam National Guard Code of Military Justice".

9           §63701. **Definitions.** As used in this Code:

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

14                   (2) "Active territorial duty" means full-time duty in the active  
15 military service of the territory, under an order of the Governor issued  
16 pursuant to authority vested in him by law, and while going to and from  
17 such duty.

18                   (3) "Cadet" as used in this code shall include Senior Reserve  
19 Officer Training Corps students who also are participating in the  
20 simultaneous membership program (SMP) with the Guam National  
21 Guard and Guam Military Academy Officer Candidate Participants.

22                   (4) "Code" means the Guam National Guard Code of Military  
23 Justice.

24                   (5) "Commanding Officer" includes commissioned officer and  
25 command position in accordance with applicable regulations.

1           (6) **"Concerning authority"** includes, in addition to the person  
2 who convened the court, a commissioned officer commanding for the  
3 time being, or a successor in command.

4           (7) **"Duty status"** means on duty pursuant to orders such as  
5 inactive duty training, annual training, active duty special work, full  
6 time national guard duty, special training, active guard reserve, or  
7 other authorized duty as set out in Title 32, United States Code and  
8 appropriate regulations of the Department of Defense, Army, Air  
9 Force, and National Guard Bureau as well as the laws and regulations  
10 of Guam. It does not include duty, the performance of which, subjects a  
11 person to the Uniform Code of Military Justice.

12           (8) **"Enlisted member"** means a person enlisted in, or Enlisted  
13 member inducted, called, or conscripted into, the territorial military  
14 forces in an enlisted grade.

15           (9) **"Federal Service"** means on duty, governed by the Federal  
16 Service provisions of Title 10, United States Code, particularly the  
17 Uniform Code of Military Justice.

18           (10) **"Grade"** means a step or degree, in a graduated scale Grade  
19 of office or military rank, that is established and designated as a grade  
20 by law or regulation.

21           (11) **"He, him or any other masculine pronoun"**, where used,  
22 means, and shall be interpreted to include, the masculine and/or  
23 feminine gender, as the case may be.

24           (12) **"Includes"** means "includes but not limited to".

25           (13) **"Judge advocate"** means any commissioned officer who is  
26 federally recognized as judge advocate by the National Guard Bureau

1 and has been certified by the Territorial Judge Advocate General or in  
2 certain cases, as appropriate, a judge advocate of an United States  
3 Armed Forces, active or reserve, meeting the qualifications of Article 27,  
4 Uniform Code of Military Justice, and being so certified and designated  
5 as required by said Armed Force.

6 (14) "**Legal officer**" means any commissioned officer of the  
7 territorial military forces or non-military person who:

8 (a) volunteers to prosecute or defend an accused in a court-  
9 martial or administrative matter;

10 (b) graduated from a law school accredited by the  
11 American Bar Association (ABA);

12 (c) is a member of the bar of a Federal court or of the  
13 highest court of a State, Territory, Commonwealth of the United  
14 States or the District of Columbia; and

15 (d) has been certified as competent to perform such duties  
16 by the Territorial Judge Advocate.

17 (15) "**May**" is used in a permissive sense. The words "no person  
18 may..." means that no person is required, authorized, or permitted to do  
19 the act proscribed.

20 (16) "**Military**" refers to any or all of the territorial military  
21 forces.

22 (17) "**Military Court**" means a court-martial, a court of inquiry,  
23 a military commission, or a provost court.

24 (18) "**Military Judge**" means an official of a court-martial  
25 detailed in accordance with this Code.

1           (19) **"National Guard"** means the Army National Guard and/or  
2 the Air National Guard.

3           (20) **"Officer"** means commissioned officer and warrant officer.

4           (21) **"Pay"** includes basic pay, special pay, incentive pay, retired  
5 pay, and equivalent pay, but does not include allowances.

6           (22) **"Rank"** means the order of precedence among members of  
7 the territorial military forces.

8           (23) **"Record"**, when used in connection with the proceedings of a  
9 military court means:

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

12           (b) an official audio tape, videotape, or similar material  
13 from which sound, or sound and visual images, depicting the  
14 proceedings may be reproduced.

15           (24) **"Scheduled unit training assembly"** means that training  
16 assembly scheduled as a part of the comprehensive plan for a unit on a  
17 yearly basis.

18           (25) **"Shall"** is used in an imperative sense.

19           (26) **"Spouse"** means husband or wife, as the case may be.

20           (27) **"Superior Commissioned Officer"** means a commissioned  
21 officer superior in rank or command.

22           (28) **"Territory"** means the Territory of Guam.

23           (29) **"Territorial Judge Advocate General"** means the Judge  
24 Advocate General of the territorial military forces, commissioned  
25 therein, and responsible for supervising the administration of military



1 justice in the territorial military forces, and performing such other legal  
2 duties as may be required by the Adjutant General.

3 (30) "Territorial military forces" means the National Guard of  
4 this Territory, as defined in Section 101(3), (4) and (6) of Title 32, United  
5 States Code, and any other militia or military forces organized under  
6 the laws of the territory, when not in a status subjecting them to the  
7 jurisdiction of the Uniform Code of Military Justice under Chapter 37 of  
8 Title 10, United States Code.

9 *SOURCE: Uniform Code of Military Justice, 10 USCS §§ 801 et seq. (hereafter - "UCMJ") ARTICLE 1.*

10 *The references to the UCMJ were before the Legislature during its deliberations.*

11 **§63702. Persons subject to this Code.**

12 (a) This Code applies to each member of the territorial military forces  
13 on duty status who is not in federal service. It also applies during the period  
14 of time in which he was under lawful order to be in a duty status.

15 (b) It also applies to any person who has the capacity to understand the  
16 significance of enlisting or accepting a commission in the territorial military  
17 forces and so voluntarily enlists or accepts such commission.

18 (c) A person who is serving with the territorial military who accepts  
19 pay or allowances and performs in military duty forces who submitted  
20 voluntarily to the military authority, meets the mental competence and  
21 minimum age qualifications of Title 10 of the United States Code Annotated,  
22 receives military pay or allowances, and performs military duties is subject to  
23 this Code until such person's service has been terminated in accordance with  
24 law or appropriate regulations.

25 (d) A person not on a duty status who committed an offense may be  
26 ordered to duty status for military justice matters against this Code arising

1 while on duty status and may be ordered to active duty involuntarily for the  
2 purpose of investigation under §63719.2 , trial by court-martial or nonjudicial  
3 punishment under §63715.

4 SOURCE: UCMJ ARTICLE 2.

5 **§63703. Personnel Jurisdiction.**

6 (a) Each person discharged from the territorial military forces who is  
7 later charged with having fraudulently obtained his discharge is, subject to  
8 §63720.9 of this Code, subject to trial by court-martial on that charge and is,  
9 after apprehension, subject to this Code while in custody of the military for  
10 that trial. Upon conviction of that charge he is subject to trial by court-  
11 martial for all offenses under this Code committed before the fraudulent  
12 discharge.

13 (b). No person who has deserted from the territorial military forces  
14 may be relieved from amenability to the jurisdiction of this Code by virtue of a  
15 separation from any later period of service.

16 (c) A person subject to this Code is not, by virtue of the termination of a  
17 period of active duty or inactive duty training, relieved from amenability to  
18 jurisdiction of this Code for an offense against this Code committed during  
19 such period of active duty or inactive-duty training.

20 SOURCE: UCMJ ARTICLE 3.

21 **§63704. Reserved.**

22 **§63705. Territorial applicability of the Code.**

23 (a) This Code applies in all places. It also applies to all persons  
24 otherwise subject to this Code while they are serving outside the Territory of  
25 Guam, and while they are going to and returning from such service outside

1 the Territory of Guam, in the same manner and to the same extent as if they  
2 were serving inside the Territory of Guam.

3 (b) A court-martial, court of inquiry, a military commission, or a  
4 provost court may be convened and held in units of the territorial military  
5 forces while those units are serving outside the boundaries of Guam, with the  
6 same jurisdiction and power as to persons subject to this code as if the  
7 proceedings were held inside the boundaries of Guam, and offenses  
8 committed outside the territory may be tried and punished either inside or  
9 outside the Territory of Guam.

10 *SOURCE: UCMJ ARTICLE 5.*

11 **§63706. Judge advocates/legal officers.**

12 (a) **Appointment.**

13 (1) The Adjutant General shall appoint an officer of the  
14 territorial military forces as Territorial Judge Advocate General. To be  
15 eligible for appointment, an officer must have graduated from an ABA  
16 accredited law school, be a member in good standing of a bar of a  
17 Federal Court or the highest court of a State, Territory,  
18 Commonwealth of the United States or the District of Columbia, be  
19 federally recognized by the National Guard Bureau as a judge advocate  
20 for at least five (5) years or have been appointed a judge advocate by an  
21 United States Armed Force pursuant to Article 27 of the Uniform Code  
22 of Military Justice for a minimum of five (5) years or a combination of  
23 National Guard Bureau or Armed Forces recognition for the minimum  
24 five (5) years and have completed The Judge Advocate General's School  
25 Advance Course of the Army or Air Force.

1           (2) The Adjutant General shall appoint judge advocates upon the  
2 recommendation of the Territorial Judge Advocate General. To be  
3 eligible for appointment, an officer must be a member of the bar of a  
4 Federal Court or of the highest court of a State, Territory,  
5 Commonwealth of the United States, or the District of Columbia. The  
6 Territorial Judge Advocate General shall not recommend an officer for  
7 final appointment approval to the Adjutant General until said officer  
8 has been federally recognized as a judge advocate by the National  
9 Guard Bureau.

10           (3) The Territorial Judge Advocate General shall appoint or  
11 designate a legal officer. For an individual to be eligible to be  
12 designated or appointed as legal officer he must be a member of the bar  
13 of a Federal Court or of the highest court of a State, Territory,  
14 Commonwealth of the United States or the District of Columbia.

15           (4) The Territorial Judge Advocate General or his assistants shall  
16 make frequent inspections in the field in supervision of the  
17 administration of military justice.

18           (5) Convening authorities shall at all times communicate directly  
19 with their staff judge advocates or legal officers in matters relating to  
20 the administration of military justice; and the staff judge advocate or  
21 legal officers of any command are entitled to communicate directly with  
22 the staff judge advocate or legal officers of a superior or subordinate  
23 command, or with the Territorial Judge Advocate General.

24           (6) No person who has acted as member, military judge, trial  
25 counsel, assistant trial counsel, defense counsel, assistant defense  
26 counsel, or investigating officer, or who has been a witness for either

1 the prosecution or defense in any case may later act as staff judge  
2 advocate or legal officer to any reviewing authority upon the same  
3 case.

4 (7) In the absence, or lack, of a qualifying Territorial Judge  
5 Advocate General, the most senior judge advocate within the territorial  
6 military forces may perform duties as such for a period not to exceed  
7 one hundred twenty (120) days unless continued as authorized herein,  
8 providing that he or she is so designated by the Adjutant General and  
9 the Acting Territorial Judge Advocate General so designated meets all  
10 the requirements set out in this Subarticle except that for the number of  
11 years as a judge advocate and completion of the Judge Advocate  
12 General's School Advance Course of an Armed Force of the United  
13 States. Nothing contained herein shall limit the Adjutant General's  
14 authority to redesignate a judge advocate as the Acting Territorial  
15 Judge Advocate provided no other judge advocate within the territorial  
16 military forces meet the qualifications for Territorial Judge Advocate as  
17 set out in this subarticle.

18 *SOURCE: UCMJ ARTICLE 6.*

## 19 **SUBARTICLE II.**

### 20 **APPREHENSION AND RESTRAINT.**

#### 21 **§63707. Apprehension.**

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

23 (b) **Who may apprehend.** Any person authorized by this Code, or by  
24 regulations issued under it, and/or any marshal of a court-martial appointed  
25 pursuant to the provisions of this Code, and any peace officer having  
26 authority to apprehend offenders under the laws of the United States, a

1 State, Territory, Commonwealth of the United States, or the District of  
2 Columbia, may apprehend persons subject to this Code, upon reasonable  
3 belief that an offense has been committed and that the person apprehended  
4 committed it.

5 (c) **Authority to quell quarrels, frays and disorders.** Commissioned  
6 officers, warrant officers, and noncommissioned officers have authority to  
7 quell quarrels, frays, and disorders among persons subject to this Code and to  
8 apprehend persons subject to this Code who take part therein.

9 *SOURCE: UCMJ ARTICLE 7.*

10 **§63708. Apprehension of deserters.** Any civil officer having authority to  
11 apprehend offenders under the laws of the United States or a State,  
12 Territory, Commonwealth of the United States or the District of Columbia  
13 may summarily apprehend a deserter from the territorial military forces and  
14 deliver him into the custody of territorial military forces.

15 *SOURCE: UCMJ ARTICLE 8.*

16 **§63709. Imposition of restraint.**

17 (a) **Definition of Arrest and Confinement.**

18 (1) **Arrest** is the restraint of a person by an order, not imposed as  
19 punishment for an offense, directing him to remain within certain specified  
20 limits.

21 (2) **Confinement** is the physical restraint of a person.

22 (b) **Restraint of enlisted member.** An enlisted member may be ordered  
23 into arrest or confinement by any commissioned officer by an order, oral or  
24 written, delivered in person or through other persons subject to this Code. A  
25 commanding officer may authorize a warrant officer or noncommissioned

1 officer to order an enlisted man of his command or subject to his authority  
2 into arrest or confinement.

3 (c) **Restraint of commissioned officer/warrant officer.** A  
4 commissioned officer or warrant officer may be ordered apprehended or into  
5 arrest or confinement only by a commanding officer to whose authority he is  
6 subject, by an order, oral or written, delivered in person or by another  
7 commissioned officer. The authority to order such persons apprehended or  
8 into arrest or confinement may not be delegated.

9 (d) **Apprehension or arrest requires probable cause.** No person may be  
10 ordered apprehended or into arrest or confinement except for probable cause.

11 (e) **No limits to authority of authorized persons.** Nothing in this  
12 Article limits the authority of persons authorized to apprehend offenders to  
13 secure the custody of an alleged offender until proper authority may be  
14 notified.

15 *SOURCE: UCMJ ARTICLE 9.*

16 **§63710. Restraint of persons charged with offenses.** Any person subject  
17 to this Code charged with an offense under this Code shall be ordered into  
18 arrest or confinement, as circumstances may require; but when charged with  
19 an offense normally processed as nonjudicial punishment, such person shall  
20 not ordinarily be placed in confinement. When any person subject to this  
21 Code is placed in arrest or confinement prior to trial, immediate steps shall be  
22 taken to inform him of the specific wrong of which he is accused and to try  
23 him or to dismiss the charges and release him. Persons confined, other than  
24 in a guardhouse, whether before, during, or after trial by a military court,  
25 shall be confined in a civilian correctional facility, jail, lockup or any other

1 facility used for the purpose of confinement of prisoners that is so designated  
2 by the Adjutant General.

3 *SOURCE: UCMJ ARTICLE 10.*

4 **§63711. Reports and receiving prisoners.**

5 (a) No provost marshal, commander of a guard, master at arms,  
6 warden, keeper, or officer of a territory jail, lockup or correctional facility  
7 designated under §63710 of this Code, may refuse to receive or keep any  
8 prisoner committed to his charge, when the committing person furnishes a  
9 statement, signed by him, of the offense charged against the prisoner.

10 (b) Every commander of a guard, master at arms, warden, keeper, or  
11 officer of a territorial jail, lockup or correctional facility designated under  
12 §63710 of this Code, to whose charge a prisoner is committed shall, within  
13 twenty-four (24) hours after that commitment or as soon as he is relieved  
14 from guard, report to the commanding officer of the prisoner the name of the  
15 prisoner, the offense charged against him, and the name of the person who  
16 ordered or authorized the commitment.

17 *SOURCE: UCMJ ARTICLE 11.*

18 **§63712. Reserved.**

19 **§63713. Punishment prohibited before trial.** Subject to §63720.19 of this  
20 Code, no person, while being held for trial or the result of trial, may be  
21 subjected to punishment or penalty other than arrest or confinement upon the  
22 charges pending against him, nor shall the arrest or confinement imposed  
23 upon him be any more rigorous than the circumstances require to ensure his  
24 presence, but he may be subjected to minor punishment during that period for  
25 infractions of discipline.

26 *SOURCE: UCMJ ARTICLE 13.*



1           **§63714. Delivery of offenders to civil authorities.**

2           (a) Under such regulations as may be prescribed under this Code, a  
3 person subject to this Code who is on duty status who is accused of an offense  
4 against civil authority may be delivered, upon request, to the civil authority  
5 for trial.

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

12           SOURCE: UCMJ ARTICLE 14.

13                               **SUBARTICLE III.**

14                                       **NON-JUDICIAL PUNISHMENT.**

15           **§63715. Commanding officer's non-judicial punishment.**

16           (a) **Limiting Regulations.** Under disciplinary regulations as the  
17 Adjutant General may promulgate, limitations may be placed on the powers  
18 granted by this Article with respect to the kind and the amount of punishment  
19 authorized, the categories of commanding officers and warrant officers  
20 exercising command authorized to exercise those powers, and the kinds of  
21 court-martial to which the case may be referred upon such a demand. Under  
22 similar regulations, rules may be prescribed with respect to the suspension of  
23 punishments authorized hereunder.

24           (b) **Right to refuse non-judicial punishment.** Punishment may not be  
25 imposed on any member of the territorial military forces under this Article if

1 the member has, before imposition of such punishment, demanded trial by  
2 court-martial in lieu of such punishment.

3 (c) **Punishments authorized.** Subject to subsections (a) and (b) of this  
4 section, any commanding officer may, in addition to or in lieu of admonition  
5 or reprimand, impose one or more of the following disciplinary punishments  
6 for minor offenses without the intervention of a court-martial:

7 (1) If imposed by a general court-martial convening  
8 authority as defined in §63717 of this code upon officers of his  
9 command:

10 (i) arrest in quarters for not more than fifteen (15) days;

11 (ii) forfeiture of not more than fifteen (15) days' pay or a  
12 fine of Three Hundred Dollars (\$300);

13 (iii) restriction to certain specified limits with or without  
14 suspension from duty, for not more than thirty (30) days;

15 (2) If imposed by a field grade officer or above, upon  
16 personnel other than personnel covered by §63715(c)(1) above:

17 (i) forfeiture of not more than ten (10) days' pay or a  
18 fine of not more than Two Hundred Dollars (\$200);

19 (ii) reduction to the lowest or any intermediate pay  
20 grade, if the grade from which demoted is within the  
21 promotion authority of the officer imposing the reduction or  
22 any officer subordinate to the one who imposes the reduction,  
23 but no enlisted member in a pay grade above E-4 may be  
24 reduced more than two (2) pay grades;

1 (iii) extra duties including fatigue or other duties, for not  
2 more than fifteen (15) days, which need not be consecutive, and  
3 for not more than two (2) hours per day, holidays included;

4 (iv) restriction to certain specified limits, with or without  
5 suspension for duty for not more than thirty (30) days;

6 (3) If imposed by a company grade officer upon personnel  
7 other than personnel covered by §63715(c)(1) above:

8 (i) forfeiture of not more than seven (7) days' pay or a  
9 fine of not more than One Hundred Dollars (\$100);

10 (ii) reduction to next inferior pay grade, if the grade  
11 from which demoted is within the promotion authority of the  
12 officer imposing the reduction or any officer subordinate to the  
13 one who imposes the reduction;

14 (iii) extra duties including fatigue or other duties, for not  
15 more than ten (10) days, which need not be consecutive, and for  
16 not more than two (2) hours per day, holidays included;

17 (iv) restriction to certain specified limits, with or without  
18 suspension from duty, for not more than fourteen (14) days;

19 (4) An officer in charge may impose upon enlisted members  
20 assigned to the unit of which he is in charge, any of the  
21 punishments authorized under subsection (c)(3)(i)-(iv) of this  
22 §63715 as the Adjutant General may authorize by regulations.

23 (5) The Governor may only impose punishment under this  
24 Subarticle upon officers of general rank and may impose any of  
25 the punishments authorized under (c)(1)(i)-(iii) of this §63715.

26 (d) **Summarized proceedings:**

1 (1) A commander, after a preliminary inquiry into an alleged  
2 offense by an enlisted member, may use summarized proceedings if it is  
3 determined that should punishment be found to be appropriate, it  
4 should not exceed:

5 (i) extra duties for fourteen (14) days;

6 (ii) restriction for fourteen (14) days;

7 (iii) oral reprimand or admonition; or

8 (iv) any combination of (i), (ii) or (iii).

9 (2) The summarized proceedings hearing shall consist of:

10 (i) consideration of evidence, written or oral, against the  
11 member;

12 (ii) examination of available evidence by the member;

13 (iii) presentation by the member of testimony of available  
14 witnesses or other matters, in defense, extenuation, and/or  
15 mitigation;

16 (iv) determination of guilt or innocence by imposing  
17 commander;

18 (v) imposition of punishment or termination of the  
19 proceedings; and

20 (vi) explanation of right to appeal.

21 (e) **When formal proceedings required.** In all cases except summarized  
22 proceedings set out in subsection (d) above, commanders should use formal  
23 proceedings conducted in accordance with regulations and/or guidance as set  
24 out by the disciplinary regulations.

25 (f) **Suspension, mitigation or remission of punishment.** The officer  
26 who imposes the punishment authorized in subsection (c), or his successor in

1 command, may, at any time, suspend probationally any part of a reduction in  
2 grade or fine or forfeiture imposed under subsection (c), whether or not  
3 executed. In addition, he may, at any time, except as may be limited by  
4 regulations of the territorial military forces, remit or mitigate any part or  
5 amount of the unexecuted punishment imposed, and may set aside in whole  
6 or in part the punishment, whether executed or unexecuted; and restore all  
7 rights, privileges, and property affected. He may also mitigate reduction in  
8 grade to a fine or forfeiture of pay. When mitigating arrest in quarters to  
9 restriction or extra duties to restriction the mitigated punishment shall not be  
10 for a greater period than the punishment mitigated. When mitigating  
11 reduction in grade to a fine or forfeiture of pay, the amount of the fine or  
12 forfeiture shall not be greater than the amount that could have been imposed  
13 initially under this Subarticle by the officer who imposed the punishment  
14 mitigated.

15 (g) **Combined punishment limitation.** No two (2) or more of the  
16 punishments of arrest in quarters, extra duties, and restrictions may be  
17 combined to run consecutively in the maximum amount possible for each.  
18 Whenever any of those punishments are combined to run consecutively, there  
19 must be an apportionment.

20 (h) **Right to appeal.** A person punished under this Subarticle who  
21 considers his punishment unjust or disproportionate to the offense may,  
22 through the proper channel, appeal to the next superior authority, except  
23 that no appeal may be taken above the level of the Adjutant General or from  
24 punishment imposed by the Adjutant General pursuant to §63715(c)(1)(2) and  
25 the Governor imposed pursuant to §63715(c)(5). The appeal shall be promptly  
26 forwarded and decided, but the person punished may in the meantime be

1 required to undergo the punishment adjudged, except the superior authority  
2 should suspend punishments of arrest in quarters, extra duties and  
3 restrictions until after the appeal. The superior authority may exercise the  
4 same powers with respect to the punishment imposed as may be exercised  
5 under subsection (d) by the officer who imposed the punishment. Before  
6 acting on any appeal the authority who is to act on the appeal shall refer the  
7 case to a judge advocate for advice on appropriateness of the punishment  
8 and whether the proceedings were conducted under the law and regulations.  
9 The judge advocate is not limited to an examination of written matters of  
10 record of proceedings and may make any inquiries that are necessary.

11 (i) **Not bar to subsequent prosecution.** The imposition and  
12 enforcement of disciplinary punishment under this Subarticle for any act or  
13 omission is not a bar to trial by court-martial or appropriate civilian court for  
14 a serious crime or offense growing out of the same act or omission, and not  
15 properly punishable under this Subarticle, but the fact that a disciplinary  
16 punishment has been enforced may be shown by the accused upon trial, and  
17 when so shown shall be considered in determining the measure of punishment  
18 to be adjudged in the event of a finding of guilty.

19 (j) **Record of proceedings.** The Adjutant General may, by regulation,  
20 prescribe the form of records to be kept of proceedings under this Subarticle,  
21 and may also prescribe that certain categories of those proceedings shall be in  
22 writing.

23 (k) **Punishment and limitations.** Each form of punishment authorized  
24 under this Subarticle are described and limited as follows:

25 (1) **Admonition and Reprimand.**

1 Admonition and reprimand are two forms of censure intended to  
2 express adverse reflection or criticism of a person's conduct. A  
3 reprimand is a more severe form of censure than an admonition.

4 **Limitation:** Although either reprimand or admonition may  
5 generally be imposed in the form of verbal or written censure, where  
6 imposed on a commissioned or warrant officer as nonjudicial  
7 punishment, it must be in written form.

8 (2) **Arrest in quarters.**

9 Arrest in quarters is the limiting of a person's liberty by an order  
10 requiring that he remain in his quarters. The limit is created through  
11 moral (duty to obey order) rather than physical restraint. A person  
12 undergoing this punishment may be required to perform those duties  
13 prescribed by superior authority, but must remain within the limits of  
14 his quarters unless the limits of arrest are otherwise extended by  
15 appropriate authority.

16 **Limitation:** This punishment may be imposed only upon officers  
17 and will not be performed beyond a date one hundred eighty (180) days  
18 from the date the punishment is ordered executed.

19 (3) **Extra duties.** Extra duties involve the performance of duties  
20 in addition to those normally assigned to the person being punished.  
21 The extra duty may be any type of military duty, including fatigue  
22 duties, and may extend for two (2) hours on each of the days the  
23 punishment is to be performed.

24 **Limitation:** No extra duty may be imposed which constitutes a  
25 known safety or health hazard to the member or which constitutes cruel  
26 or unusual punishment or which is not sanctioned by customs of the

1 service concerned. Extra duties assigned as punishment of  
2 noncommissioned officers, or any other enlisted persons of equivalent  
3 grades or positions, should not be of a kind that demeans or degrades  
4 their positions. This punishment will not be performed beyond a date  
5 one hundred twenty (120) days from the date the punishment is ordered  
6 executed.

7 (4) **Fine.** A fine is a pecuniary sanction requiring the immediate  
8 payment of the dollar penalty assessed.

9 (5) **Forfeiture of pay.** Forfeiture means a permanent loss of  
10 entitlement to the pay forfeited.

11 **Limitation:** If the punishment includes both reduction, whether or  
12 not suspended, and forfeiture of pay, the forfeiture must be based on the  
13 grade to which reduced.

14 (6) **Reduction in grade.** Reduction in grade means the reduction  
15 of an enlisted member to a lower pay grade.

16 **Limitation:** The reduction may not be by more than two pay  
17 grades and may only be taken when the nonjudicial punishment  
18 authority, or any subordinate of his, has the authority to promote to the  
19 grade held by the member prior to his reduction.

20 (7) **Restriction.** Restriction is the least severe form of  
21 deprivation of liberty. Like arrest in quarters, restriction involves moral  
22 rather than physical restraint. It requires the subject of the punishment  
23 to restrict himself to a prescribed geographical area and may also limit  
24 his activities. A person undergoing restriction may be required to report  
25 to a designated place at specified times to ensure that the punishment is  
26 being properly executed. Unless otherwise specified by the authority



1 imposing punishment, a person in restriction may be required to  
2 perform any military duty.

3 **Limitation:** This punishment will not be performed beyond a date  
4 one hundred twenty (120) days from the date the punishment is ordered  
5 executed.

6 (l) **Calculation and execution of punishment.** Each form of punishment  
7 imposed under this Subarticle, which has a defined duration or dollar  
8 amount, will be calculated and executed as follows:

9 (1) **Arrest in quarters, restriction or extra duties.** Periods of  
10 arrest in quarters, restriction or extra duties will always be imposed in  
11 terms of days, never in months or fractions thereof. A period of such  
12 punishment need not be in consecutive days. Such punishment will be  
13 served, rather, on each following "duty" day performed by the member  
14 until the punishment has been completed. However, in the case of extra  
15 duty punishment, the punishment may be served on non-consecutive  
16 duty days at the discretion of the imposing authority. For purposes of  
17 this section a "duty" day is a calendar day on which the member is on a  
18 duty status (as defined by §63701(7) of this Code) for eight(8) hours or  
19 more.

20 (2) **Fine or forfeiture.** Fines or forfeitures will be expressed in  
21 whole dollar amounts at the time of imposition. In determining  
22 maximum forfeiture, a day's pay will be the amount of pay that would  
23 be received were the member on active duty for one day (i.e. each four  
24 hour drill training unit will count as a day for purposes of an IDT's  
25 pay). The definition of "pay" will be that defined by §63701(21) of this  
26 Code. A fine will be due for payment on the date of the punishment's

1 execution, although the imposing authority may permit (for cause  
2 shown) an extension. In the event of a forfeiture, the subject member's  
3 pay will be forfeited from the date of execution until the total dollar  
4 amount imposed has been reached.

5 SOURCE: UCMJ ARTICLE 15.

6 SUBARTICLE IV.  
7 COURTS-MARTIAL.

8 §63716. Court-Martial classified.

9 (a) The three kinds of courts-martial in each of the territorial military  
10 forces are:

11 (1) **General Court-Martial**, which shall consist of:

12 (i) a military judge and not less than five (5) members; or

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

17 (2) **Special Court-Martial**, which shall consist of:

18 (i) not less than three (3) members; or

19 (ii) a military judge and not less than three (3) members; or

20 (iii) only a military judge, if one has been detailed to the court and  
21 the accused under the conditions that is prescribed in §63716(a)(1)(ii) so  
22 requests; and

23 (3) **Summary Court-Martial**, which shall consist of one (1) officer, who  
24 shall be a military judge or an attorney who is a member of the bar of a  
25 federal court, or the highest court of a State, Territory, Commonwealth of  
26 the United States or the District of Columbia and certified to be competent to

1 perform such duties by the Territorial Judge Advocate General, or if such  
2 military judge or attorney is not reasonably available, then a senior officer of  
3 the United States Armed Forces, either active, reserve or national guard,  
4 certified as competent to perform such duties by the Territorial Judge  
5 Advocate General.

6 SOURCE: UCMJ ARTICLE 16.

7 **§63716.1. Jurisdiction of courts-martial in general.** Each Armed Force  
8 of the territory has court-martial jurisdiction over all persons subject to this  
9 Code. The exercise of jurisdiction by one force over personnel of another  
10 force shall be in accordance with regulations of the territorial military forces.  
11 All persons subject or who become subject to the provisions of this Code may  
12 be tried for offenses committed within or without the boundaries of Guam.

13 SOURCE: UCMJ ARTICLE 17.

14 **§63716.2. Jurisdiction of General Courts-Martial.**

15 (a) Subject to §63716.1 of this Code, general courts-martial have  
16 jurisdiction to try persons subject to this Code for any offense made  
17 punishable by this Code and may, under such limitations as the regulations of  
18 the territorial military forces may prescribe, adjudge any of the following  
19 punishments:

20 (1) A fine of not more than Two Hundred Dollars (\$200) or  
21 confinement of not more than two hundred (200) days. However, in no  
22 case, may the total of such fine and jail time exceed a combined total of  
23 two hundred (200) days;

24 (2) Forfeiture of pay and allowances;

25 (3) A reprimand;

26 (4) Dismissal, dishonorable discharge or bad conduct discharge;

1 (5) Reduction of rank and grade;  
2 (6) Any combination of these punishments; or  
3 (7) If the offense being tried is under §63723.60 of this Code and  
4 the offense alleged is a violation of Title 9, Guam Code Annotated, then  
5 the range of punishment may be equal to, but shall not exceed, the  
6 punishment authorized under said Title 9 for such offense.

7 (b) A dismissal, dishonorable discharge or bad conduct discharge may  
8 not be adjudged unless a complete record (verbatim or, if authorized by  
9 regulations of the territorial military forces, videotape or similar records) of  
10 the proceedings and testimony has been made, counsel having the  
11 qualifications prescribed under §63718.1(b) of this Code was detailed to  
12 represent the accused, and a military judge was detailed to the trial.

13 *SOURCE: UCMJ ARTICLE 18.*

14 **§63716.3. Jurisdiction of Special Courts-Martial.**

15 (a) Subject to §63716.1 of this Code, special courts-martial have  
16 jurisdiction to try persons subject to this Code, except commissioned officers,  
17 for any offense for which they may be punished under this Code. A special  
18 court-martial has the same powers of punishment as a general court-martial,  
19 except that a fine or confinement imposed by a special court-martial may not  
20 be more than a One Hundred Dollars (\$100) fine or confinement of not more  
21 than one hundred (100) days for each single offense and in no case may the  
22 total of such fine and jail time exceed One Hundred Dollars (\$100) or one  
23 hundred (100) days or a combined total of Two Hundred Dollars (\$200) and  
24 two hundred (200) days and a dismissal or dishonorable discharge may not be  
25 adjudged but, in its stead, a bad-conduct discharge may be adjudged.

1 (b) A bad-conduct discharge may not be adjudged unless a complete  
2 record of the proceedings and testimony was made, counsel having the  
3 qualifications prescribed under §63718.1(b) of this Code was detailed to  
4 represent the accused, and a military judge was detailed to the trial. In all  
5 special courts-martial cases, except for a special court-martial authorized to  
6 adjudge a bad-conduct discharge, in which a military judge was not detailed  
7 to be held but the convening authority shall make a detailed written  
8 statement, to be appended to the record, stating the reason or reasons a  
9 military judge could not be detailed.

10 SOURCE: UCMJ ARTICLE 19.

11 **§63716.4. Jurisdiction of Summary Courts-Martial.**

12 (a) Subject to §63716.1 of this Code, summary courts-martial have the  
13 jurisdiction to try persons subject to this Code, except officers, for any offense  
14 made punishable by this Code.

15 (b) No person with respect to whom summary courts-martial have  
16 jurisdiction may be brought to trial before a summary court-martial if he  
17 objects thereto. If objection to trial by summary court-martial is made by an  
18 accused, trial may be ordered by special or general court-martial, as may be  
19 appropriate.

20 (c) A summary court-martial may sentence to a fine of not more than  
21 Twenty-Five Dollars (\$25) or confinement of not more than twenty-five (25)  
22 days for each single offense, grant forfeiture of pay and allowances, and  
23 order a reduction to the ranks, including a noncommissioned officer.  
24 However, in no case may the total fine of Fifty Dollars (\$50) and confinement  
25 of fifty (50) days or a combined total of One Hundred Dollars (\$100) and one  
26 hundred (100) days be exceeded.

1 SOURCE: UCMJ ARTICLE 20.

2 **§63716.5. Jurisdiction of courts-martial.** The provisions of this Code  
3 conferring jurisdiction upon courts-martial do not deprive military  
4 commissions, provost courts, or other military tribunals of concurrent  
5 jurisdiction with respect to offenders or offenses that by statute or by the law  
6 of war may be tried by military commissions, provost courts, or other military  
7 tribunals.

8 SOURCE: UCMJ ARTICLE 21.

9 **SUBARTICLE V.**

10 **COMPOSITION OF COURTS-MARTIAL**

11  
12 **§63717. Who may convene general courts-martial.** In the territorial  
13 military forces a general courts-martial may be convened by:

- 14 (1) the Governor of the Territory of Guam; or  
15 (2) the Adjutant General or any other General Officer in the  
16 territorial military forces under disciplinary regulations of such military  
17 forces.

18 SOURCE: UCMJ ARTICLE 22.

19 **§63717.1. Who may convene special courts-martial.** In the territorial  
20 military forces not in federal service, the commanding officer of a garrison,  
21 fort, post, camp, air base, auxiliary air base, or other place where troops are  
22 on duty, or of a division, brigade, regiment, wing, group, detached battalion,  
23 detached squadron, separate squadron, or other detached command, may  
24 convene special courts-martial. Special courts-martial may also be convened  
25 by superior authority. When any such officer is an accuser, the court may be  
26 convened by superior competent authority if considered advisable by him.

1 SOURCE: UCMJ ARTICLE 23.

2 **§63717.2. Who may convene summary courts-martial.** In the territorial  
3 military forces not in federal service, the commanding officer of a garrison,  
4 fort, post, camp, air base, auxiliary air base, or other place where troops are  
5 on duty, or of a division, brigade, regiment, wing, group, detached battalion,  
6 detached squadron, separate squadron, detached company, or other  
7 detachment, may convene a summary court-martial.

8 SOURCE: UCMJ ARTICLE 24.

9 **§63717.3. Who may serve on courts-martial.**

10 (a) Any territorial commissioned officer in duty status is eligible to  
11 serve on all courts-martial for the trial of any person who may lawfully be  
12 brought before such courts for trial.

13 (b) Any warrant officer in duty status is eligible to serve on general and  
14 special courts-martial for the trial of any person, other than a commissioned  
15 officer, who may lawfully be brought before such courts for trial.

16 (c) (1) Any enlisted member of the territorial military forces in a  
17 territorial duty status who is not a member of the same unit as the accused is  
18 eligible to serve on general and special courts-martial for the trial of any  
19 enlisted member of the territorial military forces who may lawfully be  
20 brought before such courts for trial, but he shall serve as a member of a court  
21 only if, before the conclusion of a session called by the military judge under  
22 §63720.3(a) of this Code prior to trial or, in the absence of such a session,  
23 before the court is assembled for the trial of the accused, the accused  
24 personally has requested in writing that enlisted members serve on it. After  
25 such a request, the accused may not be tried by a general or special court-  
26 martial the membership of which does not include enlisted members in a

1 number comprising at least one-third of the total membership of the court,  
2 unless eligible members cannot be obtained on account of physical conditions  
3 or military exigencies. If such members cannot be obtained, the court may be  
4 convened and the trial held without them, but the convening authority shall  
5 make a detailed written statement, to be appended to the record, stating why  
6 they could not be obtained.

7 (2) In this Subarticle, the word "unit" means any regularly organized  
8 body, but in no case may it be a body larger than a company, squadron or  
9 body corresponding to one of them.

10 (d) (1) When it can be avoided, no member of the territorial military  
11 forces may be tried by a court-martial which consists of any member junior to  
12 him in rank or grade.

13 (2) When convening a court-martial, the convening authority shall  
14 detail as members thereof such members of the territorial military forces as,  
15 in his opinion are the best qualified for the duty by reason of age, education,  
16 training, experience, length of service, and judicial temperament. No  
17 member of the territorial military forces is eligible to serve as a member of a  
18 general or special court-martial when he is the accuser or a witness for the  
19 prosecution or has acted as investigating officer or as counsel in the same  
20 case.

21 (e) Before a court-martial is assembled for the trial of a case, the  
22 convening authority may excuse a member of the court from participating in  
23 the case. Under such regulations as the Adjutant General may prescribe, the  
24 convening authority may delegate his authority under this subsection to his  
25 staff judge advocate or legal officer or to any other principal assistant.

26 SOURCE: UCMJ ARTICLE 25.



1           **§63718. Military judge of general, special or summary court-martial.**

2           (a) A military judge shall be detailed to each general court-martial. A  
3 military judge shall, if not prevented by physical conditions or military  
4 exigencies, be detailed to each special and summary court-martial.  
5 Regulations shall provide for the manner in which the military judges are  
6 detailed for such courts-martial and for the persons who are authorized to  
7 detail military judges for such courts-martial. The military judge shall  
8 preside over open sessions of the court-martial to which he has been detailed.

9           (b) A military judge shall be a commissioned officer or a civilian who is  
10 a member of the bar of a federal court or a member of the bar of the highest  
11 court of a State, Territory, Commonwealth of the United States or the  
12 District of Columbia and who is certified to be qualified for duty as a military  
13 judge by the Territorial Judge Advocate General. If an individual has been  
14 certified as a military judge by the Judge Advocate General of the Armed  
15 Force of which such military judge is a member or by a sister  
16 Commonwealths of the United States or the District of Columbia, he may be  
17 so certified by the Territorial Judge Advocate General. A qualified judge of  
18 the Superior Court of Guam shall be, without certification, qualified to  
19 preside over any military court of the military forces of the Territory of  
20 Guam. Civilians, serving as a military judge, shall have the same powers  
21 and authority as a military officer detailed as a military judge.

22           (c) The military judge of a general court-martial or a special court-  
23 martial authorized to adjudge a bad-conduct discharge should be, if practical,  
24 a qualified member as set out in §63718(b) of another National Guard or  
25 active or reserve Armed Force of the United States or a qualified civilian.

1 (d) No person is eligible to act as military judge in a case if he is the  
2 accuser or a witness for the prosecution or has acted as investigating officer  
3 or a counsel in the same case.

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

7 *SOURCE: UCMJ ARTICLE 26.*

8 **§63718.1. Detail of trial counsel and defense counsel.**

9 (a) For each general, special, and summary court-martial the authority  
10 convening the court shall detail trial counsel and defense counsel and such  
11 assistants as he considers appropriate. No person who has acted as  
12 investigating officer, military judge, or court member in any case may act  
13 later as trial counsel, assistant trial counsel, or unless expressly requested by  
14 accused, as defense counsel or assistant defense counsel in the same case. No  
15 person who has acted for the prosecution may act later in the same case for  
16 the defense, nor may any person who has acted for the defense act later in the  
17 same case for the prosecution.

18 (b) Trial counsel and defense counsel detailed for a general court-  
19 martial:

20 (1) must be a judge advocate who is a graduate of an accredited  
21 law school or is a member of the bar of a federal court or of the highest  
22 court of a State, Territory, Commonwealth of the United States or the  
23 District of Columbia; and

24 (2) must be certified as competent to perform such duties by the  
25 Territorial Judge Advocate General; or

1           (3) If counsel having such qualifications as set out in  
2 §63718.1(b)(1) and (2) cannot be obtained on account of physical  
3 conditions or military exigencies, then the Territorial Judge Advocate  
4 General may temporarily certify a judge advocate officer certified by a  
5 sister National Guard of the various States, Territories,  
6 Commonwealths of the United States, or the District of Columbia (Air  
7 or Army), or any active or reserve judge advocate officer of the United  
8 States Armed Forces certified under Article 27 of the Uniform Code of  
9 Military Justice of the United States or a non-judge advocate officer or  
10 civilian who is a graduate of an accredited law school, member of the  
11 bar of a federal court, or of the highest court of a State, Territory,  
12 Commonwealth, or the District of Columbia, as competent to perform  
13 such duties.

14 (c) In the case of a special or summary court-martial:

15           (1) The accused shall be afforded the opportunity to be  
16 represented at the trial by counsel having qualifications prescribed in  
17 §63718.1(b) of this Code unless counsel having such qualifications  
18 cannot be obtained on account of physical conditions or military  
19 exigencies. If counsel having such qualifications cannot be obtained, the  
20 court may be convened and the trial held but the convening authority  
21 shall make a detailed written statement, to be appended to the record,  
22 stating why counsel with such qualifications could not be obtained;

23           (2) If the trial counsel is qualified to act as counsel before a  
24 general court-martial, the defense counsel detailed by the convening  
25 authority must be a person similarly qualified; and

1 (3) If the trial counsel is a judge advocate, or a member of the bar  
2 of a federal court or the highest court of a State, Territory,  
3 Commonwealth of the United States or the District of Columbia, the  
4 defense counsel detailed by the convening authority must be one of the  
5 foregoing.

6 SOURCE: UCMJ ARTICLE 27.

7 **§63718.2. Detail or employment of reporters.** Under such regulations  
8 as the Adjutant General may prescribe, the convening authority of a general  
9 or special court-martial, military commission, or court of inquiry shall detail  
10 or employ qualified court reporters, who shall record the proceedings of and  
11 testimony taken before that court or commission. Under like regulations the  
12 convening authority may detail or employ interpreters who shall interpret for  
13 the court or commission.

14 SOURCE: UCMJ ARTICLE 28.

15 **§63718.3. Absent and additional members.**

16 (a) No member of a general or special court-martial may be absent or  
17 excused after the court has been assembled for the trial of the accused except  
18 for physical disability or as the result of a challenge or by order of the  
19 convening authority for good cause.

20 (b) Whenever a general court-martial, other than a general court-  
21 martial composed of a military judge only, is reduced below five (5) members  
22 the trial may not proceed unless the convening authority details new  
23 members sufficient in number to provide not less than five (5) members. The  
24 trial may proceed with the new members present after the recorded evidence  
25 previously introduced has been read to the court in the presence of the  
26 military judge, the accused, and counsel for both sides.

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

10 (d) If the military judge of a court-martial composed of a military  
11 judge only is unable to proceed with the trial because of physical disability, as  
12 a result of a challenge, or for other good cause, the trial shall proceed, subject  
13 to any applicable conditions of §63716(a)(1)(ii) or §63716(a)(2)(iii) of this Code,  
14 after the detail of a new military judge as if no evidence had previously been  
15 introduced, unless a verbatim record of the evidence previously introduced or  
16 stipulation thereof is read in court in the presence of the new military judge,  
17 the accused, and counsel for both sides.

18 SOURCE: UCMJ ARTICLE 29.

19 **SUBARTICLE VI.**

20 **PRE-TRIAL PROCEDURE.**

21 **§63719. Charges and specifications.**

22 (a) Charges and specifications shall be signed by a person subject to  
23 this Code under oath before a commissioned officer of the territorial military  
24 forces authorized to administer oaths and shall state:

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

1           (2) That they are true in fact to the best of his knowledge and  
2 belief.

3           (b) Upon the preferring of charges, the proper authority shall take  
4 immediate steps to determine what disposition should be made thereof in the  
5 interest of justice and discipline, and the person accused shall be informed of  
6 the charges against him as soon as practicable.

7           *SOURCE: UCMJ ARTICLE 30.*

8           **§63719.1. Compulsory self-incrimination prohibited.**

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

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

18           (c) No person subject to this Code may compel any person to make a  
19 statement or produce evidence before any military tribunal if the statement or  
20 evidence is not material to the issue and may tend to degrade him.

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

24           *SOURCE: UCMJ ARTICLE 31.*

25           **§63719.2. Investigation.**

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

7 (b) The accused shall be advised of the charges against him and of his  
8 right to be represented at that investigation by counsel. Upon his own  
9 request, he shall be represented by civilian counsel if provided by him, or  
10 military counsel of his own selection if such counsel is reasonably available, or  
11 by counsel detailed by the officer exercising general court-martial jurisdiction  
12 over the command. At that investigation full opportunity shall be given to  
13 the accused to cross-examine witnesses against him if they are available and  
14 to present anything he may desire in his own behalf, either in defense or  
15 mitigation, and the investigating officer shall examine available witnesses  
16 requested by the accused. If the charges are forwarded after the  
17 investigation, they shall be accompanied by a statement of the substance of  
18 the testimony taken on both sides and a copy thereof shall be given to the  
19 accused.

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

1 witnesses for further cross-examination and to offer any new evidence in his  
2 own behalf.

3 (d) The requirements of this section are binding on all persons  
4 administering this Code but failure to follow them does not constitute  
5 jurisdictional error.

6 *SOURCE: UCMJ ARTICLE 32.*

7 **§63719.3. Forwarding of charges.** When a person is held for trial by  
8 general court-martial the commanding officer shall, within eight (8) days  
9 after the accused is ordered into arrest or confinement, if practicable,  
10 forward the charges, together with the investigation and allied papers, to the  
11 officer exercising general court-martial jurisdiction. If that is not practicable,  
12 he shall report in writing to the officer the reasons for the delay.

13 *SOURCE: UCMJ ARTICLE 33.*

14 **§63719.4. Advice of staff judge advocate.**

15 (a) Before directing the trial of any charge by general court-martial,  
16 the convening authority shall refer it to his staff judge advocate for  
17 consideration and advice. The convening authority may not refer a charge to  
18 a general court-martial for trial unless he has been advised in writing by the  
19 staff judge advocate that:

20 (1) the specification alleges an offense under the Code;

21 (2) the specification is warranted by the evidence indicated in the  
22 report of investigation under §63719.2 of this Code, if there is such a  
23 report; and

24 (3) a court-martial would have jurisdiction over the accused and  
25 the offense.



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

4 (1) expressing his conclusions with respect to each matter set  
5 forth in subsection (a); and

6 (2) recommending action that the convening authority take  
7 regarding the specification. If the specification is referred for trial, the  
8 recommendation of the Staff Judge Advocate shall accompany the  
9 specification.

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

15 SOURCE: UCMJ ARTICLE 34.

16 **§63719.5. Service of charges.** The trial counsel to whom general or  
17 special court-martial charges are referred for trial shall cause to be served  
18 upon the accused a copy of the charges upon which trial is to be had. The  
19 summary court-martial convening authority shall, in the referral of a  
20 summary court-martial, cause to be served upon the accused a copy of the  
21 charges upon which the trial is to be had. Actual service of charges upon the  
22 accused in any court-martial authorized by this Code may be effectuated by  
23 any person authorized by the Territorial Judge Advocate General. In time of  
24 peace no person may, against his objections, be brought to trial, or be required  
25 to participate by himself or counsel in a session called by the military judge  
26 under §63720.3(a) of this Code in a general court-martial case within a period

1 of five (5) days after service of charges upon him, or in a special court-martial  
2 case within a period of three (3) days after the service of charges upon him, or  
3 in a summary court-martial case within a period of twenty-four hours after  
4 the service of charges upon him.

5 SOURCE: UCMJ ARTICLE 35.

6 **SUBARTICLE VII.**

7 **TRIAL PROCEDURE.**

8 **§63720. Disciplinary Regulations.**

9 (a) Pretrial, trial, and post trial procedures, including burdens of  
10 proof, for cases arising under this Code triable in courts-martial, military  
11 commissions and other military tribunals, and procedures for courts of  
12 inquiry, may be prescribed by disciplinary regulations which shall, so far as  
13 practical, apply the principles of law generally recognized in the trial of  
14 courts-martial in the United States Armed Forces. However, such principles  
15 shall not be contrary to or inconsistent with this Code. The rules of evidence  
16 applicable under this Code shall be the rules of evidence as promulgated by  
17 the President in the United States Manual for Courts-Martial (Part III). If a  
18 member of the territorial military forces is tried in a territorial court for a  
19 violation of Title 9, Guam Code Annotated, under §63723.60 of this Code,  
20 then, in that event, the principals of law and the rules of evidence applicable  
21 shall be that recognized in the trial of criminal cases in the courts of the  
22 territory.

23 (b) The Adjutant General shall issue and promulgate regulations,  
24 including those regulations referred to herein as disciplinary regulations, in  
25 furtherance of the provisions of this Code. The regulations shall take effect  
26 by Executive Order of the Governor.

1 (c) The provisions of the Administrative Adjudication Law shall not  
2 apply to the issuance and promulgation of regulations pursuant to this Code.

3 SOURCE: UCMJ ARTICLE 36.

4 **§63720.1. Unlawfully influencing action of court.**

5 (a) No authority convening a general, special or summary court-  
6 martial, nor any other commanding officer, or officer serving on the staff  
7 thereof, may censure, reprimand, or admonish the court or any member,  
8 military judge, or counsel thereof, with respect to the findings or sentence  
9 adjudged by the court, or with respect to any other exercise of its or his  
10 functions in the conduct of the proceeding. No person subject to this Code  
11 may attempt to coerce or, by any unauthorized means, influence the action of  
12 the court-martial or any other military tribunal or any member thereof, in  
13 reaching the findings or sentence in any case, or the action of any convening,  
14 approving, or reviewing authority with respect to his judicial acts. The  
15 foregoing provisions of this subsection shall not apply with respect to general  
16 instructional or informational courses in military justice if such courses are  
17 designed solely for the purpose of instructing members of a command in the  
18 instructions given in open court by the military judge, president of a special  
19 court-martial, or counsel.

20 (b) In the preparation of an effectiveness, fitness, or efficiency report  
21 or any other report or document used in whole or in part for the purpose of  
22 determining whether a member of the territorial military forces is qualified to  
23 be advanced, in grade, or in determining the assignment or transfer of a  
24 member of the territorial military forces or in determining whether a member  
25 should be retained in the territorial military forces, no person subject to this  
26 Code may, in preparing any such report

1 (1) consider or evaluate the performance of duty of any such  
2 member of a court-martial, or

3 (2) give a less favorable rating or evaluation of any member of  
4 the territorial military forces because of the zeal with which such  
5 member, as counsel, represented any accused before a court-martial.

6 SOURCE: UCMJ ARTICLE 37.

7 **§63720.2. Duties of trial counsel and defense counsel.**

8 (a) The trial counsel of a general, special, or summary court-martial  
9 shall prosecute in the name of the Territory of Guam, and shall, under the  
10 direction of the court, prepare the record of the proceedings.

11 (b) (1) The accused has the right to be represented in his defense before  
12 a general, special, or summary court-martial or at an investigation under  
13 §63719.2 as provided in this subsection.

14 (2) The accused may be represented by civilian counsel if  
15 provided by him.

16 (3) The accused may be represented:

17 (i) by military counsel detailed under §63718; or

18 (ii) by civilian attorney provided under §63718; or

19 (iii) by military counsel of his own selection if that counsel  
20 is reasonably available as determined by the Territorial Judge  
21 Advocate General.

22 (4) If the accused is represented by civilian counsel, other than  
23 provided by §63718 and §63720.2(b)(3)(ii) military counsel detailed or selected  
24 under item (3) shall act as associate counsel unless excused at the request of  
25 the accused. If military counsel cannot be detailed and a civilian counsel is

1 provided under §63718, such counsel shall be excused if accused retains his  
2 own civilian counsel.

3 (5) Except as otherwise provided under §63720.2(b)(3) if the accused is  
4 represented by military counsel of his own selection under subitem (iii) of  
5 §63720.2(b)(3), any military counsel detailed under subitem (i) of this  
6 §63720.2(b)(3) shall be excused.

7 (6) The accused is not entitled to be represented by more than one  
8 counsel provided by the territory. However, the person authorized under  
9 regulations prescribed under §63718 of this Code to detail counsel in his sole  
10 discretion:

11 (i) may detail additional military counsel as assistant defense  
12 counsel; and

13 (ii) if the accused is represented by military counsel of his own  
14 selection under subitem (iii) of §63720.2(b)(3) may approve a request  
15 from the accused that military counsel detailed under subitem (i) of  
16 §63720.2(b)(3) act as associate defense counsel.

17 (7) The Territorial Judge Advocate General shall define "reasonably  
18 available" for the purpose of subitem (iii) of §63720.2(b)(3) and establish  
19 procedures for determining whether the military counsel selected by an  
20 accused under that paragraph is reasonably available.

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

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

1           (2) may assist the accused in the submission of any matter under  
2           §63722.1.

3           (d) An assistant trial counsel of a general, special or summary court-  
4 martial may, under the direction of the trial counsel or when he is qualified to  
5 be a trial counsel as required by §63718 of this Code, perform any duty  
6 imposed by law, regulation, or the custom of the service upon the trial counsel  
7 of the court.

8           (e) An assistant defense counsel of a general, special or summary  
9 court-martial may, under the direction of the defense counsel or when he is  
10 qualified to be the defense counsel as required by §63718 of this Code, perform  
11 any duty imposed by law, regulation, or the custom of the service upon  
12 counsel for the accused.

13           *SOURCE: UCMJ ARTICLE 38.*

14           **§63720.3. Sessions.**

15           (a) At any time after the service of charges which have been referred  
16 for trial to a court-martial composed of a military judge and members, the  
17 military judge may, subject to §63719.5, call the court into session without the  
18 presence of the members for the purpose of:

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

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

1 (3) if permitted by disciplinary regulations, holding the  
2 arraignment and receiving the pleas of the accused; and

3 (4) performing any other procedural function which may be  
4 performed by the military judge under this Code or under rules  
5 prescribed pursuant to §63720 of this Code and which does not require  
6 the presence of the members of the court. These proceedings shall be  
7 conducted in the presence of the accused, the defense counsel, and the  
8 trial counsel and shall be made a part of the record.

9 (b) When the members of a court-martial deliberate or vote, only the  
10 members may be present. All other proceedings, including any other  
11 consultation of the members of the court with counsel or the military judge,  
12 shall be made a part of the record and shall be in the presence of the accused,  
13 the defense counsel, the trial counsel, and in cases in which a military judge  
14 has been detailed to the court, the military judge.

15 *SOURCE: UCMJ ARTICLE 39.*

16 **§63720.6. Continuances.** The military judge or a court-martial without  
17 a military judge may, for reasonable cause, grant a continuance to any party  
18 for such time, and as often, as may appear to be just.

19 *SOURCE: UCMJ ARTICLE 40.*

20 **§63720.7. Challenges.**

21 (a) The military judge and members of a general and special court-  
22 martial may be challenged by the accused or the trial counsel for cause stated  
23 to the court. The military judge, or, if none, the court, shall determine the  
24 relevance and validity of challenges for cause, and may not receive challenge  
25 to more than one person at a time. Challenges by the trial counsel shall  
26 ordinarily be presented and decided before those by the accused are offered.

1 (b) Each accused and the trial counsel is entitled to one preemptory  
2 challenge, but the military judge may not be challenged except for cause.

3 *SOURCE: UCMJ ARTICLE 41.*

4 **§63720.8. Oaths.**

5 (a) Before performing their respective duties, military judges, members  
6 of general and special court-martial, trial counsel, assistant trial counsel,  
7 defense counsel and assistant or associate defense counsel, reporters, and  
8 interpreters shall take an oath to perform their duties faithfully. The form of  
9 the oath, the time and place of the taking thereof, the manner of recording the  
10 same and whether the oath shall be taken for all cases in which these duties  
11 are to be performed or for a particular case, shall be as prescribed by the  
12 Territorial Judge Advocate General. The Territorial Judge Advocate General  
13 may provide that an oath to perform faithfully duties as a military judge, trial  
14 counsel, assistant trial counsel, defense counsel, or assistant or associate  
15 defense counsel may be taken at any time by a judge advocate or other person  
16 certified to be qualified or competent for the duty, and if such an oath is taken  
17 it need not again be taken at the time the judge advocate, or other person is  
18 detailed to that duty.

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

20 *SOURCE: UCMJ ARTICLE 42.*

21 **§63720.9. Statute of limitations.**

22 (a) A person charged with desertion or absence without leave in time  
23 of insurrection, or with aiding the enemy or with mutiny may be tried and  
24 punished at any time without limitation.

25 (b) Except as otherwise provided by this Subarticle, a person charged  
26 with desertion in time of peace or with the offenses punishable under



1 §§63723.40, 63723.41, and 63723.42 of this Code is not liable to be tried by  
2 court-martial if the offense was committed more than three (3) years before  
3 the receipt of sworn charges and specifications by an officer exercising  
4 summary court-martial jurisdiction over the command.

5 (c) Except as otherwise provided in this Subarticle, a person charged  
6 with any offense is not liable to be tried by court-martial or punished under  
7 §63715 of this Code if the offense was committed more than two (2) years  
8 before the receipt of sworn charges and specifications by an officer exercising  
9 summary court-martial jurisdiction over the command, or before the  
10 imposition of punishment under §63715 of this Code.

11 (d) Periods in which the accused is absent from the territory in which  
12 Guam has authority to apprehend him, or in the custody of civil authorities,  
13 or in the hands of the enemy, shall be excluded in computing the period of  
14 limitation prescribed by this Subarticle.

15 *SOURCE: UCMJ ARTICLE 43.*

16 **§63720.10. Former jeopardy.**

17 (a) No person tried by a court provided for by this code shall for the  
18 same offense be tried by another court of this territory.

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

23 (c) A proceeding which, after the introduction of evidence but before a  
24 finding, is dismissed or terminated by the convening authority or on motion of  
25 the prosecution for failure of available evidence or witnesses without any  
26 fault of the accused is a trial in the sense of this article.

1           SOURCE: UCMJ ARTICLE 44.

2           **§63720.11. Pleas of the accused.**

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

9           (b) With respect to any charge or specification to which a plea of guilty  
10 has been made by the accused and accepted by the military judge, or by a  
11 court-martial without a military judge, a finding of guilty of the charge and  
12 specification may, if permitted by regulations of the Adjutant General, be  
13 entered immediately without vote. This finding shall constitute the finding of  
14 the court unless the plea of guilty is withdrawn prior to the announcement of  
15 the sentence, in which event the proceedings shall continue as though the  
16 accused had pleaded not guilty.

17           SOURCE: UCMJ ARTICLE 45.

18           **§63720.12. Opportunity to obtain witnesses.**

19           (a) The trial counsel, the defense counsel, the accused, and the court-  
20 martial shall have equal opportunity to obtain witnesses and other evidence.  
21 Each shall have the right of compulsory process for obtaining witnesses.

22           (b) The presiding officer of a court-martial may:

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

26               (2) Issue subpoenas duces tecum and other subpoenas;

1 (3) Enforce by attachment the attendance of witnesses and the  
2 production of books and papers; and

3 (4) Sentence for refusal to be sworn or to answer, as provided in  
4 actions before civil courts of Guam.

5 (c) Process issued in court-martial cases to compel witnesses to appear  
6 and testify and to compel the production of other evidence shall run to any  
7 part of Guam and shall be executed by civil officials or peace officers as  
8 prescribed by the laws of Guam.

9 *SOURCE: UCMJ ARTICLE 46.*

10 **§63720.13. Refusal to appear or testify.**

11 (a) Any person not subject to this Code who:

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

18 (2) has been duly paid or tendered the fees and mileage of a  
19 witness at the rates allowed to witnesses under §63724.11 of this Code;  
20 and provided; and

21 (3) willfully neglects or refuses to appear, or refuses to qualify as  
22 a witness or to testify or to produce any evidence which that person  
23 may have been legally subpoenaed to produce, is guilty of an offense  
24 against the Territory of Guam and may be punished by fine not to  
25 exceed Five Hundred Dollars (\$500) or confinement not to exceed sixty

1 (60) days in jail, or by both fine and confinement, and such witness shall  
2 be prosecuted in the Superior Court of Guam.

3 (b) Any prosecution under this section shall be by the Attorney General  
4 of Guam after submission of a complaint to him by the presiding officer of a  
5 military court, commission, court of inquiry or board.

6 *SOURCE: UCMJ ARTICLE 47.*

7 **§63720.14. Contempt.** A military court may punish for contempt any  
8 person who uses any menacing word, sign, or gesture in its presence, or who  
9 disrupts its proceedings by any riot or disorder. The punishment may not  
10 exceed confinement of thirty (30) days or a fine of One Hundred Dollars  
11 (\$100), or both.

12 *SOURCE: UCMJ ARTICLE 48.*

13 **§63720.15. Deposition.**

14 (a) Oral or written deposition, may be taken by any party, at any time,  
15 after charges have been signed in accordance with §63719 of this Code, unless  
16 prohibited by a military judge or a court-martial without a military judge  
17 hearing the case, or, if the case is not being heard, an authority competent to  
18 convene a court-martial for the trial of those charges, if such prohibition is  
19 based on good cause.

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

23 (c) Depositions may be taken before and authenticated by any military  
24 or civil officer authorized by the laws of Guam or by the laws of the place  
25 where the deposition is taken to administer oaths.

1 (d) Any duly authenticated deposition taken upon reasonable notice to  
2 the other parties, so far as otherwise admissible under the rules of evidence,  
3 may be read in evidence or, in the case of audio tape, videotape, or similar  
4 material, may be played in evidence before any military court or commission  
5 in any case, or in any proceeding before a court of inquiry or military board, if  
6 it appears:

7 (1) that the witness is beyond the boundaries of Guam or the  
8 State, Territory, Commonwealth of the United States, or District of  
9 Columbia in which the court, commission, or board is ordered to sit, or  
10 beyond one hundred (100) miles from the place of trial or hearing; or

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

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

16 *SOURCE: UCMJ ARTICLE 49.*

17 **§63720.16. Admissibility of records of courts of inquiry.**

18 (a) The sworn testimony, contained in the duly authenticated record of  
19 proceedings of a court of inquiry, of a person whose oral testimony cannot be  
20 obtained, may, if otherwise admissible under the rules of evidence, be read in  
21 evidence by any party before a court-martial if the accused was a party before  
22 the court of inquiry and if the same issue was involved or if the accused  
23 consents to the introduction of such evidence.

24 (b) Such testimony may also be read in evidence before a court of  
25 inquiry or a military board.

1 (c) In all courts of inquiry both enlisted men and officers shall have the  
2 right to counsel and the right to cross examination of all witnesses.  
3 Testimony obtained in violation of this subsection cannot be read in evidence  
4 before a court of inquiry or court-martial except by the accused or with the  
5 consent of accused.

6 *SOURCE: UCMJ ARTICLE 50.*

7 **§63720.17. Voting and rulings.**

8 (a) Voting by members of a general or special court-martial on the  
9 findings and on the sentence, and by members of a court-martial without a  
10 military judge upon questions of challenge, shall be by secret written ballot.  
11 The junior member of the court shall count the votes. The count shall be  
12 checked by the president, who shall forthwith announce the result of the  
13 ballot to the members of the court.

14 (b) The military judge and, except for questions of challenge, the  
15 president of a court-martial without a military judge shall rule upon all  
16 questions of law and all interlocutory questions arising during the  
17 proceedings. Any such ruling made by the military judge upon any question of  
18 law or any interlocutory question other than the factual issue of mental  
19 responsibility of the accused, or by the president of a court-martial without a  
20 military judge other than a motion for a finding of not guilty, is final and  
21 constitutes the ruling of the court. However, the military judge or the  
22 president of a court-martial without a military judge may change his ruling at  
23 any time during the trial. Unless the ruling is final, if any member objects  
24 thereto, the court shall be cleared and closed and the question decided by a  
25 voice vote as provided in §63720.18, beginning with the junior in rank.

1 (c) Before a vote is taken on the findings, the military judge or the  
2 president of a court-martial without a military judge shall, in the presence of  
3 the accused and counsel, instruct the members of the court as to the elements  
4 of the offense and charge them:

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

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

11 (3) that, if there is a reasonable doubt as to the degree of guilt,  
12 the finding must be in a lower degree as to which there is no reasonable  
13 doubt; and

14 (4) that the burden of proof to establish the guilt of the accused  
15 beyond a reasonable doubt is upon the Territory of Guam.

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

23 *SOURCE: UCMJ ARTICLE 51.*

24 **§63720.18. Number of votes required.**

25 (a) No person shall be convicted, if charged under §63723.60 of this  
26 Code of an offense which is a violation of the Guam penal laws and the

1 punishment assessable is that which Guam Penal statutes authorizes, unless  
2 the court-martial is before an appropriate court of the territory following the  
3 rules and procedures concerning criminal trials of the Territory of Guam  
4 after arraignment.

5 (b) No person shall be convicted of an offense in any other case, except  
6 by concurrence of two-thirds ( $2/3$ ) of the members present at the time the vote  
7 is taken.

8 (c) Except for sentences for convictions under subsection (a) which  
9 shall be determined by Guam penal statutes and criminal procedures, all  
10 sentences shall be determined by concurrence of two-thirds ( $2/3$ ) of the  
11 members present at the time the vote is taken.

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

21 *SOURCE: UCMJ ARTICLE 52.*

22 **§63720.19. Court to announce action.** A court-martial shall announce  
23 its findings and sentence to the parties as soon as determined.

24 *SOURCE: UCMJ ARTICLE 53.*

25 **§63720.20. Record of trial.**



1 (a) Each general court-martial shall keep a separate record of the  
2 proceedings in each case brought before it, and the record shall be  
3 authenticated by the signature of the military judge. If the record cannot be  
4 authenticated by the military judge by reason of his death, disability, or  
5 absence, it shall be authenticated by the signature of the trial counsel or if the  
6 trial counsel is unable to authenticate it by reason of his death, disability, or  
7 absence it shall be authenticated by a member. In a court-martial consisting  
8 of only a military judge the record shall be authenticated by the court reporter  
9 under the same conditions which would impose such a duty on a member  
10 under this subsection. Records of trials in the territorial courts as provided by  
11 this Code shall be authenticated as any other record before the territorial  
12 court.

13 (b) Each special and summary court-martial shall keep a separate  
14 record of the proceedings in each case, and the record shall be authenticated  
15 by the signature of the military judge. If the record cannot be authenticated  
16 by the military judge by reason of his death, disability, or absence, it shall be  
17 authenticated by the signature of the trial counsel or if the trial counsel is  
18 unable to authenticate it by reason of death, disability, or absence, it shall be  
19 authenticated by a member. In a court-martial consisting of only a military  
20 judge the record shall be authenticated by the court reporter under the same  
21 conditions which would impose such duty on a member under this section.

22 (c) (1) A complete record (verbatim or, if allowed by the regulations of  
23 the territorial military forces, videotape or similar record) of the proceedings  
24 and testimony shall be prepared:

25 (i) in each general court-martial case in which the sentence  
26 adjudged includes a dismissal or discharge, or, if the sentence adjudged

1 does not include a discharge, any other punishment which exceeds that  
2 which may otherwise be adjudged by a special court-martial; and

3 (ii) in each special court-martial case in which the sentence  
4 adjudged includes a bad-conduct discharge.

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

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

10 *SOURCE: UCMJ ARTICLE 54.*

## 11 SUBARTICLE VIII.

### 12 SENTENCES.

13 **§63721. Cruel and unusual punishments prohibited.** Punishment by  
14 flogging, or by branding, marking, or tattooing on the body, or any other  
15 cruel or unusual punishment, may not be adjudged by a court-martial or  
16 inflicted upon any person subject to this Code. The use of irons, single or  
17 double, except for the purpose of safe custody, is prohibited.

18 *SOURCE: UCMJ ARTICLE 55.*

19 **§63721.1. Maximum sentence limits.** The punishment which a court-  
20 martial may direct for an offense may not exceed such limits prescribed by  
21 Guam law and/or this Code nor limits prescribed by disciplinary regulations.

22 *SOURCE: UCMJ ARTICLE 56.*

#### 23 **§63721.2. Effective day of sentences.**

24 (a) Whenever a sentence of a court-martial as lawfully adjudged and  
25 approved includes a forfeiture of pay or allowances in addition to  
26 confinement not suspended or deferred, the forfeiture may apply to pay and

1 allowances becoming due on or after the date the sentence is approved by the  
2 convening authority. No forfeiture may extend to any pay or allowances  
3 accrued before that date.

4 (b) Any period of confinement included in a sentence of a court-martial  
5 begins to run from the date the sentence is adjudged by the court-martial, but  
6 periods during which the sentence to confinement is suspended or deferred  
7 shall be excluded in computing the service of the term of confinement.

8 (c) On application by an accused who is under sentence to confinement  
9 that has not been ordered executed, the convening authority or, if the accused  
10 is no longer under his jurisdiction, the officer exercising general court-martial  
11 jurisdiction over the command to which the accused is currently assigned,  
12 may in his sole discretion defer service of the sentence to confinement. The  
13 deferment shall terminate when the sentence is ordered executed. The  
14 deferment may be rescinded at any time by the officer who granted it or, if the  
15 accused is no longer under his jurisdiction, by the officer exercising general  
16 court-martial jurisdiction over the command to which the accused is currently  
17 assigned.

18 (d) In territorial military forces not in federal service, no sentence of  
19 dismissal, dishonorable discharge, or bad-conduct discharge may be executed  
20 until it is approved by the Governor.

21 (e) All other sentences of court-martial are effective on the date  
22 ordered executed.

23 *SOURCE: UCMJ ARTICLE 57.*

24 **§63721.3. Execution of confinement.**

25 (a) A sentence of confinement adjudged by a military court, whether or  
26 not the sentence includes discharge or dismissal, and whether or not the

1 discharge or dismissal has been executed, may be carried into execution by  
2 confinement in any place of confinement under the control of the territorial  
3 military forces or in penal or correctional institution under the control of the  
4 Territory of Guam, or which the Territory of Guam or any political  
5 subdivision thereof may control or be allowed to use. Persons so confined in  
6 penal or correctional institution not under the control of territorial military  
7 forces are subject to the same discipline and treatment as persons confined or  
8 committed by the courts of Guam or in the place in which the institution is  
9 situated.

10 (b) The omission of the words "hard labor" from any sentence or  
11 punishment of a court-martial adjudging confinement does not deprive the  
12 authority executing that sentence or punishment of the power to require hard  
13 labor as a part of the punishment.

14 (c) The keepers, officers, wardens and directors of correctional  
15 facilities, jails, penitentiaries, prisons or any institution utilized for the  
16 purpose of holding or housing prisoners for the Territory of Guam, or by such  
17 person as he may authorize to act under §63710 of this Code, shall receive  
18 persons ordered into confinement before trial and persons committed to  
19 confinement by a military court and shall confine them according to the law.  
20 No such keeper, officer, warden or director may require payment of any fee  
21 or charge for so receiving or confining a person.

22 *SOURCE: UCMJ ARTICLE 58.*

23 **§63721.4. Sentences: reduction in enlisted grade upon approval.**

24 (a) Unless otherwise provided in regulations to be prescribed by the  
25 Adjutant General, a court-martial sentence of a member, as approved by the

1 convening authority, that includes a dishonorable or bad-conduct discharge  
2 reduces that member to pay grade E-1, effective on the date of that approval.

3 (b) If the sentence of a member who is reduced in pay grade under  
4 subsection (a) is set aside or disapproved, or, as finally approved, does not  
5 include punishment of reduction in rank, the rights and privileges of which he  
6 was deprived because of that reduction shall be restored to him and he is  
7 entitled to the pay and allowances to which he would have been entitled for  
8 the period the reduction was in effect, had he not been so reduced.

9 *SOURCE: UCMJ ARTICLE 58A*

## 10 **SUBARTICLE IX.**

### 11 **POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL.**

#### 12 **§63722. Error of law; lesser included offense.**

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

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

19 *SOURCE: UCMJ ARTICLE 59.*

#### 20 **§63722.1. Action by the convening authority.**

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

23 (b) The accused may submit to the convening authority matters for  
24 consideration by the convening authority with respect to the findings and the  
25 sentence. Such submissions shall be made within thirty (30) days after the  
26 accused has been given an authenticated record of trial and, if applicable, the

1 recommendation of the staff judge advocate or legal officer under subsection  
2 (d) of this section. If the accused shows that additional time is required for the  
3 accused to submit such matters, the convening authority or other person  
4 taking action under this article, for good cause, may extend the period:

5 (1) in the case of a general court-martial or special court-martial  
6 which has adjudged a bad-conduct discharge, for not more than an  
7 additional thirty (30) days;

8 (2) in the case of all other courts-martial, for not more than an  
9 additional twenty (20) days;

10 (3) (i) The time periods used in this subsection shall not apply to  
11 accused and his counsel, if said counsel is detailed military counsel,  
12 counsel and accused are or were on active duty during the trial and  
13 continuously thereafter in which case the time limitations of Article 60,  
14 Uniform Code of Military Justice, Chapter 47, Title 10 United States  
15 Code are applicable were the accused and his military counsel are or  
16 were on duty for the necessary period of time considering time  
17 requirements of said article.

18 (ii) If accused has retained civilian counsel the time limitations in  
19 which to make a submission under subsection (b) shall be governed by  
20 Article 60, Uniform Code of Military Justice, Chapter 47, Title 10 United  
21 States Code.

22 (iii) The accused may waive his right to make a submission to the  
23 convening authority. Such waiver must be in writing and may not be  
24 revoked. For the purposes of subsection (c)(2), the time within which  
25 the accused may make a submission under this subsection shall be

1 deemed to have expired upon the submission of such a waiver to the  
2 convening authority.

3 (c) (1) The authority under this article to modify the findings and  
4 sentence of a court-martial is a matter of command prerogative involving the  
5 sole discretion of the convening authority. Under disciplinary regulations, a  
6 commissioned officer commanding for the time being, a successor in  
7 command, or any person exercising general court-martial jurisdiction may  
8 act under this article in place of the convening authority.

9 (2) Action on the sentence of a court-martial shall be taken by the  
10 convening authority or by another person authorized to act under this  
11 Subarticle. Subject to the disciplinary regulations, such action may be taken  
12 only after consideration of any matters submitted by the accused under  
13 subsection (b) and, if applicable, under subsection (d), or after the time for  
14 submitting such matters expires, whichever is earlier. The convening  
15 authority or any other person taking such action, in his sole discretion, may  
16 approve, disapprove, commute, or suspend the sentence in whole or in part.

17 (3) Action on the findings of a court-martial by the convening authority  
18 or other person acting on the sentence is not required. However, such person,  
19 in his sole discretion, may:

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

22 (ii) change a finding of guilty to a charge or specification to a  
23 finding of guilty of an offense that is a lesser offense of the offense  
24 stated in the charge or specification.

25 (d) Before acting under this Subarticle on any general court-martial or  
26 special court-martial case that includes a bad-conduct discharge, the

1 convening authority or other person taking action under this article shall  
2 obtain and consider the written recommendation of the staff judge advocate  
3 or legal officer. The convening authority or other person taking action under  
4 this article shall refer the record of trial to his staff judge advocate or legal  
5 officer, and the staff judge advocate or legal officer shall use such record in  
6 the preparation of his recommendation. The recommendation of the staff  
7 judge advocate or legal officer shall include such matters as may be  
8 prescribed by regulation and shall be served on the accused, who shall have a  
9 reasonable time from the date of receipt in which to submit any matter in  
10 response. In no case shall such period of time be less than periods set out in  
11 §63722.1(c). Failure to object in the response to the recommendation or to any  
12 matter attached to the recommendation waives the right to object thereto.

13 (e) (1) The convening authority or other person taking action under  
14 this article, in his sole discretion, may order a proceeding in revision or a  
15 rehearing.

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

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

23 (ii) reconsider a finding of not guilty of any charge, unless there  
24 has been a finding of guilty under a specification laid under that charge,  
25 which sufficiently alleges a violation of some Subarticle of this Code; or



1 (iii) increase the severity of some part of the sentence unless the  
2 sentence prescribed for the offense is mandatory.

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

12 *SOURCE: UCMJ ARTICLE 60.*

13 **§63722.2. Reserved.**

14 **§63722.3. Reserved.**

15 **§63722.4. Rehearings.** Each rehearing under the Code shall take place  
16 before a court-martial composed of members of the first court-martial which  
17 first heard the case. Upon a rehearing the accused may not be tried for any  
18 offense of which he was found not guilty by the first court-martial, and no  
19 sentence in excess of or more severe than the original sentence may be  
20 imposed, unless the sentence is based upon a finding of guilty of an offense  
21 not considered upon the merits in the original proceedings, or unless the  
22 sentence prescribed for the offense is mandatory. If the sentence approved  
23 after the first court-martial was in accordance with a pretrial agreement and  
24 the accused at the rehearing changes his plea with respect to the charges or  
25 specifications upon which the pretrial agreement was based, or otherwise  
26 does not comply with the pretrial agreement, the sentence as to those charges

1 or specifications may include any punishment not in excess of that lawfully  
2 adjudged at the first court-martial.

3 *SOURCE: UCMJ ARTICLE 63.*

4 **§63722.5. Review by a judge advocate.**

5 (a) Each case in which there has been a finding of guilty shall be  
6 reviewed by a judge advocate or legal officer. A judge advocate or legal  
7 officer may not review a case under this subsection if he has acted in the same  
8 case as an accuser, investigating officer, member of the court, military judge,  
9 or counsel or has otherwise acted on behalf of the prosecution or defense.  
10 The judge advocate's or legal officer's review shall be in writing and shall  
11 contain the following:

12 (1) Conclusions as to whether:

13 (i) the court had jurisdiction over the accused and the  
14 offense;

15 (ii) the charge and specification stated an offense; and

16 (iii) the sentence was within the limits prescribed as a  
17 matter of law.

18 (2) A response to each allegation of error made in writing by the  
19 accused.

20 (3) If the case is sent for action under subsection (b), a  
21 recommendation as to the appropriate action to be taken and an  
22 opinion as to whether corrective action is required as a matter of law.

23 (b) The record of trial and related documents in each case reviewed  
24 under subsection (a) shall be sent for action to the person exercising general  
25 court-martial jurisdiction over the accused at the time the court was  
26 convened, or to that of the person's successor in command, if:

1 (d) If the final action of the court-martial has resulted in an acquittal of  
2 all charges and specifications, the opinion of the judge advocate or legal  
3 officer is limited to questions of jurisdiction.

4 *SOURCE: UCMJ ARTICLE 64.*

5 **§63722.6. Disposition of records.**

6 (a) In a case subject to review by §63722.11 of this Code in which the  
7 right to such review is not waived, the record of trial and action thereon shall  
8 be transmitted to the Territorial Judge Advocate General for appropriate  
9 action.

10 (b) Except as otherwise required by the Code, all other records of trial  
11 and related documents shall be transmitted to the Territorial Judge Advocate  
12 General and disposed of as he sees fit or as the Adjutant General may  
13 prescribe by regulation.

14 *SOURCE: UCMJ ARTICLE 65.*

15 **§63722.7. Reserved.**

16 **§63722.8. Reserved.**

17 **§63722.9. Judicial review by territorial appellate court.**

18 (a) An accused, who was tried by a court-martial and who still deems  
19 himself aggrieved after he has exhausted all of his rights of military review  
20 under this Code, may, if provided for by disciplinary regulations, appeal the  
21 judgment or sentence of the court-martial, as may have been modified on  
22 review under this Code prior to judicial review under this article to appellate  
23 courts as may be available to cases appealed from the Superior Court of  
24 Guam.

25 (b) The filing of an appeal pursuant to subsection (a) shall not of itself  
26 stay the execution of the judgment or sentence appealed from, but the

1 appellate court may stay the same upon motion upon such conditions as it  
2 may deem proper, notwithstanding any conflicting or contrary provision of  
3 this Code or disciplinary regulations relating to the effective date or  
4 execution of sentences or any other contrary provision of law.

5 (c) Counsel on appeal shall be at the expense of the accused unless the  
6 accused, upon written request to the Territorial Judge Advocate General,  
7 requests representation on appeal and furnishes documentation of his or her  
8 financial inability to retain counsel, and the Territorial Judge Advocate  
9 certifies the accused's financial inability to the Adjutant General, then in that  
10 case the Adjutant General may authorize the Territorial Judge Advocate  
11 General to provide representation for the accused on said appeal and said  
12 counsel must be certified competent as provided by this Code. The Territory  
13 of Guam shall be responsible for any compensation owed counsel appointed  
14 by this article and said counsel shall be paid as any other attorney in criminal  
15 court appointment matters.

16 **§63722.10. Reserved.**

17 **§63722.11. Review in the office of the Territorial Judge Advocate**  
18 **General.**

19 (a) The record of trial in each general court-martial that was not  
20 reviewed by the Territorial Judge Advocate General in the §63722.5 judge  
21 advocate or legal officer review of this Code shall be examined by the  
22 Territorial Judge Advocate General if there is a finding of guilty and the  
23 accused does not waive or withdraw his right to review. If any part of the  
24 findings or sentence is found to be unsupported in law or, if reassessment of  
25 the sentence is appropriate, the Territorial Judge Advocate General may  
26 modify or set aside the findings or sentence or both.

1 (b) The findings or sentence, or both, in a court-martial case not  
2 reviewed under subsection (a) may be modified or set aside, in whole or in  
3 part, by the Territorial Judge Advocate General on the ground of newly  
4 discovered evidence, fraud on the court, lack of jurisdiction over the accused  
5 or the offense, error prejudicial to the substantial rights of the accused, or the  
6 appropriateness of the sentence. If such case is considered upon application  
7 of the accused, the application must be filed in the office of the Territorial  
8 Judge Advocate General by the accused on or before the last day of the two-  
9 year period beginning on the date the sentence is approved under §63722.1 of  
10 this Code, unless the accused established good cause for failure to file within  
11 that time.

12 (c) If the Territorial Judge Advocate General sets aside the findings or  
13 sentence, he may, except when the setting aside is based on lack of sufficient  
14 evidence in the record to support the findings, order a rehearing. If he sets  
15 aside the findings and sentence and does not order a rehearing, he shall order  
16 that the charges be dismissed. If the Territorial Judge Advocate General  
17 orders a rehearing but the convening authority finds a rehearing impractical,  
18 the convening authority shall dismiss the charges.

19 *SOURCE: UCMJ ARTICLE 69.*

20 **§63722.12. Reserved.**

21 **§63722.13. Execution of sentence of dismissal, bad-conduct discharge**  
22 **or dishonorable discharge; suspension of sentence.**

23 (a) When a sentence extends to dismissal or a dishonorable or bad-  
24 conduct discharge, that part of the sentence providing for dismissal, or  
25 dishonorable or bad-conduct discharge may not be executed until approved

1 by the Governor. The Governor may commute, remit, or suspend the  
2 sentence, or any part of the sentence, as he sees fit.

3 (b) All other court-martial sentences, unless suspended or deferred,  
4 may be ordered executed by the convening authority when approved by him.  
5 The military judge, summary court officer, or the convening authority may  
6 suspend the execution of any sentence.

7 *SOURCE: UCMJ ARTICLE 71.*

8 **§63722.14. Vacation of suspension.**

9 (a) Before the vacation of the suspension of any court-martial sentence  
10 which includes dismissal, dishonorable or bad-conduct discharge, the officer  
11 having general court-martial jurisdiction over officer or enlisted probationer  
12 or special court-martial jurisdiction over enlisted probationer shall hold a  
13 hearing on the alleged violation of probation. The probationer shall be  
14 represented by counsel if he so desires.

15 (b) The record of the hearing and the recommendation of the officer  
16 having special court-martial jurisdiction shall be sent for action to the officer  
17 exercising general court-martial jurisdiction over the probationer. If he  
18 vacates the suspension, any unexecuted part of the sentence, except a  
19 dismissal, dishonorable or bad-conduct discharge, shall be executed. The  
20 vacation of the suspension of a dismissal, dishonorable or bad-conduct  
21 discharge is not effective until approved by the Governor.

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

25 *SOURCE: UCMJ ARTICLE 72.*

1           **§63722.15. Petition for new trial.** At any time within two (2) years after  
2 approval by the convening authority and/or the Governor of a court-martial  
3 sentence, the accused may petition the Territorial Judge Advocate General for  
4 a new trial on the grounds of newly discovered evidence or fraud on the  
5 court.

6           *SOURCE: UCMJ ARTICLE 73.*

7           **§63722.16. Remission and suspension.**

8           (a) The Governor may and, when designated by him, the Adjutant  
9 General, Territorial Judge Advocate General or commanding officer may  
10 remit or suspend any part or amount of the unexecuted sentence, including all  
11 uncollected forfeitures.

12           (b) The Governor may, for good cause, substitute an administrative  
13 form of discharge for a discharge or dismissal.

14           *SOURCE: UCMJ ARTICLE 74.*

15           **§63722.17. Restoration.**

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

22           (b) If a previously executed sentence of dishonorable discharge or bad-  
23 conduct discharge is not imposed on a new trial, the Governor may substitute  
24 therefore a form of discharge authorized for administrative issuance unless  
25 the accused is to serve out the remainder of his enlistment.

1 (c) If a previously executed sentence of dismissal is not imposed on a  
2 new trial, the Governor may substitute therefore a form of discharge  
3 authorized for administrative issue. The commissioned officer dismissed by  
4 that sentence may be, to correct an injustice, reappointed by the Governor  
5 alone, to such commissioned grade and with such rank as in the opinion of the  
6 Governor that former officer would have attained had he not been dismissed.  
7 The reappointment of such former officer may not be made if a position  
8 vacancy is not available under applicable tables of organization.  
9 Reappointment may not be made if the commissioned officer dismissed was  
10 convicted of criminal acts which would be grounds for elimination under  
11 administrative personnel regulations. If the dismissed commissioned officer  
12 is reappointed all the time between the dismissal and reappointment shall be  
13 considered as service for all purposes.

14 *SOURCE: UCMJ ARTICLE 75.*

15 **§63722.18. Reserved.**

16 **§63722.19. Reserved.**

17 **SUBARTICLE X.**  
18 **PUNITIVE ARTICLES.**

19 **§63723. Principals.**

20 A principal is any person punishable under this Code who:

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

23 (2) causes an act to be done which if directly performed by him  
24 would be punishable by this Code.

25 *SOURCE: UCMJ ARTICLE 77.*



1           **§63723.1. Accessory after the fact.** Any person subject to this Code  
2 who, knowing that an offense punishable by this Code has been committed,  
3 receives, comforts, or assists the offender in order to hinder or prevent his  
4 apprehension, trial, or punishment shall be punished as a court-martial may  
5 direct.

6           *SOURCE: UCMJ ARTICLE 78.*

7           **§63723.2. Conviction of lesser included in the offense.** An accused may  
8 be found guilty of an offense necessarily included in the offense charged or of  
9 an attempt to commit either the offense charged or an offense necessarily  
10 included therein.

11           *SOURCE: UCMJ ARTICLE 79.*

12           **§63723.3. Attempts.**

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

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

19           (c) Any person subject to this Code may be convicted of an attempt to  
20 commit an offense although it appears on the trial that the offense was  
21 consummated.

22           *SOURCE: UCMJ ARTICLE 80.*

23           **§63723.4. Conspiracy.** Any person subject to this Code who conspires  
24 with any other person to commit an offense under this Code shall, if one or  
25 more of the conspirators does an act to effect the object of the conspiracy, be  
26 punished as a court-martial may direct.

1           SOURCE: UCMJ ARTICLE 81.

2           **§63723.5. Solicitation.**

3           (a) Any person subject to this Code who solicits or advises another or  
4 others to desert in violation of §63723.8 of this Code or mutiny in violation of  
5 §63723.17 of this Code shall, if the offense solicited or advised is attempted or  
6 committed, be punished with the punishment provided for the commission of  
7 the offense, but if the offense solicited or advised is not committed or  
8 attempted, he shall be punished as a court-martial may direct.

9           (b) Any person subject to this Code who solicits or advises another or  
10 others to commit an act of misbehavior before the enemy or opposing forces  
11 or individuals in violation of §63723.22 of this Code or sedition in violation of  
12 §63723.17 of this Code shall, if the offense solicited or advised is committed,  
13 be punished with the punishment provided for the commission of the offense,  
14 but, if the offense solicited or advised is not committed, he shall be punished  
15 as a court-martial may direct.

16           SOURCE: UCMJ ARTICLE 82.

17           **§63723.6. Fraudulent enlistment, appointment, or separation.** Any  
18 person who engages in the following shall be punished as a court-martial  
19 may direct:

20           (1) procures his own enlistment or appointment in the territorial  
21 military forces by knowingly false representation or deliberate  
22 concealment as to his qualifications for the enlistment or appointment  
23 and receives pay or allowances thereunder, or

24           (2) procures his own separation from the armed forces by  
25 knowingly false representation or deliberate concealment as to his  
26 eligibility for that separation.

1 SOURCE: UCMJ ARTICLE 83.

2 **§63723.7. Unlawful enlistment, appointment, or separation.** Any  
3 person subject to this Code who effects an enlistment or appointment in or  
4 separation from the territorial military forces of any person who is known to  
5 him to be ineligible for that enlistment, appointment, or separation because it  
6 is prohibited by law, regulation, or order shall be punished as a court-martial  
7 may direct.

8 SOURCE: UCMJ ARTICLE 84.

9 **§63723.8. Desertion.**

10 (a) Any member of the territorial military forces is guilty of desertion  
11 who:

12 (1) without authority goes or remains absent from his unit;

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

15 (3) without being regularly separated from one of the territorial  
16 military forces enlists or accepts an appointment in the same or another  
17 of the territorial military forces or one of the armed forces without fully  
18 disclosing the fact that he has not been regularly separated, or enters  
19 any foreign armed service except when authorized by the United States  
20 and the Territory of Guam.

21 (b) Any commissioned officer of the territorial military forces who,  
22 after tender of his resignation and before notice of its acceptance, quits his  
23 post or proper duties without leave and with intent to remain away  
24 therefrom permanently is guilty of desertion.

25 (c) Any person found guilty of desertion or attempt to desert shall be  
26 punished as a court-martial may direct.

1           SOURCE: UCMJ ARTICLE 85.

2           **§63723.9. Absence without leave.** Any member of the territorial  
3 military forces shall be punished as a court-martial may direct who, without  
4 authority:

5           (a) fails to go to his appointed place of duty at the time prescribed;

6           (b) goes from that place; or

7           (c) absents himself or remains absent from his unit, organization, or  
8 place of duty at which he is required to be at the time prescribed.

9           SOURCE: UCMJ ARTICLE 86.

10          **§63723.10. Missing movement.** Any person subject to this Code who  
11 through neglect or design misses the movement of a ship, aircraft, or unit  
12 with which he is required in the course of duty to move shall be punished as a  
13 court-martial may direct.

14          SOURCE: UCMJ ARTICLE 87.

15          **§63723.11. Contempt toward officials.** Any commissioned officer who  
16 uses contemptuous words against the President, the Vice President, Congress,  
17 the Secretary of Defense, the Secretary of Army, the Secretary of Air Force,  
18 the Governor or Legislature of Guam or any State, Territory,  
19 Commonwealth of the United States in which he is on duty or present shall be  
20 punished as a court-martial may direct.

21          SOURCE: UCMJ ARTICLE 88.

22          **§63723.12. Disrespect toward superior commissioned officer.** Any  
23 person subject to this Code who behaves with disrespect toward his superior  
24 commissioned officer shall be punished as a court-martial may direct.

25          SOURCE: UCMJ ARTICLE 89.

1           **§63723.13. Assaulting or willfully disobeying superior commissioned**  
2 **officer.** Any person subject to this Code shall be punished as a court-martial  
3 may direct if that person:

4           (a) strikes his superior commissioned officer or draws or lifts up any  
5 weapon or offers any violence against him while he is in the execution of his  
6 office; or

7           (b) willfully disobeys a lawful command of his superior commissioned  
8 officer.

9           *SOURCE: UCMJ ARTICLE 90.*

10           **§63723.14. Insubordinate conduct toward warrant officer or**  
11 **noncommissioned officer.** Any warrant officer or enlisted member shall be  
12 punished as a court-martial may direct if that person:

13           (a) strikes or assaults a warrant or noncommissioned officer while that  
14 officer is in the execution of his office;

15           (b) willfully disobeys the lawful order of a warrant officer or  
16 noncommissioned officer; or

17           (c) treats with contempt or is disrespectful in language or deportment  
18 toward a warrant officer or noncommissioned officer while that officer is in  
19 the execution of his office.

20           *SOURCE: UCMJ ARTICLE 91.*

21           **§63723.15. Failure to obey order or regulation.** Any person subject to  
22 this Code shall be punished as a court-martial may direct if that person:

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

24           (b) having knowledge of any other lawful order issued by a member of  
25 the territorial military forces, which it is his duty to obey, fails to obey the  
26 order; or

1 (c) is derelict in the performance of his duties.

2 *SOURCE: UCMJ ARTICLE 92.*

3 **§63723.16. Cruelty and maltreatment.** Any person subject to this Code  
4 who is guilty of cruelty toward, or oppression or maltreatment of, any person  
5 subject to his orders shall be punished as a court-martial may direct.

6 *SOURCE: UCMJ ARTICLE 93.*

7 **§63723.17. Mutiny or sedition.**

8 (a) Any person subject to this Code is guilty of a failure to suppress or  
9 report a mutiny or sedition if that person:

10 (1) with intent to usurp or override lawful military authority,  
11 refuses, in concert with any other person, to obey orders or otherwise  
12 do his duty or creates any violence or disturbance is guilty of mutiny;

13 (2) with intent to cause the overthrow or destruction of lawful  
14 civil authority, creates, in concert with any other person, revolt,  
15 violence, or other disturbance against that authority is guilty of  
16 sedition; or

17 (3) fails to do his utmost to prevent and suppress a mutiny or  
18 sedition being committed in his presence, or fails to take all reasonable  
19 means to inform his superior commissioned officer or commanding  
20 officer of a mutiny or sedition which he knows or has reason to believe  
21 is taking place.

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

25 *SOURCE: UCMJ ARTICLE 94.*

1           **§63723.18. Resistance, breach of arrest, and escape.** Any person subject  
2 to this Code who resists apprehension or breaks arrest or who escapes from  
3 custody or confinement shall be punished as a court-martial may direct.

4           *SOURCE: UCMJ ARTICLE 95.*

5           **§63723.19. Releasing prisoner without proper authority.** Any person  
6 subject to this Code who, without proper authority, releases any prisoner  
7 committed to his charge, or who through neglect or design suffers any such  
8 prisoner to escape, shall be punished as a court-martial may direct, whether  
9 or not the prisoner was committed in strict compliance with the law.

10          *SOURCE: UCMJ ARTICLE 96.*

11          **§63723.20. Unlawful detention.** Any person subject to this Code who,  
12 except as provided by law, apprehends, arrests, or confines any person shall  
13 be punished as a court-martial may direct.

14          *SOURCE: UCMJ ARTICLE 97.*

15          **§63723.21. Noncompliance with procedural rules.** Any person subject  
16 to this Code shall be punished as a court-martial may direct if that person:

17           (a) is responsible for unnecessary delay in the disposition of any case of  
18 a person accused of an offense under this Code; or

19           (b) knowingly and intentionally fails to enforce or comply with any  
20 provision of this Code regulating the proceedings before, during, or after  
21 trial of an accused.

22          *SOURCE: UCMJ ARTICLE 98.*

23          **§63723.22. Misbehavior before the enemy.** Any person subject to this  
24 Code shall be punished as a court-martial may direct if that person before or  
25 in the presence of the enemy, opposing forces or individuals:

26           (a) runs away;

1 (b) shamefully abandons, surrenders, or delivers up any command,  
2 unit, place, or military property which it is his duty to defend;

3 (c) through disobedience, neglect, or intentional misconduct endangers  
4 the safety of any such command, unit, place, or military property;

5 (d) casts away his arms or ammunition;

6 (e) is guilty of cowardly conduct;

7 (f) quits his place of duty to plunder or pillage;

8 (g) causes false alarms in any command, unit, or place under control of  
9 the territorial military forces;

10 (h) willfully fails to do his utmost to encounter, engage, capture, or  
11 destroy any enemy troops, insurgents, combatants, vessels, aircraft, or any  
12 other thing, which it is his duty so to encounter, engage, capture, or destroy;

13 or

14 (i) does not afford all practicable relief and assistance to any troops,  
15 combatants, vessels, or aircraft of the territorial military forces and/or armed  
16 forces belonging to the United States or their allies when engaged in battle.

17 *SOURCE: UCMJ ARTICLE 99.*

18 **§63723.23. Subordinate compelling surrender.** Any person subject to  
19 this Code shall be punished as a court-martial may direct compels or attempts  
20 to compel the commander of any place, vessel, aircraft, or other military  
21 property, or of any body of members of the territorial military forces, to give  
22 it up to an enemy without proper authority.

23 *SOURCE: UCMJ ARTICLE 100.*

24 **§63723.24. Improper use of countersign.** Any person subject to the  
25 Code who in time of insurrection or civil disturbance discloses the parole or  
26 countersign to any person not entitled to receive it or who gives to another



1 who is entitled to receive and use the parole or countersign a different parole  
2 or countersign from that which, to his knowledge, he was authorized to give,  
3 shall be punished as a court-martial may direct.

4 *SOURCE: UCMJ ARTICLE 101.*

5 **§63723.25. Forcing a safeguard.** Any person subject to this Code who  
6 forces a safeguard shall be punished as a court-martial may direct.

7 *SOURCE: UCMJ ARTICLE 102.*

8 **§63723.26. Captured or abandoned property.**

9 (a) All persons subject to this Code shall secure all public property  
10 taken from the enemy or insurrectionist for the service of the Territory and/or  
11 the United States, and shall give notice and turn over to the proper authority  
12 without delay all captured or abandoned property in their possession,  
13 custody, or control.

14 (b) Any person subject to this Code shall be punished as a court-martial  
15 may direct if that person:

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

17 (2) buys, sells, trades, or in any way deals in or disposes of  
18 captured or abandoned property, whereby he receives or expects any  
19 profit, benefit, or advantage to himself or another directly or indirectly  
20 connected with himself; or

21 (3) engages in looting or pillaging.

22 *SOURCE: UCMJ ARTICLE 103.*

23 **§63723.27. Aiding the enemy or insurrectionist.** Any person subject to  
24 this Code shall be punished as a court-martial may direct if that person:

25 (a) aids, attempts to aid, the enemy or insurrectionist with arms,  
26 ammunition, supplies, money, or other things; or

1 (b) without proper authority, knowingly harbors or protects or gives  
2 intelligence to or communicates or corresponds with or holds intercourse  
3 with the enemy or insurrectionist, either directly or indirectly.

4 SOURCE: UCMJ ARTICLE 104.

5 **§63723.28. Misconduct of a prisoner.** Any person subject to this Code  
6 shall be punished as a court-martial may direct if that person, while in the  
7 hands of the enemy or an insurgent in time of insurrection:

8 (a) for the purpose of securing favorable treatment by his captors acts  
9 without proper authority in a manner contrary to law, custom, or regulation,  
10 to the detriment of others of whatever nationality held by the enemy or  
11 insurgents as civilian or military prisoners; or

12 (b) while in a position of authority over such persons maltreats them  
13 without justifiable cause.

14 SOURCE: UCMJ ARTICLE 105.

15 **§63723.29. Reserved.**

16 **§63723.30. Reserved.**

17 **§63723.31. False official statements.** Any person subject to this Code  
18 who, with intent to deceive, signs any false record, return, regulation, order,  
19 or other official document, knowing it to be false, or makes any other false  
20 official statement knowing it to be false, shall be punished as a court-martial  
21 may direct.

22 SOURCE: UCMJ ARTICLE 107.

23 **§63723.32. Military property of United States and/or the Territory of**  
24 **Guam: loss, damage, destruction, or wrongful disposition.** Any person  
25 subject to this Code shall be punished as a court-martial may direct if that  
26 person, without proper authority:

1 (a) sells or otherwise disposes of;  
2 (b) willfully or through neglect damages, destroys, or loses; or  
3 (c) willfully or through neglect suffers to be lost, damaged, sold, or  
4 wrongfully disposed of; any military property of the United States and/or the  
5 Territory of Guam.

6 *SOURCE: UCMJ ARTICLE 108.*

7 **§63723.33. Property other than military property of the United States**  
8 **and/or the Territory of Guam: waste, spoilage, or destruction.** Any person  
9 subject to this Code who willfully or recklessly wastes, spoils, or otherwise  
10 willfully and wrongfully destroys or damages any property other than  
11 military property of the United States and/or the Territory of Guam shall be  
12 punished as a court-martial may direct.

13 *SOURCE: UCMJ ARTICLE 109.*

14 **§63723.34. Improper hazarding of vessel.**

15 (a) Any person subject to this Code who willfully and wrongfully  
16 hazards or suffers to be hazard by any vessel of the territorial military forces  
17 and/or the Armed Forces of the United States shall be punished as a court-  
18 martial may direct.

19 (b) Any person subject to this Code who negligently hazards or suffers  
20 to hazard any vessel of the territorial military forces and/or the Armed  
21 Forces of the United States shall be punished as the court-martial may direct.

22 *SOURCE: UCMJ ARTICLE 110.*

23 **§63723.35. Reserved.**

24 **§63723.36. Drunk on duty.** Any person subject to this Code other than a  
25 sentinel or look-out who is found drunk on duty, shall be punished as a court-  
26 martial may direct.

1           SOURCE: UCMJ ARTICLE 112.

2           **§63723.37. Wrongful use, possession, etc., of controlled substances.**

3           (a) Any person subject to this Code who wrongfully uses, possesses,  
4 manufactures, distributes, imports into the Territory of Guam or the customs  
5 territory of the United States, or introduces into an installation, vessel,  
6 vehicle, or aircraft used by or under the control of the Armed Forces a  
7 substance described in subsection (b) shall be punished as a court-martial may  
8 direct.

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

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

13           (2) Any substance not specified in item (1) that is listed on a  
14 schedule of controlled substances prescribed by the President of the  
15 United States for purposes of this article.

16           (3) Any other substance not specified in item (1) or contained on a  
17 list prescribed by the President of the United States under item (2) that is  
18 listed in schedules I through V of §202 of the Controlled Substances Act  
19 (21 U.S.C. 812).

20           SOURCE: UCMJ ARTICLE 112A.

21           **§63723.38. Misbehavior of sentinel.** Any sentinel or look-out who is  
22 found drunk or sleeping upon his post, or leaves it before he is regularly  
23 relieved, shall be punished as a court-martial may direct.

24           SOURCE: UCMJ ARTICLE 113.

25           **§63723.39. Reserved.**

1           **§63723.40. Malingering.** Any person subject to this Code shall be  
2 punished as a court-martial may direct if that person, for the purpose of  
3 avoiding work, duty, or service:

4           (a) feigns illness, physical disablement, mental lapse or derangement;

5 or

6           (b) intentionally inflicts self-injury.

7           *SOURCE: UCMJ ARTICLE 115.*

8           **§63723.41. Reserved.**

9           **§63723.42. Provoking speeches or gestures.** Any person subject to this  
10 Code who uses provoking or reproachful words or gestures toward any other  
11 person subject to this Code shall be punished as the court-martial may direct.

12           *SOURCE: UCMJ ARTICLE 117.*

13           **§63723.43. Reserved.**

14           **§63723.44. Reserved.**

15           **§63723.45. Reserved.**

16           **§63723.46. Wrongful appropriation.** Any person subject to this Code  
17 who wrongfully takes, obtains, or withholds, by any means, from the  
18 possession of the owner or of any other person any money, personal  
19 property, or article of value of any kind with intent temporarily to deprive or  
20 defraud another person of the use and benefit of property or to appropriate it  
21 to his own use or the use of any other person other than the owner, is guilty of  
22 wrongful appropriation and shall, upon conviction, be punished as the court-  
23 martial may direct.

24           *SOURCE: UCMJ ARTICLE 121.*

25           **§63723.47. Reserved.**

26           **§63723.48. Reserved.**

- 1           §63723.49. Reserved.
- 2           §63723.50. Reserved.
- 3           §63723.51. Reserved.
- 4           §63723.52. Reserved.
- 5           §63723.53. Reserved.
- 6           §63723.54. Reserved.
- 7           §63723.55. Reserved.
- 8           §63723.56. Reserved.
- 9           §63723.57. Reserved.
- 10          §63723.58. Fraud against the United States and/or the Territory of  
11 Guam. Any person subject to this Code shall, upon conviction, be punished as  
12 a court-martial may direct:
- 13           (a) who, knowing it to be false or fraudulent,
- 14                 (1) makes any claim against the United States or officer thereof;
- 15                 (2) makes any claim against the Territory of Guam or officer  
16 thereof;
- 17                 (3) presents to any person in the civil or military service thereof,  
18 for approval or payment, any claim against the United States or any  
19 officer thereof; or
- 20                 (4) presents to any person in the civil or territorial military  
21 service thereof, for approval or payment, any claim against the  
22 Territory of Guam or any officer thereof;
- 23           (b) who, for the purpose of obtaining the approval, allowance, or  
24 payment against the United States or any officer thereof and/or the Territory  
25 of Guam or any officer thereof,

1 (1) makes or uses any writing or other paper knowing it to  
2 contain any false or fraudulent statements;

3 (2) makes any oath to any fact or to any writing or other paper  
4 knowing the oath to be false; or

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

8 (c) who, having charge, possession, custody, or control of any money,  
9 or other property of the United States and/or the Territory of Guam, forces  
10 of the United States, knowingly delivers to any person having authority to  
11 receive it, any amount thereof less than that for which he receives a  
12 certificate or receipt; or

13 (d) who, being authorized to make or deliver any paper certifying the  
14 receipt of any property of the United States and/or the Territory of Guam  
15 furnished or intended for the territorial military forces or the Armed Forces of  
16 the United States, makes or delivers to any person such writing without  
17 having full knowledge of the truth of the statements therein contained and  
18 with intent to defraud the United States or the Territory of Guam.

19 *SOURCE: UCMJ ARTICLE 132.*

20 **§63723.59. Conduct unbecoming of an officer and gentleman.** Any  
21 commissioned officer or cadet who is convicted of conduct unbecoming an  
22 officer and a gentleman shall be punished as a court-martial may direct.

23 *SOURCE: UCMJ ARTICLE 133.*

24 **§63723.60. General article.**

25 (a) Though not specifically mentioned in this Code, all violations of the  
26 criminal laws of the Territory of Guam or the criminal laws of the federal

1 government of the United States, of which persons subject to the Code may  
2 be guilty, shall be taken cognizance of by a general, special or summary  
3 court-martial according to the nature and degree of the offense, and  
4 punishment shall, at the discretion of that court, be limited to the maximum  
5 punishment allowed for such crime or offense by the criminal statutes of said  
6 Territory or United States.

7 (b) Although not specifically mentioned in this Code, all disorders and  
8 neglects to the prejudice of good order and discipline in the territorial military  
9 forces, all conduct of a nature to bring discredit upon the territorial military  
10 forces, and crimes and offenses not capital, of which persons subject to this  
11 Code may be guilty, shall be taken cognizance of by a general, special or  
12 summary court-martial, according to the punishment allowed for such crime  
13 or offense by the criminal statutes of said Territory or United States.

14 (c) Although not specifically mentioned in this Code, all disorders and  
15 neglects to the prejudice of good order and discipline in the territorial military  
16 forces, all conduct of a nature to bring discredit upon the territorial military  
17 forces, and crimes and offenses not capital, of which persons subject to this  
18 Code may be guilty, shall be taken cognizance of by a general, special or  
19 summary court-martial, according to the nature and degree of the offense,  
20 and shall be punished at the discretion of that court.

21 (d) Specifically mentioning a violation in this Code does not preclude  
22 the general, special or summary court-martial from taking cognizance of all  
23 violations of the criminal laws of the Territory of Guam or the criminal laws  
24 of the federal government of the United States as authorized in (a) and (b)  
25 above, of which persons subject to this Code may be guilty, and punishment  
26 shall, at the discretion of that court, be limited to the maximum punishment



1 allowed for such crime or offense by the criminal statutes of said territory or  
2 United States. It is within the sole discretion of the convening authority to  
3 determine whether to charge under the specific provisions of this Code or  
4 under this general article §63723.60. The convening authority may charge, at  
5 his own discretion, either under a specific provision of this Code or under this  
6 general article §63723.60 for the same offense but not both.

7 *SOURCE: UCMJ ARTICLE 134.*

8 **§63723.61. Civilian jurisdiction.** Inclusion of offenses within this Code  
9 does not preclude the prosecution of such criminal conduct under other  
10 territorial laws in the Superior Court of Guam unless prohibited by the  
11 United States Constitution; **provided**, however, that nothing in this Code  
12 shall be construed to give jurisdiction of the courts established by this Code  
13 over any person not in the territorial military forces.

#### 14 **SUBARTICLE XI.**

#### 15 **MISCELLANEOUS PROVISIONS.**

#### 16 **§63724. Courts of inquiry.**

17 (a) Courts of inquiry to investigate any matter may be convened by any  
18 person authorized to convene a general court-martial or by any other person  
19 designated by the Adjutant General for that purpose, whether or not the  
20 persons involved have requested such inquiry.

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

24 (c) Any person subject to this Code whose conduct is subject to inquiry  
25 shall be designated as a party. Any person subject to the Code or employed by  
26 the Department of Military Affairs who has a direct interest in the subject of

1 inquiry has the right to be designated as a party upon request to the court.  
2 Any person designated as a party shall be given due notice and has the right  
3 to be present, to be represented by counsel, to cross-examine witnesses, and  
4 to introduce evidence.

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

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

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

11 (g) Courts of inquiry shall make findings of fact but may not express  
12 authority.

13 (h) Each court of inquiry shall keep a record of its proceedings, which  
14 shall be authenticated by the signatures of the president and counsel for the  
15 court and forwarded to the convening authority. If the record cannot be  
16 authenticated by the president, it shall be signed by a member in lieu of the  
17 president. If the record cannot be authenticated by the counsel for the court,  
18 it shall be signed by a member in lieu of the counsel.

19 *SOURCE: UCMJ ARTICLE 135.*

20 **§63724.1. Authority to administer oaths and to act as notary public.**

21 (a) The following persons on duty status with the territorial military  
22 forces may administer oaths for the purposes of military administration,  
23 including military justice, and have the general power of a notary public in  
24 the performance of all notarial acts to be executed by members of the  
25 territorial military forces and/or their dependents, wherever they may be:

1           (1) The Territorial Judge Advocate General and all judge  
2 advocates;

3           (2) all summary courts-martial;

4           (3) all Adjutants, Assistant Adjutants, Acting Adjutants, and  
5 Personnel Adjutants;

6           (4) all Staff Judge Advocates and Legal Officers, and Acting or  
7 Assistant Staff Judge Advocates and Legal Officers; and

8           (5) all other persons designated by regulation of the Adjutant  
9 General or Territory law.

10          (b) The following persons on duty status with the territorial military  
11 forces may administer oaths necessary in the performance of their duties:

12           (1) The president, military judge, trial counsel, and assistant trial  
13 counsel;

14           (2) The president, counsel for the court, and recorder of any court  
15 of inquiry;

16           (3) All officers designated to take a deposition;

17           (4) All persons detailed to conduct an investigation;

18           (5) All recruiting officers; and

19           (6) All other persons designated by regulations of the Adjutant  
20 General or Territory law.

21          (c) No fee may be paid to or received by any person for the  
22 performance of any notarial act herein authorized.

23          (d) The signature without seal of any such person acting as notary,  
24 together with the title of his office, is prima facie evidence of his authority.

25          SOURCE: UCMJ ARTICLE 136.

1           **§63724.2. Articles to be explained.** §§63702, 63703, 63705, 63706-63715,  
2 63717.3, 63718.1, 63719.1, 63720.1, 63720.2, 63721, 63723-63723.60, and  
3 63724.2-63724.4 of this Code shall be carefully explained to every enlisted  
4 member at the time of his enlistment or transfer or induction into, or at the  
5 time of his order to duty in or with any of the territorial military forces or  
6 within 30 days thereafter. They shall be explained annually to each unit of the  
7 territorial military forces. A complete text of this Code and of the regulations  
8 prescribed by the Adjutant General thereunder shall be made available to any  
9 member of the territorial military forces, upon his request, for his personal  
10 examination.

11           *SOURCE: UCMJ ARTICLE 137.*

12           **§63724.3. Complaints of wrongs.**

13           (a) Any member of the territorial military forces who believes himself  
14 wronged by his commanding officer, and who, upon due application to that  
15 commanding officer, is refused redress, may complain to any superior officer  
16 who shall examine into the complaint and take proper measures for  
17 redressing the wrong complained of; and he shall, as soon as possible, send to  
18 the Adjutant General a true statement of that complaint with the proceedings  
19 had thereon.

20           (b) When an action or proceeding is commenced in any court, other  
21 than a military court, against any member of the territorial military forces  
22 for any act done in the lawful performance of their duty, as determined by a  
23 finding of fact made by a court of inquiry under §63724 of this Code, while  
24 such member was on active territorial duty, the member may be represented,  
25 pursuant to §30108 of Title 5, Guam Code Annotated, by the Attorney  
26 General's office. The Adjutant General, upon the written request of the

1 member involved, shall forward the member's request for representation to  
2 the Attorney General, and instruct the Territorial Judge Advocate General, a  
3 judge advocate or legal officer to assist the Attorney General's office in the  
4 preparation and trial of such case.

5 (c) Members of the territorial military forces on active territorial duty  
6 by order of the Governor or other proper authority, shall not be liable, civilly  
7 or criminally, for any act or acts done by them while in the lawful  
8 performance of their duty.

9 (d) Members of the territorial military forces on active territorial duty  
10 shall have the powers of peace officers when they are:

11 (1) called or ordered into active territorial duty by the Governor  
12 pursuant to the provisions of §63500, Title 10, Guam Code Annotated,

13 (2) serving within the area wherein military assistance is  
14 required, and

15 (3) directly assisting civil authorities in any of the situations  
16 specified in §63500, Title 10, Guam Code Annotated. The authority of  
17 any such peace officer extends to the area wherein military assistance is  
18 required as to a public offense committed or which there is reasonable  
19 cause to believe has been committed within that area.

20 *SOURCE: UCMJ ARTICLE 138.*

21 **§63724.4. Redress of injuries to property.**

22 (a) Whenever complaint is made to any commanding officer that  
23 willful damage has been done to the property of any person or that his  
24 property has been wrongfully taken by members of the territorial military  
25 forces, he may, subject to such regulations as the Adjutant General may  
26 prescribe, convene a board to investigate the complaint. The board shall

1 consist of from one to three commissioned officers, and for the purpose of  
2 that investigation, it has the power to summon witnesses and examine them  
3 upon oath or affirmation, to receive depositions or other documentary  
4 evidence, and to assess the damages sustained against the responsible  
5 parties. The assessment of damages made by the board is subject to the  
6 approval of the commanding officer, and in the amount approved by him  
7 shall be charged against the pay of the offenders. The order of the  
8 commanding officer directing charges herein authorized is conclusive, except  
9 as provided in subsection (c), on any disbursing officer for the payment by him  
10 to the injured parties of the damages assessed and approved.

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

17 (c) Any person subject to this Code who is accused of causing willful  
18 damage to property has the right to be represented by counsel, to summon  
19 witnesses in his behalf, and to cross-examine those appearing against him.  
20 He has the right to appeal to the next higher commander.

21 *SOURCE: UCMJ ARTICLE 139.*

22 **§63724.5. Immunity for action of military courts.** No accused may bring  
23 an action or proceeding against the convening authority or a member of  
24 military court, board convened under this Code or military regulations, or  
25 officer or person acting under its authority or reviewing its proceedings  
26 because of the approval, imposition, or execution of any sentence or the

1 imposition or collection of a fine or penalty, or the execution of any process or  
2 mandate of a military court, board convened under this Code, or military  
3 regulation.

4 **§63724.6. Delegation of authority.**

5 (a) The Governor may delegate any authority vested in him under this  
6 Code, and may provide for the sub delegation of any such authority, except  
7 the power given him by §§63721.2 and 63724.15 of this Code.

8 (b) In the absence of the Territorial Judge Advocate General, the  
9 Adjutant General may, upon the recommendation of his senior judge  
10 advocate, appoint or designate legal officers and delegate required legal  
11 duties as appropriate.

12 *SOURCE: UCMJ ARTICLE 140.*

13 **§63724.7. Execution of process and sentence.**

14 (a) In the territorial military forces not in federal service, the processes  
15 and sentences of its courts-martial shall be executed by the civil officers  
16 prescribed by the laws of the Territory.

17 (b) When the sentence of a court-martial, as approved and ordered  
18 executed, adjudges confinement, and the convening authority, or the  
19 convening authority for the time being, as the case may be, shall issue a  
20 warrant of commitment to a peace officer, directing such peace officer to take  
21 the body of the person so sentenced and confine him in the appropriate  
22 confinement facility for the period named in such sentence, as approved, or  
23 until he or the confinement facility official in charge may be directed to  
24 release him by proper authority.

25 **§63724.8. Process of military courts.**

1 (a) Military courts may issue any process or mandate necessary to  
2 carry into effect their powers. Said court(s) may issue subpoenas and  
3 subpoenas duces tecum and enforce by attachment attendance of witnesses  
4 and production of books and records, when it is sitting within the Territory  
5 and the witnesses, books and records sought are also so located.

6 (b) Process and mandates may be issued by summary courts-martial,  
7 provost courts, or the president of other military courts as well as any  
8 military judge and may be directed to and may be executed by the marshals of  
9 the military court or any peace officer and shall be in such form as may be  
10 prescribed by regulations issued under this Code.

11 (c) All officers to whom process or mandates may be so directed shall  
12 execute them and make return of their acts thereunder according to the  
13 requirement of those documents. Except as otherwise specifically provided in  
14 this Code, no such officer may demand or require payment of any fee or  
15 charge for receiving, executing, or returning such a process or mandate or for  
16 any service in connection therewith.

17 (d) A military judge, president of any court-martial, and any summary  
18 court officer, shall have authority to issue under his hand, in the name of the  
19 Territory of Guam, process and mandates directed to the marshal, his deputy,  
20 any peace officer of the Territory, or any official of Guam authorized to serve  
21 process, and it shall be the duty of said party to serve and execute in the same  
22 manner in which like process is served or executed under court procedures of  
23 the Territory for necessary process, subpoenas, attachments, warrants of  
24 arrest and warrant of commitment.

25 **§63724.9. Payment of fines, costs, and disposition thereof.**



1 (a) All fines and forfeitures imposed by general or special courts-  
2 martial, shall be paid to the officer ordering such court, and/or to the officer  
3 commanding at the time being and by said officer, within five (5) days from  
4 receipt thereof, paid to the Adjutant General, who shall cause said monies to  
5 be placed in the fund for the Department of Military Affairs to be used to  
6 defray the cost of the administration of military justice for the Guam  
7 National Guard.

8 (b) All fines and forfeitures imposed by a summary court-martial or a  
9 Commanding Officer under §63715 shall be paid to the officer ordering said  
10 court-martial, or the officer commanding for the time being, and by such  
11 officer, within five (5) days from the receipt thereof, placed to the credit of the  
12 military unit fund of the unit of which the person fined was a member when  
13 the fine was imposed.

14 (c) When a fine is imposed by a Commanding Officer under §63715 or  
15 the sentence of a court-martial adjudges a fine against any person, and such  
16 fine has not been fully paid within ten (10) days after the confirmation  
17 thereof, the convening authority or the Adjutant General may issue a  
18 warrant of commitment directed to a peace officer directing him to take the  
19 body of the person so convicted and confine him in a confinement facility for  
20 one (1) day for any fine not exceeding One Dollar (\$1) and one (1) additional  
21 day for every dollar above that sum. However, if the Adjutant General so  
22 requests, the fine shall be enforced by the office of Attorney General in the  
23 same manner as a money judgment in a civil case or by the withholding of  
24 any funds due the accused from the Territory or any of its agencies in  
25 accordance with regulations prescribed by the Adjutant General. To the

1 extent not prohibited by federal laws or regulations, a fine may be enforced by  
2 withholding federal funds due the accused.

3 **§64724.10. Presumption of jurisdiction.** The jurisdiction of the military  
4 courts and boards established by this Code shall be presumed and the burden  
5 of proof rest on any person seeking to oust those courts or boards of  
6 jurisdiction in any action or proceeding.

7 **§63724.11. Witnesses expenses.**

8 (a) Persons in the employ of this Territory, not belonging to the  
9 territorial military forces, when traveling upon summons as witnesses before  
10 Territorial Military Courts, Territory or defense, are entitled to the same  
11 reimbursements for costs as if testifying for any other Territory agency.

12 (b) A person not in the employ of this Territory and not belonging to  
13 the military forces thereof, who has been duly summoned to appear as a  
14 witness before a military court, Territory or defense, will receive the same  
15 fees and reimbursement as any witness called to testify on behalf of the  
16 Territory in court proceedings before the Superior Court of Guam. Civilian  
17 witnesses will be paid by the Department of Military Affairs.

18 (c) The charges for return journeys of witnesses will be made upon the  
19 basis of the actual charges allowed for travel to the court, and the entire  
20 account thus completed will be paid upon discharge from attendance without  
21 waiting for completion of return travel.

22 (d) No fees shall be allowed to a person as witness fees, unless such  
23 person has been subpoenaed, attached, or recognized as a witness in the case.

24 **§63724.12. Arrest, bonds, laws applicable.**

25 (a) When charges against any person in the military forces of this  
26 Territory are made or referred to a convening authority authorized to

1 convene a court-martial for the trial of such person, and a convening  
2 authority, believing that such charges can be sustained, and has reason to  
3 believe that the person so charged will not appear for trial, or intends to flee  
4 from justice, a convening authority may issue a warrant of arrest to any  
5 peace officer commanding said peace officer to take the body of the person so  
6 the case may be finally disposed of; and a peace officer, on the order of the  
7 convening authority, shall bring the person so charged before the court-  
8 martial for trial, or turn him over to whomever the order may direct; the  
9 convening authority issuing the warrant of arrest, shall indorse thereon the  
10 amount of bail to be required and such bail shall not exceed two hundred fifty  
11 dollars by a summary court-martial convening authority, one thousand  
12 dollars by a special court-martial convening authority and two thousand  
13 dollars by a general court-martial convening authority unless said offense  
14 alleged is under §63723.60 as a violation of Guam Penal Law, in which case  
15 the bond shall be the same as that required for the violation alleged; and it  
16 shall be a violation of duty on the part of any peace officer, including  
17 Department of Correction personnel, to permit a person so committed to  
18 remain out of jail or a confinement facility, except that he may, when such  
19 person desires it, permit him to give bail in the sum indorsed on the warrant,  
20 on the following conditions: for his appearance, from time to time before the  
21 court-martial as he may be ordered for trial or court appearance, to keep his  
22 unit of the territorial military forces of which he is a member advised of his  
23 current home and work addresses and telephone numbers, to accept and  
24 receipt for all mail sent to him by the territorial military forces, to  
25 satisfactorily attend and participate in all territorial military duty which he is  
26 ordered to perform and to be responsible for obtaining information

1 concerning all duty dates, times, places of his territorial military unit or duty  
2 assignment, until his case is finally disposed of, or until such time as he may  
3 surrender to a peace officer as directed by the convening authority of the  
4 court-martial before which he may be ordered for trial.

5 (b) Upon the failure of any person, who has been admitted to bail to  
6 appear as a witness in any case before a court-martial, as conditioned in the  
7 bail bond of any such person, the court-martial shall certify the fact of failure  
8 to so appear to the convening authority, or to the convening authority for the  
9 time being, as the case may be; and such officer shall cause a judge advocate  
10 or the Attorney General to file suit in the appropriate courts of Guam to take  
11 action on the same.

12 (c) The rules laid down in Title 8, Guam Code Annotated (Criminal  
13 Procedure) of this Territory relating to giving of bail, amount of bail, the  
14 number of sureties, the property exempt from liability, the responsibility of  
15 parties to the same and all other rules of a general nature not inconsistent  
16 with this Code are applicable to bail taken as provided herein.

17 (d) A warrant of arrest issued by a convening authority authorized to  
18 order a court-martial, and all process, subpoenas, attachments, warrants of  
19 commitment and other process issued by courts-martial and courts of inquiry  
20 shall extend to every part of the Territory.

21 (e) When any lawful process, issued by the proper officer of any court-  
22 martial, comes to the hands of any peace officer or other official authorized  
23 by Guam law to serve process, subpoenas, and/or attachments, he shall  
24 perform the usual duties of such officer and perform all acts and duties by this  
25 Code imposed or authorized to be performed by any peace officer or other  
26 official authorized to serve process, subpoenas, and/or attachments. Failure

1 of any peace officer or official authorized to serve process, subpoenas, and/or  
2 attachments to perform the duties required by this Code shall be a  
3 misdemeanor offense punishable by a fine of not more than One Thousand  
4 Dollars (\$1,000) and a confinement of not more than twelve (12) months in  
5 jail.

6 (f) In any case whereby the offense alleged is a violation of Guam  
7 Penal law charged under §63723.60 of this Code and the punishment to be  
8 assessed is to be that authorized by the laws of Guam for such offense the  
9 rules of bail shall be the same as set out in Title 8, Guam Code Annotated  
10 (Criminal Procedure) of the Territory law, except that the conditions set out  
11 in subsection (a) shall be applicable as the Adjutant General so desires.

12 **§63724.13. Expenses of administration.** The Adjutant General shall  
13 have authority to pay all expenses incurred in the administration of  
14 Territorial Military Justice, including the expenses of courts-martial and  
15 expenses incurred under §§63722.8, 63724, 63724.3, 63724.4, and 63724.11 of  
16 this Code, from any funds appropriated to the Department of Military  
17 Affairs.

18 **§63724.14. Powers of commanding officers.** Persons in the position of  
19 commanding officer in any unit or organization of the territorial military  
20 forces, whether in said capacity as a regularly assigned commander or, if  
21 assumption or delegation of command letter has been published designating  
22 acting commander, the acting commander, whether on duty status or not,  
23 shall be vested with the authority to perform all acts necessary for the  
24 purpose of administration of military justice or those acts necessary for the  
25 administration of general military matters.

1           **§63724.15. Regulations.** The Adjutant General shall issue and  
2 promulgate appropriate and/or necessary disciplinary or military justice  
3 regulations for the administration of military justice under this code and such  
4 regulations shall take effect by Executive Order of the Governor. The  
5 provisions of the Administrative Adjudication Act shall not apply to the  
6 issuance and promulgation of regulations in furtherance of the provisions of  
7 this Code.

8           **Section 2. Annual report.** The Adjutant General shall submit, to the  
9 Speaker of the Guam Legislature, no later than ninety (90) days after the  
10 anniversary date of the enactment hereof, a detailed statistical report  
11 detailing all actions taken by the National Guard relative to the enforcement  
12 or implementation of the provisions of the Guam National Guard Code of  
13 Military Justice. Without the use of individual names or identifications, the  
14 statistical report required herein shall contain all information necessary for  
15 the determination of the extent the provisions of the Code are being cited,  
16 and/or charged.

# TWENTY-THIRD GUAM LEGISLATURE

1995 (FIRST) Regular Session

Date: 4/10/95

## VOTING SHEET

Bill No. 28

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓		:	
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL 21 \_\_\_\_\_

*Signed 4/26/95  
P.L. 23-12*



# Senator Hope Alvarez Cristobal

Committee on Federal and Foreign Affairs  
23RD GUAM LEGISLATURE

April 05, 1995

Speaker Don Parkinson  
Twenty-Third Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker,

The Committee on Federal & Foreign Affairs which was referred Bill 28:


AN ACT TO REPEAL AND REENACT ARTICLE 7 OF CHAPTER 10, GUAM  
CODE ANNOTATED, TO ESTABLISH THE CODE OF MILITARY JUSTICE FOR  
THE TERRITORY OF GUAM

submits its Committee Report to the Legislature with the recommendation TO PASS.  
The voting record is as follows:

To Pass	12
Not To Pass	0
To Abstain	0
To place in Inactive File	0

Your immediate attention to this matter is greatly appreciated.

Si Yu'os Ma'ase',

  
**HOPE ALVAREZ CRISTOBAL**  
Senator

attachments/clq





# Senator Hope Alvarez Cristobal

Committee on Federal and Foreign Affairs  
23RD GUAM LEGISLATURE

March 28, 1995

To: Committee Members  
Fr: Senator Hope A. Cristobal, Chair  
Re: Committee Report on Bill No. 28.

---

In reference to the Committee's Public Hearing conducted on February 24, 1995, the attached voting sheet is accompanied by the following supplements:

- 1) written testimonies presented to the Committee,
- 2) the Committee Report (Findings & Recommendations), and
- 3) a copy of Bill No. 28.

Please contact my office if you should have additional comments or concerns.

Si Yu'os ma'ase'

  
**HOPE ALVAREZ CRISTOBAL**

cc: All members



# Senator Hope Alvarez Cristobal

Committee on Federal and Foreign Affairs  
23RD GUAM LEGISLATURE

## VOTING SHEET

**Bill No. 28:** An act to repeal and reenact Article 7 of Chapter 63, Title 10, Guam Code Annotated, to establish the Code of Military Justice for the Territory of Guam.

Committee Members	To PASS	NOT to PASS	To ABSTAIN	To Place in INACTIVE FILE	SIGNATURE
Sen. Hope A. CRISTOBAL Chairperson	✓				<i>H. Cristobal</i>
Senator Angel SANTOS Vice-Chairperson	✓				<i>A. Santos</i>
Senator Tom ADA Member	✓				<i>T. ADA</i>
Senator J. WON PAT-BORJA Member	✓				<i>J. Won Pat-Borja</i>
Senator Mark CHARFAUROS Member	✓				<i>M. Charfauros</i>
Senator L. LEON GUERRERO Member	✓				<i>L. Leon Guerrero</i>
Senator V. PANGELINAN Member	✓				<i>V. Pangelinan</i>
Senator Francis SANTOS Member	✓				<i>F. Santos</i>
Sen. E. BARRETT-ANDERSON Member	✓				<i>E. Barrett-Anderson</i>
Senator Anthony BLAZ Member	✓				<i>A. Blaz</i>
Senator Mark FORBES Member	✓				<i>M. Forbes</i>
Senator C. LEON GUERRERO Member	✓				<i>C. Leon Guerrero</i>

## Committee on Federal & Foreign Affairs

### Committee Report on Bill 28

AN ACT TO REPEAL AND REENACT ARTICLE 7 OF CHAPTER 63, TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE CODE OF MILITARY JUSTICE FOR THE TERRITORY OF GUAM.

#### OVERVIEW

The Committee on Federal & Foreign Affairs having perview over all matters relating to the relationship between the government of Guam and the military forces on Guam, conducted a public hearing on Bill 28 on February 24, 1995.

Present at the hearing were: Senator Hope A. Cristobal, (Chair), Senator Tom Ada (member), Senator Lou Leon Guerrero (member), and Senator Mark Charfauros (member).

Citizens presenting testimony before the Committee were: Mr. Robert Pearson, Colonel Sudo, Attorney Robert Cruz, Inspector General Jesse L. Boykin, III, and Ms. Mary Camacho

The intent of Bill 28, with its passage, is to establish a Code of Military Justice for the Guam National Guard in correlation with the Uniformed Code of Military Justice of the United States.

#### FINDINGS & RECOMMENDATIONS

This Committee finds and recommends:

- 1) that it is difficult for a military organization to function without some means of administration of justice,
- 2) that a mechanism is needed to address matters of discipline with the Guam National Guard,
- 3) that the adopted Guam Code of Military Justice correlate with the United States Uniformed Code of Military Justice,
- 4) that in absence of a Guam Military Code of Justice arises the practice of coercion and manipulation, and
- 5) that adopting a Guam Code of Military Justice will contribute to the maintenance of law and order.

Therefore, **THE COMMITTEE ON FEDERAL & FOREIGN AFFAIRS SUBMITS BILL NO. 28 AND STRONG SUPPORTS IT PASSAGE.**



DEPARTMENT OF THE ARMY  
HEADQUARTERS, GUAM TERRITORIAL AREA COMMAND  
GUAM ARMY NATIONAL GUARD  
622 EAST HARMON INDUSTRIAL PARK ROAD  
FORT JUAN MUNA, TAMUNING, GUAM 96911-4421

REPLY TO  
ATTENTION OF:

February 23, 1995

Senator Hope Cristobal  
Chairperson, Committee on  
Federal and Foreign Affairs  
Agana, Guam 96910

Dear Senator Cristobal:

It is with pleasure and trepidation that I submit to you my written testimony regarding Bill No. 28, which would create a Guam Code of Military Justice. Pleasure because I am hopeful that this committee will endorse what is clearly a constructive framework for a disciplinary structure within the Guam National Guard; and trepidation because similar bills have received positive comments from previous legislative committees, only to languish in that limbo between a committee report and a second reading. This has been a long process. Those of you who know me personally will realize that I speak with only slight humor as I note that when the first incarnation of this Bill was reviewed by your honorable predecessors, I had a full head of hair and none of it was gray. Given the long history of the proposed Guam Code of Military Justice there is little that I can add to that which is already a matter of record. Instead, I would simply point out some key aspects of the Bill that I think merit your attention today.

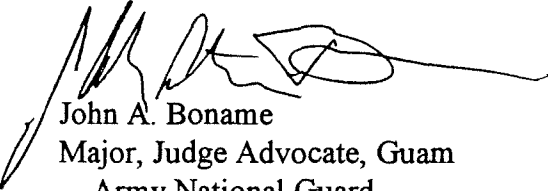
Many of the noteworthy features of the Bill are summarized in various attachments; most of which are information sheets prepared to explain previous renditions of the proposed GCMJ. My records show that many of these were prepared in March 1992, nearly three years ago, but I believe they continue to reflect the content of the Bill before you.

One of the attachments is a collection of responses to enlisted input, compiled in April 1992. A review of this shows that there is support for such a Code and that past concerns have arisen in many instances due to technical jargon and misunderstandings about the Bill's language. Much of it is written in terms that have special meanings in either the field of law, the customs of military service, or both. For the most part, the

proposed Guam Code of Military Justice adopts the federal Uniform Code of Military Justice (UCMJ). However, an effort has been made here to create a code that has specific application to Guam and reflects the valued of this community as opposed to that of the United States. For example, while the UCMJ authorizes the death penalty for certain offenses the proposed GCMJ does not. Such a punishment is inconsistent with local principles and its practice is rejected. In other areas, the proposed GCMJ generally reflects a reduction in the quantity of punishment available under the UCMJ, and an increase in the procedural rights provided the subject.

The Guam National Guard, like all government entities, needs to foster a sense of accountability among its personnel. It also has to ensure that everyone is treated fairly and equitably; and that there are standard procedures in disciplinary matters. The proposed GCMJ provides such a framework. I strongly support its passage.

Sincerely,



John A. Boname  
Major, Judge Advocate, Guam  
Army National Guard  
Acting Staff Judge Advocate

# Significant Differences Between the UCMJ & the Guam CMJ

## PUNISHMENTS PERMITTED

Unlike UCMJ, the proposed Guam code of Military Justice NEVER allows:

### The Death Penalty

NJP punishments are fewer & less harsh:

No "Bread and Water"

No "Correctional Custody"

Also no "Detention of Pay"

("Fine" is added however)

Max. penalties are substantially lower

(see charts)

All NJP punishments are appealable and require a lawyer's review

(Under UCMJ, mandatory lawyer review only where penalty substantial)

Maximum penalties in GCMJ Courts-Martial are much lower than UCMJ provides

## COURT PROCEDURES

General Courts-Martial tried in Superior Court

Use of Civilian Law/Judicial system for Serious Cases

Appellate Procedures also use civilian channels

## UCMJ Punitive Articles not in GCMJ

Art. 106-spies (defined)

Art. 123-Forgery

Art. 106a.- espionage

Art. 124- Bad Checks

Art. 111- DWI/Reckless  
Driving

Art. 124- Maiming

Art. 114- Dueling

Art. 125- Sodomy

Art. 116- Riot or Breach of  
Peace

Art. 126- Arson

Art. 118- Murder

Art. 127- Extortion

Art. 119- Manslaughter

Art. 128- Assault

Art. 120- Rape or Carnal  
Knowledge

Art. 129- Burglary

Art. 121- Larceny/ Wrongful  
Appropriation

Art. 130- Housebreaking

Art. 122- Robbery

Art. 131- Perjury

complete the Judge Advocate General's School Advance Course of the Army or Air Force, which would be unlikely for an officer with less than 5 years as a JAG. Among attorneys, as with other professions, those with less than 5 years of practice are considered "green" in the sense that they have limited professional experience, skill and insight. The requirements of 5 years experience and completion of the Advance Course help to assure that the minimum qualifications of the Territorial Judge Advocate General meet the responsibilities of the position.

As to the lack of a replacement; the incumbent was (some years ago) recruited from "off-island" and a replacement could be obtained in the same manner. The present Assistant SJA has more than the 5 years experience required and has completed more than a year of correspondence credits in the Officer Advanced Course. [Unfortunately, because the course takes more than 10 months in residence, it is programmed for 3 years of correspondence study].

The suggestion that provision be made for including the qualifications of an Assistant Judge Advocate is in part unnecessary because of the general qualifications required of "judge advocates" in Art. 6(b). However, it appears that your suggestion would be well taken with the addition of the following to Art. 6(a):

In the absence, or lack, of a qualifying Territorial Judge Advocate General, the most senior judge advocate within the territorial military forces may perform duties as such for a period not to exceed 120 days, providing that the Acting Territorial Judge Advocate General must meet all the requirements set out above except that for the number of years as a judge advocate and completion of the Judge Advocate General's School Advance Course.

## II. Subchapter II. Apprehension and Restraint

**Q/R:** Art. 9(e). This article does not limit the authority of persons authorized to secure the custody of the alleged offender until proper authority may be notified. Does this give them the authority to use physical restraint? What happens if proper authority cannot be notified? Is there a set period of time?

**R:** Art. 9(e)'s language is taken verbatim from the UCMJ. It is not an affirmative grant of authority. It does not authorize any additional control over persons. It simply indicates that the provisions of subparagraphs (a) - (d), which limit who can interfere with a person's liberty and when, do not prevent persons otherwise authorized from detaining a person so that they can be apprehended or confined by proper authority. A hypothetical example would be a situation in which an officer gets drunk and starts a brawl at the "tree bar" on Fort Juan Muna. Any MP, or other soldier (officer or enlisted) with responsibility to maintain order, could apprehend (using physical restraint if necessary) and detain the offender, until that officer's CO (or acting commander if the CO is not available) was notified so that action could be taken under Art. 9(c). There is no express time limit. The reasonable length of delay is determined by the circumstances.



soldier could lose half his or her monthly income more suddenly .

Also, note that these forfeiture totals are smaller (by half) than the maximum allowed for NJP under the UCMJ (forfeiture of  $\frac{1}{2}$  pay for two months) and that the UCMJ has no provision for fines. Here a fine, in an amount well below the maximum forfeiture, can be imposed as an alternative, but not in addition, to forfeiture. It can also be pointed out that the only substantial penalty currently available to the command in instances of misconduct, administrative separation, amounts practically to a permanent forfeiture of a guardperson's pay and all benefits. When these considerations are taken into account the range of penalties is fair.

#### IV. Subchapter IV. Courts-Martial

**Q/R:** My committee members agrees that there is a need for this type of document (a code of military justice) to maintain order and discipline in the Guard, and that the punishments provided for in the proposed code are fair when contrasted to those under the UCMJ, but we have a few questions about the terminology used.

**(1)** What does "senior officer", as used in Article 16 mean; it is not defined in the definitional section of Article 17

**R:** An amendment will be proposed to Article 16 defining "Senior Officer" as an O-5 or above.

**(2)** Article 16 also provides for the exercise of jurisdiction, in accordance with the regulations of the territorial military forces, for acts committed outside the borders of Guam. Would an exercise of jurisdiction still be in accordance with regulations of the territorial military forces, if the subject offense was committed in "duty status" in the Continental United States (CONUS)?

**R:** Although implementing regulations for the proposed code, analogous to the Manual for Courts-Martial and related service regulations which implement the UCMJ, have not yet been drafted; it is expected that the answer to your will be in the affirmative. Unless a member is in a duty status under Title 10 of the U.S. Code (active federal service), she or he is in territorial service, even while in CONUS. An example of this would be active duty for training while at a service school. Therefor there is no federal bar to the Territory exercising jurisdiction.

**(3)** The terms "military commission", "provost court" and "military tribunal" are used in Art. 21. These are not defined there or in Art. 1. How would they affect application of the Code?

**R:** These terms are used in Art. 21 only to state that the exercise of jurisdiction under the Code does not affect other military forums (some of which may be international and may come into existence only in wartime) from having jurisdiction. [An example of this is the trial of Nazi war criminals after World War II]. Because we would almost certainly be in federal

that we were not so much out to duplicate the UCMJ as we were to supplement Title 9 with the provisions of the UCMJ that served the purposes of good order and discipline.

Other modifications include amending the language of Art. 138 UCMJ. The version of 138 in the proposed GCMJ provides several additional protections to the soldier, including immunity from civil liability for acts done in the course of duty.

**Q/R:** If the Commander decides to hold an Article 15 proceeding, will the soldier be notified?

**R:** Yes. Even in the summarized proceeding set out at Art.15(d) the NJP proceeding occurs only after a preliminary inquiry during which the soldier is advised of the allegations. The procedure also provides for the member to be present, and to present evidence. The soldier is always notified prior to the hearing. He or she is also advised of the hearing results, when they are first declared.

**Q/R:** Would a soldier be given the opportunity to accept summarized proceedings or to request a reasonable time to decide whether to demand trial?

**R:** While there is no amount of time set in the code for the member to make that decision, the member would have more than "a minute" to decide. The soldier would first become aware of the charges during the preliminary inquiry and would have up until the actual imposition (see Art. 15(b), GCMJ) of punishment, if any, to request a trial.

**Q/R:** Is the Commander required to advise the soldier of the right to appeal?

**R:** Yes. Though it is not written in black letter here, just as the requirement does not appear in the UCMJ, it is intended that the same forms be used here as are used in by active duty components in documenting Art. 15 hearings, and these contain such a notice. Perhaps more importantly, the proposed code contains, at Art. 137, a requirement that portions of the code (including Art. 15) be "carefully explained" to members when they begin service and on an annual basis in unit training. It also requires that a complete copy of the Code be made available for any member who wishes to read it.

Further summaries of significant aspects of the GCMJ are attached.

## Liability of Officers

**Officers are not exempt from disciplinary action under the Proposed Code.**

### General Court-Martial

Although Enlisted Personnel may be tried before Summary (with their consent), Special or General Courts-Martial, Officers are required to stand trial in a General Court-Martial. Here they face the highest maximum penalties, as well as the equivalent of a felony conviction, even for less serious offenses.

### Non-Judicial Punishment

Officers are not exempt from non-judicial punishment under Art. 15 of the Guam Code of Military Justice. They are required to face NJP from a General Court Martial Convening Authority, normally the TAG. But under the GCMJ even the TAG can receive NJP. The Governor can impose NJP on any General Officer.

At NJP, officers can receive a harsher punishment (Arrest in Quarters) that enlisted personnel can be given.

Officers, unlike enlisted, may not be able to appeal imposition of NJP because only a General Officer imposes it upon them (usually the TAG), and there is no forum for appeal above TAG.

### Some Punitive Articles are aimed at Officers:

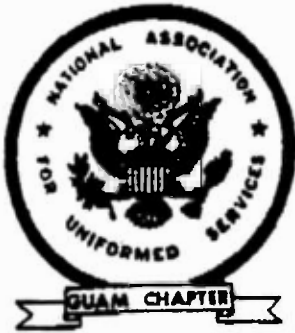
Art. 93 prohibits cruelty to, or mistreatment of, subordinates.

Art. 97 prohibits unlawful detention.

Art. 98 prohibits the abuse of disciplinary procedures.

Art. 133 prohibits Conduct Unbecoming an Officer

Art. 138 provides a mechanism for any member of the Guam National Guard to formally complain of a wrong done them by their CO to any officer above that CO in the chain of command.



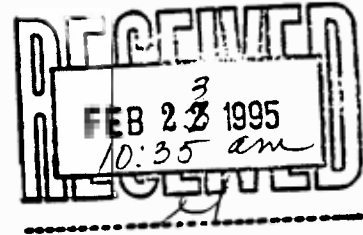
# National Association for Uniformed Services

GUAM CHAPTER (NAUS)

Post Office Box 2009, Agana, Guam 96910

February 23, 1995

Senator Hope Alvarez Cristobal  
Chairperson  
Committee on Federal and Foreign Affairs  
23rd Guam Legislature  
155 Hesler Street  
Agana, Guam 96910



Dear Madam Chairperson:

This is in response to the call for testimony, concerning Bill No. 20; Bill No. 28; and Bill No. 55.

NAUS Guam Chapter ENDORSES with enthusiasm Bill number 20, design to re-establish the Guam Veterans' Bonus for those veterans who had not already received the bonus as amended by P.L. 18-41 and others.

Bill Number 28, design to repeal and re-enact Article 7, Chapter 63, Title 10, Guam Code Annotated, to establish the code of military justice for the Territory of Guam, is submitted with a NON-CONCURRENCE. The bill is considered voluminous, complex, and requires an indepth examination into the legalese language, which dictates that the challenge should be placed towards a staff judge advocate type who would be tasked in considering options best suited for the Territorial Military community. It seems to the undersigned that the U.S. Military Justice Manual, as practiced in the U.S. Armed Forces, is considered essential and prudent for a military community. The notion to scrutinize and adopt only those considered germane to the Guam Military Justice is considered to be a provident approach, and should meet the requirement for territorial applicability. Using simplistic logic, ADOPT the U.S. Military UCMJ Manual and provide Local legislation which would identify areas not applicable for the U.S. Territory of Guam military justice system.

Bill Number 55 is CONCURRED IN; however, the provisions of this proposed law should include military (police) actions in Grenada, Panama Canal, and the Persian Gulf War.

The undersigned believes that military (police) actions should be the criteria to receive a bonus for military action. The military expeditionary actions into Somalia and Haiti were considered Humanitarian activity and did not fall within the context of military (police) actions or Combat.

Sincerely,

A.P. SGAMBELLURI

LCol U.S. Marine Corps (Ret)  
President, NAUS Guam Chapter

**ROBERT G. P. CRUZ, ESQ.**

**P. O. BOX 23396**

**BARRIGADA, GUAM 96921**

February 24, 1995

Honorable Hope A. Cristobal  
Chairperson, Committee on  
Federal and Foreign Affairs  
Twenty-Third Guam Legislature  
155 Hessler Place  
Agana, Guam 96910

Re: Bill No. 28

Dear Senator Cristobal:

I am submitting testimony in favor of Bill No. 28, an act to establish a complete Code of Military Justice for the Guam National Guard. I am a member of the Guam Army National Guard, presently serving as Commander, 1st Battalion, 294th Infantry Regiment (Light).

Guam is presently the sole National Guard organization without a comprehensive Code of Military Justice. Our Guam Code lacks what are referred as the Punitive Articles. When our Legislature enacted P.L. 16-18 in 1981, this portion of our Code was not included. The present bill would repeal and revise our existing Code to include the Punitive Articles and to make other changes believed to be appropriate.

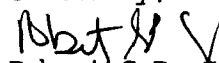
This is the fourth time the measure has been introduced. It has undergone numerous changes based upon the testimony of many individuals at prior public hearings. Members of the Guam National Guard have been given the opportunity to review the proposed measure and to comment directly to the members of the Legislature and to the leadership of our National Guard.

It is important that Bill No. 28 be adopted by this Legislature. I believe that every military organization must have discipline to be effective. Our unit, for example has been called out to assist during natural disasters. Members are on Territorial Active Duty when in the service of the Territory as opposed to being on federal service active duty as when Guam Guard members were sent to the Persian Gulf. During Desert Storm our Guard members were subject to the Uniform Code of Military Justice. When criminal actions or breaches of discipline occurred, they were subject to the UCMJ.

When troops serve on Territorial Active Duty, they need to be subject to the same standards of discipline that they would be if in federal service. This is not unique to Guam. Our members know that they should be subject to military justice if infractions occur. Not to have the Punitive Articles hurts the morale of the leadership and of the troops who want to be part of a quality organization.

The credibility of the Guam National Guard as a military organization is at stake. Our sister State and Territory National Guard organizations, the National Guard Bureau, and our active duty counterparts know we lack the ability to enforce discipline under a scheme of military justice comparable to the UCMJ. I therefore ask that this Legislature take action on this important bill without any further delay.

Sincerely,



Robert G.P. Cruz, Lieutenant Colonel, GUARNG

Madam Chairperson and Honorable Members of the Committee. I am Command Sergeant Major Joseph C. Taitano and I am here this morning to testify in favor of the Guam Uniform Code of Military Justice. This would be the second time testifying for it.

For the past 29 years of military service, I've been held accountable for my actions under the UCMJ. This was the laws and regulations that every Soldier and Airman to this day have been taught and trained to abide by throughout their military career. My assignment to the Guam Army National Guard was the only time in my career the UCMJ was not in effect.

The Soldiers and Airmen of the Guam National Guard are a special breed of professional citizens. They rate their services to the people of Guam and their country as first and foremost. Comprised of citizens of Guam, they take pride in the past accomplishments in their efforts to assist the community during natural disasters (Typhoons Omar, Yuri, Russ and the 8.2 Earthquake of 1993); Civil Disturbances at the Department of Corrections in the 1990's, and the National Call-up of our soldiers to Desert Storm. In all these calls to assistance, our Guardsmen answered and I believe it's due time that our law makers pass the UCMJ. *that they have so long ask for.*

A few months before the elections, Senator Santos brought copies of the UCMJ to Fort Juan Muna for review. He met with the enlisted soldiers there and copies were distributed to all enlisted and officers of the Guam Guard. Since then, I have not heard one negative comment against the UCMJ. As a matter of fact, when the question was asked to see UCMJ passed, the answer was an overwhelming "Yes"!.

Do not be misled that our Soldiers and Airmen do not want the UCMJ. As I've mentioned earlier, every Soldier and Airman was mandatorily given classes and training in the UCMJ. If they had not agreed to follow these guidelines, they would have voluntarily left the service by now. On previous hearings it was mentioned that enlisted soldiers and officers were not in effect given the same punishment. This is understandable, hence a new soldier or airman cannot be expected to be as experienced or knowledgeable of military standards and conduct as the Non-Commissioned Officers or Officers of this organization. Thus, when a leader fails to meet military standards of conduct, they will have to

face a more rigid consequence than that of our junior enlisted.

The UCMJ is not only a set of rules and regulations that is placed upon our Guardsmen, but in essence, a guarantee that every Guardsman will be protected from unfair treatment, and when called-up, especially during a crisis, that they can rely on the presence of all guardsmen and fear not that the absence of some may hinder their performance and may also risk the possibility of loss of lives. The absence of the UCMJ may lead to the absence of sense of obligation to duty or consequence.

The UCMJ equals a motivated and a reliable organization. The absence of the UCMJ may lead to the absence of sense of obligation to duty or consequence.

I urge that you assist us by giving us the guidelines, the laws to abide by so that we can better serve our community and country.

Joseph C. Vaitano

## NOTICE OF PUBLIC HEARING



### Committee on **Federal & Foreign Affairs** **Senator Hope Cristobal, Chair**

9:00am, Friday, February 24, 1995  
Public Hearing Room at the Guam Legislature,  
155 Hester Street, Agana

### **AGENDA**

**Bill No. 20** - An act to re-establish the Guam veteran's bonus for veterans who had already received the bonus as amended by Public Law 18-41 and others.

**Bill No. 28** - An act to repeal and reenact Article 7 of Chapter 63, Title 10, Guam Code Annotated, to establish the code of military justice for the Territory of Guam.

**Bill No. 38** - An act to create a Guam War Reparations Commission.

**Bill No 55** - To amend Title 10, Section 68100 and Section 68102, to award a monetary bonus to military veterans involved in the Persian Gulf War.

**Bill No 72** - An act to designate the former naval facility lands at Ritidian Point as property of the Government of Guam; and demanding that the Department of Defense return these excess lands to the rightful owners from which the lands were originally taken by force, deceit, and outright theft.

Please contact Senator Cristobal's office with your concerns  
and for additional info. at 472-3581/2/3.

**The Public is encouraged to participate.**



PUBLIC HEARING 02/24/95

INTERESTED PARTIES NOTIFIED: (FAXED 2/21/95)

CHAMORRO LAND TRUST COMMISSION	ATTN. JOSEPH BORJA	#477-8082
DEPT. OF AGRICULTURE, AQUATIC & WILDLIFE		#734-6570
DEPT. OF PARKS & RECREATION	ATTN. AUSTIN J. SHELTON	#472-9626
GUAM AIR/ARMY NAT'L. GUARD	ATTN. ED SIGUENZA	#647-6018
GUAM COMMUNITY COLLEGE	ATTN. ADOLF SGAMBELLURI	#734-5238
GUAM LANDOWNER'S UNITED	ATTN. TONY & MILLIE ARTERO	#477-1987
GUAM NATIONAL WILDLIFE REFUGE	ATTN. KELLY WOLCOTT	#472-7150
GUAM VETERANS CENTER		#472-7162
MILITARY AFFAIRS, GUAM AIR NAT'L. GUARD	ATTN. MAJOR DAVID CRUZ	#366-6343
U.S. ATTORNEY'S OFFICE	ATTN. FREDERICK BLACK	#472-7215
U.S. DEPT. OF INTERIOR, FISH & WILDLIFE		#472-7150
VETERANS AFFAIRS	ATTN. TINA AGUON	#472-7249
VETERANS OF FOREIGN WARS	ATTN. LOIS KIMMEL	#649-9051
OFFICE OF VETERANS AFFAIRS, ADELUP	ATTN. JOHN BLAZ	#472-8858



# Senator Hope Alvarez Cristobal

Committee on Federal and Foreign Affairs  
23RD GUAM LEGISLATURE

## Public Hearing

24 February 1995

9:30 a.m.

Legislative Public Hearing Room

\*\*\*\*\*  
CommitteeMembers

- Senator H. Cristobal, Chair
- Senator A. Santos, Vice-Chair
- Senator T. Ada
- Senator J. Wom Pat-Borja
- Senator M. Charfauros
- Senator L. Leon Guerrero
- Vice-Speaker T. Nelson
- Senator V. Pangelinan
- Senator F. Santos
- Senator E. Barrett-Anderson
- Senator A. Blaz
- Senator M. Forbes
- Senator C. Leon Guerrero

## Agenda

Bill No. 72 - An act to designate the former Naval facility lands at Ritidian Point as property of the Government of Guam; and demanding that the Dept. of Defense return these excess lands to the rightful owners from which the lands were originally taken by force, deceit, and outright theft.

Bill No. 28 - An act to repeal and reenact Article 7 of Chapter 63, Title 10, Guam Code Annotated, to establish a code of military justice for the Territory of Guam.

Bill No. 20 - An act to re-establish the Guam Veterans bonus for those veterans who had not already received the bonus as amended by Public Law 18-41 and others.

and

Bill No. 55 - An act to amend Title 10, § 68100 and § 68102, to award a monetary bonus to military veterans involved in the Persian Gulf War.

Bill No. 38 - An act to create a Guam Reparation Commission.



**WITNESS SHEET  
COMMITTEE ON FEDERAL & FOREIGN AFFAIRS**

TESTIMONY/ATTENDANCE RELATIVE TO THE PUBLIC HEARING:

February 24, 1995

NAME	AGENCY/BUSINESS/SELF/ ORGANIZATION	TOPIC	WRITTEN TESTIMONY	ORAL TESTIMONY	REMARKS
John D. Blaz	VETERANS AFFAIRS			✓	Tel: 425-4225 Fax: 477-8252
Andrew Arlene Brennan	Guam Nat'l Guard	Bill 28	✓	✓	472-3423
Robert Swilly	Guam Reg. - Parkinson				
Bob Parkinson		Bill 28	✓	✓	will speak with lead letter
Tom P. Chagnoff		Bill 28			647-2919
U. Ramon Judd	Guam Reg	Bill 28		✓	
M. Joe Taitano	GUARDIANS	" "		✓	
Cal P. Perez	SELF				477-8471
Robert Curry	ONG		✓	✓	
Robert Perry					



# 72



WITNESS SHEET  
COMMITTEE ON FEDERAL & FOREIGN AFFAIRS  
TESTIMONY/ATTENDANCE RELATIVE TO THE PUBLIC HEARING:

February 24, 1995

NAME	AGENCY/BUSINESS/SELF/ ORGANIZATION	TOPIC	WRITTEN TESTIMONY	ORAL TESTIMONY	REMARKS
James Castro	Jews D. Castro		✓		
FETER SGR0	ATTORNEY Representing Original source and claimants		To Be Submitted		Phone: Office 649-0124 Fax: 649-0870
Debra... P. ...	Heir to ...			✓	
Debra... M. ...	"		Submitted by Attorney Sgr0		
Manarum S. Ries	Jonathan Pardons Unit		✓		477-5389 477-1985
Fred... P. ...	Castro Family			✓	
Tony Artero	ARTERO REALTY	Realty		✓	477-1985
John H. ...	Debra	"		✓	633-7000
John Willa ...	Charmen City	Land	✓		632 7968
Ronald Teel...	Self	0, 11 92		✓	822-4621
LOU HERNANDEZ	"	Bill 72			
MAR CASTRO	"	Bill 72			



**WITNESS SHEET**  
**COMMITTEE ON FEDERAL & FOREIGN AFFAIRS**  
**TESTIMONY/ATTENDANCE RELATIVE TO THE PUBLIC HEARING:**

February 24, 1995

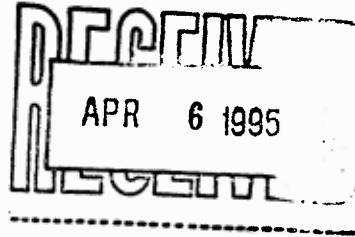
NAME	AGENCY/BUSINESS/SELF/ ORGANIZATION	TOPIC	WRITTEN TESTIMONY	ORAL TESTIMONY	REMARKS
ROBERT BRIZ	Guam National Guard / SSF		✓	✓	IN Room W 472 7950
Mony Panichis SESSE L. BOYKIN III	Guam Army National Guard INSPECTOR GENERAL GUAM ARMY NATIONAL GUARD		✓	✓	In Room 7950



**BUREAU OF BUDGET & MANAGEMENT RESEARCH**  
OFFICE OF THE GOVERNOR, Post Office Box 2950, Agaña, Guam 96910

**FRANCIS J. BALAJADIA**  
GOVERNOR

**MADELEINE Z. BORDALLO**  
LT. GOVERNOR



**JOSEPH E. RIVERA**  
DIRECTOR

**FRANCES J. BALAJADIA**  
DEPUTY DIRECTOR

The Bureau requests that Bill No(s) 28 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Bill No.28 is an Act to repeal and reenact Article 7 of Chapter 63, Title 10, Guam Code Annotated, to establish the Code of Military Justice for the Territory of Guam. The proposed Bill is administrative in nature and does not entail a fiscal impact on the General Fund.

*Joseph Rivera*  
JOSEPH E. RIVERA  
Acting



TWENTY-THIRD GUAM LEGISLATURE  
1995 (FIRST) Regular Session

MAR 13 1995

Bill No. 28 (L)

Introduced by:

F.E. SANTOS 

AN ACT TO REPEAL AND REENACT ARTICLE 7 OF CHAPTER 63, TITLE 10, GUAM CODE ANNOTATED, TO ESTABLISH THE CODE OF MILITARY JUSTICE FOR THE TERRITORY OF GUAM.

**BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

**Section 1.** Article 7 of Chapter 63, Title 10, Guam Code Annotated, is repealed and reenacted to read:

**"ARTICLE 7.**

**Guam Code of Military Justice.**

**SUBARTICLE I.**

**GENERAL PROVISIONS.**

1  
2  
3     **§63700. Name.** This Article shall be known and may be cited as the "**Guam Code of**  
4 **Military Justice**".

5     **§63701. Definitions.** As used in this Code:

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

9         (2) "**Active territorial duty**" means full-time duty in the active military service of  
10         the territory, under an order of the Governor issued pursuant to authority vested in him by law,  
11         and while going to and from such duty.

12         (3) "**Cadet**" as used in this code shall include Senior Reserve Officer Training Corps  
13         students who also are participating in the simultaneous membership program (SMP) with  
14         the Guam National Guard and Guam Military Academy Officer Candidate Participants.

15         (4) "**Code**" means the Guam Code of Military Justice.

16         (5) "**Commanding Officer**" includes commissioned officer and command position  
17         in accordance with applicable regulations.



1 (6) "**Convening authority**" includes, in addition to the person who convened the  
2 court, a commissioned officer commanding for the time being, or a successor in command.

3 (7) "**Duty status**" means on duty pursuant to orders such as inactive duty training,  
4 annual training, active duty special work, full time national guard duty, special training, active  
5 guard reserve, or other authorized duty as set out in Title 32, United States Code and  
6 appropriate regulations of the Department of Defense, Army, Air Force, and National Guard  
7 Bureau as well as the laws and regulations of Guam. It does not include duty, the performance  
8 of which, subjects a person to the Uniform Code of Military Justice.

9 (8) "**Enlisted member**" means a person enlisted in, or Enlisted member inducted,  
10 called, or conscripted into, the territorial military forces in an enlisted grade.

11 (9) "**Federal Service**" means on duty, governed by the Federal Service provisions  
12 of Title 10, United States Code, particularly the Uniform Code of Military Justice.

13 (10) "**Grade**" means a step or degree, in a graduated scale Grade of office or military  
14 rank, that is established and designated as a grade by law or regulation.

15 (11) "**He, him or any other masculine pronoun**", where used, means, and  
16 shall be interpreted to include, the masculine and/or feminine gender, as the case may be.

17 (12) "**Includes**" means "includes but not limited to".

18 (13) "**Judge advocate**" means any commissioned officer who is federally  
19 recognized as judge advocate by the National Guard Bureau and has been certified by the  
20 Territorial Judge Advocate General or in certain cases, as appropriate, a judge advocate of an  
21 United States Armed Forces, active or reserve, meeting the qualifications of Article 27,  
22 Uniform Code of Military Justice, and being so certified and designated as required by said  
23 Armed Force.

24 (14) "**Legal officer**" means any commissioned officer of the territorial military  
25 forces or non-military person who:

26 (a) volunteers to prosecute or defend an accused in a court-martial or  
27 administrative matter;

28 (b) graduated from a law school accredited by the American Bar Association  
29 (ABA);

30 (c) is a member of the bar of a Federal court or of the highest court of a State,  
31 Territory, Commonwealth of the United States or the District of Columbia; and

32 (d) has been certified as competent to perform such duties by the Territorial  
33 Judge Advocate.

34 (15) "**May**" is used in a permissive sense. The words "no person may..." means that  
35 no person is required, authorized, or permitted to do the act proscribed.

36 (16) "**Military**" refers to any or all of the territorial military forces.

1 (17) "**Military Court**" means a court-martial, a court of inquiry, a military  
2 commission, or a provost court.

3 (18) "**Military Judge**" means an official of a court-martial detailed in accordance  
4 with this Code.

5 (19) "**National Guard**" means the Army National Guard and/or the Air National  
6 Guard.

7 (20) "**Officer**" means commissioned officer and warrant officer.

8 (21) "**Pay**" includes basic pay, special pay, incentive pay, retired pay, and equivalent  
9 pay, but does not include allowances.

10 (22) "**Rank**" means the order of precedence among members of the territorial military  
11 forces.

12 (23) "**Record**", when used in connection with the proceedings of a military court  
13 means:

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

16 (b) an official audiotape, videotape, or similar material from which sound, or  
17 sound and visual images, depicting the proceedings may be reproduced.

18 (24) "**Scheduled unit training assembly**" means that training assembly  
19 scheduled as a part of the comprehensive plan for a unit on a yearly basis.

20 (25) "**Shall**" is used in an imperative sense.

21 (26) "**Spouse**" means husband or wife, as the case may be.

22 (27) "**Superior Commissioned Officer**" means a commissioned officer superior  
23 in rank or command.

24 (28) "**Territory**" means the Territory of Guam.

25 (29) "**Territorial Judge Advocate General**" means the Judge Advocate General  
26 of the territorial military forces, commissioned therein, and responsible for supervising the  
27 administration of military justice in the territorial military forces, and performing such other  
28 legal duties as may be required by the Adjutant General.

29 (30) "**Territorial military forces**" means the National Guard of this Territory, as  
30 defined in Section 101(3), (4) and (6) of Title 32, United States Code, and any other militia or  
31 military forces organized under the laws of the territory, when not in a status subjecting them to  
32 the jurisdiction of the Uniform Code of Military Justice under Chapter 37 of Title 10, United  
33 States Code.

34 **§63702. Persons subject to this Code.**

35 A. This Code applies to each member of the territorial military forces on duty status who is  
36 not in federal service. It also applies during the period of time in which he was under lawful order to  
37 be in a duty status.

1 B. It also applies to any person who has the capacity to understand the significance of  
2 enlisting or accepting a commission in the territorial military forces and so voluntarily enlists or accepts  
3 such commission.

4 C. A person who is serving with the territorial military who accept pay or allowances and  
5 performs in military duty forces who submitted voluntarily to the military authority, meets the mental  
6 competence and minimum age qualifications of Title 10 of the United States Code Annotated, receives  
7 military pay or allowances, and performs military duties is subject to this Code until such person's  
8 service has been terminated in accordance with law or appropriate regulations.

9 D. A person not on a duty status who committed an offense may be ordered to duty status  
10 for military justice matters against this Code while on duty status may be ordered to active duty  
11 involuntarily for the purpose of investigation under §63718.2, trial by court-martial or nonjudicial  
12 punishment under §63714.

13 **§63703. Personnel Jurisdiction.**

14 A. Each person discharged from the territorial military forces who is later charged with  
15 having fraudulently obtained his discharge is, subject to §63719.9 of this Code, subject to trial by  
16 court-martial on that charge and is, after apprehension, subject to this Code while in custody of the  
17 military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all  
18 offenses under this Code committed before the fraudulent discharge.

19 B. No person who has deserted from the territorial military forces may be relieved from  
20 amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

21 C. A person subject to this Code is not, by virtue of the termination of a period of active  
22 duty or inactive duty training, relieved from amenability to jurisdiction of this Code for an offense  
23 against this Code committed during such period of active duty or inactive-duty training.

24 **§63704. Reserved.**

25 **§63705. Territorial applicability of the Code.**

26 (a) This Code applies in all places. It also applies to all persons otherwise subject to this  
27 Code while they are serving outside the Territory of Guam, and while they are going to and returning  
28 from such service outside the Territory of Guam, in the same manner and to the same extent as if they  
29 were serving inside the Territory of Guam.

30 (b) A court-martial, court of inquiry, a military commission, or a provost court may be  
31 convened and held in units of the territorial military forces while those units are serving outside the  
32 boundaries of Guam, with the same jurisdiction and power as to persons subject to this code as if the  
33 proceedings were held inside the boundaries of Guam, and offenses committed outside the territory  
34 may be tried and punished either inside or outside the Territory of Guam.

35 **§63706. Judge advocates/legal officers.**

36 **A. Appointment of**

1           (1) The Adjutant General shall appoint an officer of the territorial military forces as  
2 Territorial Judge Advocate General. To be eligible for appointment, an officer must have  
3 graduated from an ABA accredited law school, be a member in good standing of a bar of a  
4 Federal Court or the highest court of a State, Territory, Commonwealth of the United States or  
5 the District of Columbia, be federally recognized by the National Guard Bureau as a judge  
6 advocate for at least five (5) years or have been appointed a judge advocate by an United States  
7 Armed Force pursuant to Article 27 of the Uniform Code of Military Justice for a minimum of  
8 five (5) years or a combination of National Guard Bureau or Armed Forces recognition for the  
9 minimum five (5) years and have completed The Judge Advocate General's School Advance  
10 Course of the Army or Air Force.

11           (2) The Adjutant General shall appoint judge advocates upon the recommendation of  
12 the Territorial Judge Advocate General. To be eligible for appointment, an officer must be a  
13 member of the bar of a Federal Court or of the highest court of a State, Territory,  
14 Commonwealth of the United States, or the District of Columbia. The Territorial Judge  
15 Advocate General shall not recommend an officer for final appointment approval to the  
16 Adjutant General until said officer has been federally recognized as a judge advocate by the  
17 National Guard Bureau.

18           (3) The Territorial Judge Advocate General shall appoint or designate a legal officer.  
19 For an individual to be eligible to be designated or appointed as legal officer he must be a  
20 member of the bar of a Federal Court or of the highest court of a State, Territory,  
21 Commonwealth of the United States or the District of Columbia.

22           (4) The Territorial Judge Advocate General or his assistants shall make frequent  
23 inspections in the field in supervision of the administration of military justice.

24           (5) Convening authorities shall at all times communicate directly with their staff judge  
25 advocates or legal officers in matters relating to the administration of military justice; and the  
26 staff judge advocate or legal officers of any command are entitled to communicate directly with  
27 the staff judge advocate or legal officers of a superior or subordinate command, or with the  
28 Territorial Judge Advocate General.

29           (6) No person who has acted as member, military judge, trial counsel, assistant trial  
30 counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a  
31 witness for either the prosecution or defense in any case may later act as staff judge advocate or  
32 legal officer to any reviewing authority upon the same case.

33           (7) In the absence, or lack, of a qualifying Territorial Judge Advocate General, the  
34 most senior judge advocate within the territorial military forces may perform duties as such for  
35 a period not to exceed one hundred twenty (120) days unless continued as authorized herein,  
36 providing that he or she is so designated by the Adjutant General and the Acting Territorial  
37 Judge Advocate General so designated meets all the requirements set out in this Subarticle

1 except that for the number of years as a judge advocate and completion of the Judge Advocate  
2 General's School Advance Course of an Armed Force of the United States. Nothing contained  
3 herein shall limit the Adjutant General's authority to redesignate a judge advocate as the Acting  
4 Territorial Judge Advocate provided no other judge advocate within the territorial military  
5 forces meet the qualifications for Territorial Judge Advocate as set out in this subarticle.

## 6 SUBARTICLE II.

### 7 APPREHENSION AND RESTRAINT.

#### 8 §63707. Apprehension.

9 A. **Definition.** Apprehension is the taking of a person into custody.

10 B. **Who may apprehend.** Any person authorized by this Code, or by regulations  
11 issued under it, and/or any marshal of a court-martial appointed pursuant to the provisions of this  
12 Code, and any peace officer having authority to apprehend offenders under the laws of the United  
13 States, a State, Territory, Commonwealth of the United States, or the District of Columbia, may  
14 apprehend persons subject to this Code, upon reasonable belief that an offense has been committed and  
15 that the person apprehended committed it.

16 C. **Authority to quell quarrels, frays and disorders.** Commissioned officers,  
17 warrant officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders  
18 among persons subject to this Code and to apprehend persons subject to this Code who take part  
19 therein.

20 §63708. **Apprehension of deserters.** Any civil officer having authority to apprehend  
21 offenders under the laws of the United States or a State, Territory, Commonwealth of the United  
22 States or the District of Columbia may summarily apprehend a deserter from the territorial military  
23 forces and deliver him into the custody of territorial military forces.

#### 24 §63709. Imposition of restraint.

##### 25 A. Definition of Arrest and Confinement.

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

28 (2) **Confinement** is the physical restraint of a person.

29 B. **Restraint of enlisted member.** An enlisted member may be ordered into arrest or  
30 confinement by any commissioned officer by an order, oral or written, delivered in person or through  
31 other persons subject to this Code. A commanding officer may authorize a warrant officer or  
32 noncommissioned officer to order an enlisted man of his command or subject to his authority into  
33 arrest or confinement.

34 C. **Restraint of commissioned officer/warrant officer.** A commissioned officer  
35 or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding  
36 officer to whose authority he is subject, by an order, oral or written, delivered in person or by another

1 commissioned officer. The authority to order such persons apprehended or into arrest or confinement  
2 may not be delegated.

3 **D. Apprehension or arrest requires probable cause.** No person may be ordered  
4 apprehended or into arrest or confinement except for probable cause.

5 **E. No limits to authority of authorized persons.** Nothing in this Article limits the  
6 authority of persons authorized to apprehend offenders to secure the custody of an alleged offender  
7 until proper authority may be notified.

8 **F. Restraint of persons charged with offenses.** Any person subject to this Code  
9 charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances  
10 may require; but when charged with an offense normally processed as nonjudicial punishment, such  
11 person shall not ordinarily be placed in confinement. When any person subject to this Code is placed  
12 in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific  
13 wrong of which he is accused and to try him or to dismiss the charges and release him. Persons  
14 confined, other than in a guardhouse, whether before, during, or after trial by a military court, shall be  
15 confined in a civilian correctional facility, jail, lockup or any other facility used for the purpose of  
16 confinement of prisoners that is so designated by the Adjutant General.

17 **§63710. Reports and receiving prisoners.**

18 A. No provost marshal, commander of a guard, master at arms, warden, keeper, or officer  
19 of a territory jail, lockup or correctional facility designated under §63709(F) of this Code, may refuse  
20 to receive or keep any prisoner committed to his charge, when the committing person furnishes a  
21 statement, signed by him, of the offense charged against the prisoner.

22 B. Every commander of a guard, master at arms, warden, keeper, or officer of a territorial  
23 jail, lockup or correctional facility designated under §63709(F) of this Code, to whose charge a  
24 prisoner is committed shall, within twenty-four (24) hours after that commitment or as soon as he is  
25 relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the  
26 offense charged against him, and the name of the person who ordered or authorized the commitment.

27 **§63711. Reserved.**

28 **§63712. Punishment prohibited before trial.** Subject to §63719.19 of this Code,  
29 no person, while being held for trial or the result of trial, may be subjected to punishment or penalty  
30 other than arrest or confinement upon the charges pending against him, nor shall the arrest or  
31 confinement imposed upon him be any more rigorous than the circumstances require to ensure his  
32 presence, but he may be subjected to minor punishment during that period for infractions of discipline.

33 **§63713. Delivery of offenders to civil authorities.**

34 A. Under such regulations as may be prescribed under this Code, a person subject to this  
35 Code who is on duty status who is accused of an offense against civil authority may be delivered,  
36 upon request, to the civil authority for trial.

1 B. When delivery under this article is made to any civil authority of a person undergoing  
2 sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the  
3 execution of the sentence of the court-martial, and the offender, after having answered to civil  
4 authorities for his offense, shall, upon the request of competent military authority, be returned to  
5 military custody for the completion of his sentence.

6 **SUBARTICLE III.**  
7 **NON-JUDICIAL PUNISHMENT.**

8 **§63714. Commanding officer's non-judicial punishment.**

9 (A) **Limiting Regulations.** Under disciplinary regulations as the Adjutant General may  
10 promulgate, limitations may be placed on the powers granted by this Article with respect to the kind  
11 and the amount of punishment authorized, the categories of commanding officers and warrant officers  
12 exercising command authorized to exercise those powers, and the kinds of court-martial to which the  
13 case may be referred upon such a demand. Under similar regulations, rules may be prescribed with  
14 respect to the suspension of punishments authorized hereunder.

15 (B) **Right to refuse non-judicial punishment.** Punishment may not be imposed on  
16 any member of the territorial military forces under this Article if the member has, before imposition of  
17 such punishment, demanded trial by court-martial in lieu of such punishment.

18 (C) **Punishments authorized.** Subject to subsections (A) and (B) of this Subarticle, any  
19 commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of  
20 the following disciplinary punishments for minor offenses without the intervention of a court-martial:

21 (1) If imposed by a general court-martial convening authority as defined in  
22 §63716 of this code upon officers of his command:

23 (a) arrest in quarters for not more than fifteen (15) days;

24 (b) forfeiture of not more than fifteen (15) days' pay or a fine of Three  
25 Hundred Dollars (\$300);

26 (c) restriction to certain specified limits with or without suspension from  
27 duty, for not more than thirty (30) days;

28 (2) If imposed by a field grade officer or above, upon personnel other than  
29 personnel covered by §63714(C)(1) above:

30 (a) forfeiture of not more than ten (10) days pay or a fine of not more than  
31 Two Hundred Dollars (\$200);

32 (b) reduction to the lowest or any intermediate pay grade, if the grade  
33 from which demoted is within the promotion authority of the officer imposing the  
34 reduction or any officer subordinate to the one who imposes the reduction, but no  
35 enlisted member in a pay grade above E-4 may be reduced more than two (2) pay  
36 grades;

1 (c) extra duties including fatigue or other duties, for not more than fifteen  
2 (15) days, which need not be consecutive, and for not more than two (2) hours per  
3 day, holidays included;

4 (d) restriction to certain specified limits, with or without suspension for  
5 duty for not more than thirty (30) days;

6 (3) If imposed by a company grade officer upon personnel other than  
7 personnel covered by §63714(C)(1) above:

8 (a) forfeiture of not more than seven (7) days pay or a fine of not more  
9 than One Hundred Dollars (\$100);

10 (b) reduction to next inferior pay grade, if the grade from which demoted  
11 is within the promotion authority of the officer imposing the reduction or any  
12 officer subordinate to the one who imposes the reduction;

13 (c) extra duties including fatigue or other duties, for not more than ten  
14 (10) days, which need not be consecutive, and for not more than two (2) hours per  
15 day, holidays included;

16 (d) restriction to certain specified limits, with or without suspension from  
17 duty, for not more than fourteen (14) days;

18 (4) An officer in charge may impose upon enlisted members assigned to the  
19 unit of which he is in charge, any of the punishments authorized under subsection  
20 (C)(3)(a)-(d) of this §64714 as the Adjutant General may authorize by regulations.

21 (5) The Governor may only impose punishment under this Subarticle upon  
22 officers of general rank and may impose any of the punishments authorized under  
23 (C)(1)(a)-(c) of this §63714.

24 **(D) Summarized proceedings:**

25 (1) A commander, after a preliminary inquiry into an alleged offense by an enlisted  
26 member, may use summarized proceedings if it is determined that should punishment be found  
27 to be appropriate, it should not exceed:

28 (a) extra duties for fourteen (14) days;

29 (b) restriction for fourteen (14) days;

30 (c) oral reprimand or admonition;

31 (d) any combination of (a), (b) or (c);

32 (2) The summarized proceedings hearing shall consist of:

33 (a) consideration of evidence, written or oral, against the member;

34 (b) examination of available evidence by the member;

35 (c) presentation by the member of testimony of available witnesses or other  
36 matters, in defense, extenuation, and/or mitigation;

37 (d) determination of guilt or innocence by imposing commander;



- (e) imposition of punishment or termination of the proceedings;
- (f) explanation of right to appeal.

**(E) When formal proceedings required.** In all cases except summarized proceedings set out in subsection (d) above, commanders should use formal proceedings conducted in accordance with regulations and/or guidance as set out by the disciplinary regulations.

**(F) Suspension, mitigation or remission of punishment.** The officer who imposes the punishment authorized in subsection (c), or his successor in command, may, at any time, suspend probationally any part of a reduction in grade or fine or forfeiture imposed under subsection (c), whether or not executed. In addition, he may, at any time, except as may be limited by regulations of the territorial military forces, remit or mitigate any part or amount of the unexecuted punishment imposed, and may set aside in whole or in part the punishment, whether executed or unexecuted; and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to a fine or forfeiture of pay. When mitigating arrest in quarters to restriction or extra duties to restriction the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to a fine or forfeiture of pay, the amount of the fine or forfeiture shall not be greater than the amount that could have been imposed initially under this Subarticle by the officer who imposed the punishment mitigated.

**(G) Combined punishment limitation.** No two (2) or more of the punishments of arrest in quarters, extra duties, and restrictions may be combined to run consecutively in the maximum amount possible for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment.

**(H) Right to appeal.** A person punished under this Subarticle who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority, except that no appeal may be taken above the level of the Adjutant General or from punishment imposed by the Adjutant General pursuant to §63714(C)(1)(2) and the Governor imposed pursuant to §63714(C)(5). The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged, except the superior authority should suspend punishments of arrest in quarters, extra duties and restrictions until after the appeal. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on any appeal the authority who is to act on the appeal shall refer the case to a judge advocate for advice on appropriateness of the punishment and whether the proceedings were conducted under the law and regulations. The judge advocate is not limited to an examination of written matters of record of proceedings and may make any inquiries that are necessary.

**(I) Not bar to subsequent prosecution.** The imposition and enforcement of disciplinary punishment under this Subarticle for any act or omission is not a bar to trial by court-martial or appropriate civilian court for a serious crime or offense growing out of the same act or

1 omission, and not properly punishable under this Subarticle, but the fact that a disciplinary punishment  
2 has been enforced may be shown by the accused upon trial, and when so shown shall be considered in  
3 determining the measure of punishment to be adjudged in the event of a finding of guilty.

4 **(J) Record of proceedings.** The Adjutant General may, by regulation, prescribe the  
5 form of records to be kept of proceedings under this Subarticle, and may also prescribe that certain  
6 categories of those proceedings shall be in writing.

7 **(K) Punishment and limitations.** Each form of punishment authorized under this  
8 Subarticle are described and limited as follows:

9 **(1) Admonition and Reprimand.**

10 Admonition and reprimand are two forms of censure intended to express adverse  
11 reflection or criticism of a person's conduct. A reprimand is a more severe form of censure  
12 than an admonition.

13 **Limitation:** Although either reprimand or admonition may generally be imposed in  
14 the form of verbal or written censure, where imposed on a commissioned or warrant officer as  
15 nonjudicial punishment, it must be in written form.

16 **(2) Arrest in quarters.**

17 Arrest in quarters is the limiting of a person's liberty by an order requiring that he  
18 remain in his quarters. The limit is created through moral (duty to obey order) rather than  
19 physical restraint. A person undergoing this punishment may be required to perform those  
20 duties prescribed by superior authority, but must remain within the limits of his quarters unless  
21 the limits of arrest are otherwise extended by appropriate authority.

22 **Limitation:** This punishment may be imposed only upon officers and will not be  
23 performed beyond a date one hundred eighty (180) days from the date the punishment is  
24 ordered executed. [This period may be extended by thirty (30) days for IDT officers each time  
25 the person being punished fails to complete a scheduled drill or active duty period.]

26 **(3) Extra duties.** Extra duties involve the performance of duties in addition to  
27 those normally assigned to the person being punished. The extra duty may be any type of  
28 military duty, including fatigue duties, and may extend for two (2) hours on each of the days  
29 the punishment is to be performed.

30 **Limitation:** No extra duty may be imposed which constitutes a known safety or  
31 health hazard to the member or which constitutes cruel or unusual punishment or which is not  
32 sanctioned by customs of the service concerned. Extra duties assigned as punishment of  
33 noncommissioned officers, or any other enlisted persons of equivalent grades or positions,  
34 should not be of a kind that demeans or degrades their positions. This punishment will not be  
35 performed beyond a date one hundred twenty (120) days from the date the punishment is  
36 ordered executed. [This period may be extended by thirty (30) days for IDT members each time  
37 the person being punished fails to complete a scheduled drill or active duty period.]

1           (4) **Fine.** A fine is a pecuniary sanction requiring the immediate payment of the  
2 dollar penalty assessed.

3           (5) **Forfeiture of pay.** Forfeiture means a permanent loss of entitlement to the pay  
4 forfeited.

5           **Limitation:** If the punishment includes both reduction, whether or not suspended,  
6 and forfeiture of pay, the forfeiture must be based on the grade to which reduced.

7           (6) **Reduction in grade.** Reduction in grade means the reduction of an enlisted  
8 member to a lower pay grade.

9           **Limitation:** The reduction may not be by more than two pay grades and may only  
10 be taken when the nonjudicial punishment authority, or any subordinate of his, has the  
11 authority to promote to the grade held by the member prior to his reduction.

12           (7) **Restriction.** Restriction is the least severe form of deprivation of liberty. Like  
13 arrest in quarters, restriction involves moral rather than physical restraint. It requires the subject  
14 of the punishment to restrict himself to a prescribed geographical area and may also limit his  
15 activities. A person undergoing restriction may be required to report to a designated place at  
16 specified times to ensure that the punishment is being properly executed. Unless otherwise  
17 specified by the authority imposing punishment, a person in restriction may be required to  
18 perform any military duty.

19           **Limitation:** This punishment will not be performed beyond a date one hundred  
20 twenty (120) days from the date the punishment is ordered executed. [This period may be  
21 extended by thirty (30) days for IDT members each time the person being punished fails to  
22 complete a scheduled drill or active duty period.]

23           (L) **Calculation and execution of punishment.** Each form of punishment imposed  
24 under this Subarticle, which has a defined duration or dollar amount, will be calculated and executed as  
25 follows:

26           (1) **Arrest in quarters, restriction or extra duties.** Periods of arrest in  
27 quarters, restriction or extra duties will always be imposed in terms of days, never in months  
28 or fractions thereof. A period of such punishment need not be in consecutive days. Such  
29 punishment will be served, rather, on each following "duty" day performed by the member  
30 until the punishment has been completed. However, in the case of extra duty punishment, the  
31 punishment may be served on non-consecutive duty days at the discretion of the imposing  
32 authority. For purposes of this section a "duty" day is a calendar day on which the member is  
33 on a duty status (as defined by §63701(7) of this Code) for eight(8) hours or more.

34           (2) **Fine or forfeiture.** Fines or forfeitures will be expressed in whole dollar  
35 amounts at the time of imposition. In determining maximum forfeiture, a day's pay will be the  
36 amount of pay that would be received were the member on active duty for one day (i.e. each  
37 four hour drill training unit will count as a day for purposes of an IDT's pay). The definition

1 of "pay" will be that defined by §63701(21) of this Code. A fine will be due for payment on  
2 the date of the punishment's execution, although the imposing authority may permit (for cause  
3 shown) an extension. In the event of a forfeiture, the subject member's pay will be forfeited  
4 from the date of execution until the total dollar amount imposed has been reached.

5 **SUBARTICLE IV.**  
6 **COURTS-MARTIAL.**

7 **§63715. Court-Martial classified.**

8 **A.** The three kinds of courts-martial in each of the territorial military forces are:

9 **(1) General Court-Martial**, which shall consist of:

10 (a) a military judge and not less than five (5) members; or

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

14 **(2) Special Court-Martial**, which shall consist of:

15 (a) not less than three (3) members; or

16 (b) a military judge and not less than three (3) members; or

17 (c) only a military judge, if one has been detailed to the court and the accused under  
18 the conditions that is prescribed in Subsection (A)(1)(b) of this §63715 so requests; and

19 **(3) Summary Court-Martial**, which shall consist of one (1) officer, who shall be a  
20 military judge or an attorney who is a member of the bar of a federal court, or the highest court of a  
21 State, Territory, Commonwealth of the United States or the District of Columbia and certified to be  
22 competent to perform such duties by the Territorial Judge Advocate General, or if such military judge  
23 or attorney is not reasonably available, then a senior officer of the United States Armed Forces, either  
24 active, reserve or national guard, certified as competent to perform such duties by the Territorial Judge  
25 Advocate General.

26 **§63715.1. Jurisdiction of courts-martial in general.** Each Armed Force of the  
27 territory has court-martial jurisdiction over all persons subject to this Code. The exercise of  
28 jurisdiction by one force over personnel of another force shall be in accordance with regulations of the  
29 territorial military forces. All persons subject or who become subject to the provisions of this Code  
30 may be tried for offenses committed within or without the boundaries of Guam.

31 **§63715.2. Jurisdiction of General Courts-Martial.**

32 (A) Subject to §63715.1 of this Code, general courts-martial have jurisdiction to try persons  
33 subject to this Code for any offense made punishable by this Code and may, under such limitations as  
34 the regulations of the territorial military forces may prescribe, adjudge any of the following  
35 punishments:

1 (1) A fine of not more than Two Hundred Dollars (\$200) or confinement of not more  
2 than two hundred (200) days. However, in no case, may the total of such fine and jail time  
3 exceed a combined total of two hundred (200) days.

4 (2) Forfeiture of pay and allowances;

5 (3) A reprimand;

6 (4) Dismissal, dishonorable discharge or bad conduct discharge;

7 (5) Reduction of rank and grade;

8 (6) Any combination of these punishments; or

9 (7) If the offense being tried is under §63722.60 of this Code and the offense alleged  
10 is a violation of Title 9, Guam Code Annotated, then the range of punishment may be equal to,  
11 but shall not exceed, the punishment authorized under said Title 9 for such offense.

12 (B) A dismissal, dishonorable discharge or bad conduct discharge may not be adjudged  
13 unless a complete record (verbatim or, if authorized by regulations of the territorial military forces,  
14 videotape or similar records) of the proceedings and testimony has been made, counsel having the  
15 qualifications prescribed under §63717.1(b) of this Code was detailed to represent the accused, and a  
16 military judge was detailed to the trial.

17 **§63715.3. Jurisdiction of Special Courts-Martial.**

18 (A) Subject to §63715.1 of this Code, special courts-martial have jurisdiction to try persons  
19 subject to this Code, except commissioned officers, for any offense for which they may be punished  
20 under this Code. A special court-martial has the same powers of punishment as a general court-  
21 martial, except that a fine or confinement imposed by a special court-martial may not be more than a  
22 One Hundred Dollars (\$100) fine or confinement of not more than one hundred (100) days for each  
23 single offense and in no case may the total of such fine and jail time exceed One Hundred Dollars  
24 (\$100) or one hundred (100) days or a combined total of Two Hundred Dollars (\$200) and two  
25 hundred (200) days and a dismissal or dishonorable discharge may not be adjudged but, in its stead, a  
26 bad-conduct discharge may be adjudged.

27 (B) A bad-conduct discharge may not be adjudged unless a complete record of the  
28 proceedings and testimony has been made, counsel having the qualifications prescribed under Article  
29 §63717.1(B) of this Code was detailed to represent the accused, and a military judge was detailed to  
30 the trial. In all special courts-martial cases, except for a special court-martial authorized to adjudge a  
31 bad-conduct discharge, in which a military judge was not detailed to be held but the convening  
32 authority shall make a detailed written statement, to be appended to the record, stating the reason or  
33 reasons a military judge could not be detailed.



1 (A) Any territorial commissioned officer in duty status is eligible to serve on all courts-martial  
2 for the trial of any person who may lawfully be brought before such courts for trial.

3 (B) Any warrant officer in duty status is eligible to serve on general and special courts-martial  
4 for the trial of any person, other than a commissioned officer, who may lawfully be brought before  
5 such courts for trial.

6 (C) (1) Any enlisted member of the territorial military forces in a territorial duty status who  
7 is not a member of the same unit as the accused is eligible to serve on general and special courts-martial  
8 for the trial of any enlisted member of the territorial military forces who may lawfully be brought  
9 before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of  
10 a session called by the military judge under §63719.3(A) of this Code prior to trial or, in the absence  
11 of such a session, before the court is assembled for the trial of the accused, the accused personally has  
12 requested in writing that enlisted members serve on it. After such a request, the accused may not be  
13 tried by a general or special court-martial the membership of which does not include enlisted members  
14 in a number comprising at least one-third of the total membership of the court, unless eligible members  
15 cannot be obtained on account of physical conditions or military exigencies. If such members cannot  
16 be obtained, the court may be convened and the trial held without them, but the convening authority  
17 shall make a detailed written statement, to be appended to the record, stating why they could not be  
18 obtained.

19 (2) In this Subarticle, the word "unit" means any regularly organized body, but in no case  
20 may it be a body larger than a company, squadron or body corresponding to one of them.

21 (D) (1) When it can be avoided, no member of the territorial military forces may be tried by  
22 a court-martial which consists of any member junior to him in rank or grade.

23 (2) When convening a court-martial, the convening authority shall detail as members thereof  
24 such members of the territorial military forces as, in his opinion are the best qualified for the duty by  
25 reason of age, education, training, experience, length of service, and judicial temperament. No  
26 member of the territorial military forces is eligible to serve as a member of a general or special court-  
27 martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or  
28 as counsel in the same case.

29 (E) Before a court-martial is assembled for the trial of a case, the convening authority may  
30 excuse a member of the court from participating in the case. Under such regulations as the Adjutant  
31 General may prescribe, the convening authority may delegate his authority under this subsection to his  
32 staff judge advocate or legal officer or to any other principal assistant.

33 **§63717. Military judge of general, special or summary court-martial.**

34 (A) A military judge shall be detailed to each general court-martial. A military judge shall, if  
35 not prevented by physical conditions or military exigencies, be detailed to each special and summary  
36 court-martial. Regulations shall provide for the manner in which the military judges are detailed for  
37 such courts-martial and for the persons who are authorized to detail military judges for such courts-

1 martial. The military judge shall preside over open sessions of the court-martial to which he has been  
2 detailed.

3 (B) A military judge shall be a commissioned officer or a civilian who is a member of the bar  
4 of a federal court or a member of the bar of the highest court of a State, Territory, Commonwealth of  
5 the United States or the District of Columbia and who is certified to be qualified for duty as a military  
6 judge by the Territorial Judge Advocate General. If an individual has been certified as a military judge  
7 by the Judge Advocate General of the Armed Force of which such military judge is a member or by a  
8 sister Commonwealths of the United States or the District of Columbia, he may be so certified by the  
9 Territorial Judge Advocate General. A qualified judge of the Superior Court of Guam shall be,  
10 without certification, qualified to preside over any military court of the military forces of the Territory  
11 of Guam. Civilians, serving as a military judge, shall have the same powers and authority as a military  
12 officer detailed as a military judge.

13 (C) The military judge of a general court-martial or a special court-martial authorized to  
14 adjudge a bad-conduct discharge should be, if practical, a qualified member as set out in subsection (b)  
15 of another National Guard or active or reserve Armed Force of the United States or a qualified civilian.

16 (D) No person is eligible to act as military judge in a case if he is the accuser or a witness for  
17 the prosecution or has acted as investigating officer or a counsel in the same case.

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

21 **§63717.1. Detail of trial counsel and defense counsel.**

22 (A) For each general, special, and summary court-martial the authority convening the court  
23 shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No  
24 person who has acted as investigating officer, military judge, or court member in any case may act later  
25 as trial counsel, assistant trial counsel, or unless expressly requested by accused, as defense counsel or  
26 assistant defense counsel in the same case. No person who has acted for the prosecution may act later  
27 in the same case for the defense, nor may any person who has acted for the defense act later in the  
28 same case for the prosecution.

29 (B) Trial counsel and defense counsel detailed for a general court-martial:

30 (1) must be a judge advocate who is a graduate of an accredited law school or is a  
31 member of the bar of a federal court or of the highest court of a State, Territory,  
32 Commonwealth of the United States or the District of Columbia; and

33 (2) must be certified as competent to perform such duties by the Territorial Judge  
34 Advocate General; or

35 (3) If counsel having such qualifications as set out in §63717.1(B)(1) and (2) cannot  
36 be obtained on account of physical conditions or military exigencies, then the Territorial Judge  
37 Advocate General may temporarily certify a judge advocate officer certified by a sister National



1 Guard of the various States, Territories, Commonwealths of the United States, or the District  
2 of Columbia (Air or Army), or any active or reserve judge advocate officer of the United  
3 States Armed Forces certified under §63716 of the Uniform Code of Military Justice of the  
4 United States or a non-judge advocate officer or civilian who is a graduate of an accredited law  
5 school, member of the bar of a federal court, or of the highest court of a State, Territory,  
6 Commonwealth, or the District of Columbia, as competent to perform such duties.

7 (C) In the case of a special or summary court-martial:

8 (1) The accused shall be afforded the opportunity to be represented at the trial by  
9 counsel having qualifications prescribed in §63717.1(B) of this Code unless counsel having  
10 such qualifications cannot be obtained on account of physical conditions or military exigencies.  
11 If counsel having such qualifications cannot be obtained, the court may be convened and the  
12 trial held but the convening authority shall make a detailed written statement, to be appended to  
13 the record, stating why counsel with such qualifications could not be obtained;

14 (2) If the trial counsel is qualified to act as counsel before a general court-martial, the  
15 defense counsel detailed by the convening authority must be a person similarly qualified; and

16 (3) If the trial counsel is a judge advocate, or a member of the bar of a federal court or  
17 the highest court of a State, Territory, Commonwealth of the United States or the District of  
18 Columbia, the defense counsel detailed by the convening authority must be one of the  
19 foregoing.

20 **§63717.2. Detail or employment of reporters.** Under such regulations as the  
21 Adjutant General may prescribe, the convening authority of a general or special court-martial, military  
22 commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the  
23 proceedings of and testimony taken before that court or commission. Under like regulations the  
24 convening authority may detail or employ interpreters who shall interpret for the court or commission.

25 **§63717.3. Absent and additional members.**

26 (A) No member of a general or special court-martial may be absent or excused after the court  
27 has been assembled for the trial of the accused except for physical disability or as the result of a  
28 challenge or by order of the convening authority for good cause.

29 (B) Whenever a general court-martial, other than a general court-martial composed of a  
30 military judge only, is reduced below five (5) members the trial may not proceed unless the convening  
31 authority details new members sufficient in number to provide not less than five (5) members. The  
32 trial may proceed with the new members present after the recorded evidence previously introduced has  
33 been read to the court in the presence of the military judge, the accused, and counsel for both sides.

34 (C) Whenever a special court-martial, other than a special court-martial composed of a  
35 military judge only, is reduced below three (3) members the trial may not proceed unless the convening  
36 authority details new members sufficient in number to provide not less than three (3) members. The  
37 trial shall proceed with the new members present as if no evidence had previously been introduced at

1 the trial, unless a verbatim record of the evidence previously introduced before the members of the  
2 court or stipulation thereof is read in court in the presence of the military judge, if any, the accused,  
3 and counsel for both sides.

4 (D) If the military judge of a court-martial composed of a military judge only is unable to  
5 proceed with the trial because of physical disability, as a result of a challenge, or for other good cause,  
6 the trial shall proceed, subject to any applicable conditions of §63715(1)(b) or (2)(c) of this Code, after  
7 the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim  
8 record of the evidence previously introduced or stipulation thereof is read in court in the presence of  
9 the new military judge, the accused, and counsel for both sides.

10 **SUBARTICLE VI.**

11 **PRE-TRIAL PROCEDURE.**

12 **§63718. Charges and specifications.**

13 (A) Charges and specifications shall be signed by a person subject to this Code under oath  
14 before a commissioned officer of the territorial military forces authorized to administer oaths and shall  
15 state:

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

18 (2) That they are true in fact to the best of his knowledge and belief.

19 (B) Upon the preferring of charges, the proper authority shall take immediate steps to  
20 determine what disposition should be made thereof in the interest of justice and discipline, and the  
21 person accused shall be informed of the charges against him as soon as practicable.

22 **§63718.1. Compulsory self-incrimination prohibited.**

23 (A) No person subject to this Code may compel any person to incriminate himself or to  
24 answer any question the answer to which may tend to incriminate him.

25 (B) No person subject to this Code may interrogate, or request any statement from an accused  
26 or a person suspected of an offense without first informing him of the nature of the accusation and  
27 advising him that he does not have to make any statement regarding the offense of which he is accused  
28 or suspected and that any statement made by him may be used as evidence against him in a trial by  
29 court-martial.

30 (C) No person subject to this Code may compel any person to make a statement or produce  
31 evidence before any military tribunal if the statement or evidence is not material to the issue and may  
32 tend to degrade him.

33 (D) No statement obtained from any person in violation of the Article, or through the use of  
34 coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a  
35 trial by court-martial.

36 **§63718.2. Investigation.**

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

6 (B) The accused shall be advised of the charges against him and of his right to be represented  
7 at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if  
8 provided by him, or military counsel of his own selection if such counsel is reasonably available, or by  
9 counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that  
10 investigation full opportunity shall be given to the accused to cross-examine witnesses against him if  
11 they are available and to present anything he may desire in his own behalf, either in defense or  
12 mitigation, and the investigating officer shall examine available witnesses requested by the accused. If  
13 the charges are forwarded after the investigation, they shall be accompanied by a statement of the  
14 substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

15 (C) If an investigation of the subject matter of an offense has been conducted before the  
16 accused is charged with the offense, and if the accused was present at the investigation and afforded  
17 the opportunities for representation, cross-examination, and presentation prescribed in subsection (b)  
18 of this Subarticle, no further investigation of that charge is necessary under this Subarticle unless it is  
19 demanded by the accused after he is informed of the charge. A demand for further investigation  
20 entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in  
21 his own behalf.

22 (D) The requirements of this Subarticle are binding on all persons administering this Code but  
23 failure to follow them does not constitute jurisdictional error.

24 **§63718.3. Forwarding of charges.** When a person is held for trial by general court-  
25 martial the commanding officer shall, within eight (8) days after the accused is ordered into arrest or  
26 confinement, if practicable, forward the charges, together with the investigation and allied papers, to  
27 the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in  
28 writing to the officer the reasons for the delay.

29 **§63718.4. Advice of staff judge advocate.**

30 (A) Before directing the trial of any charge by general court-martial, the convening authority  
31 shall refer it to his staff judge advocate for consideration and advice. The convening authority may not  
32 refer a charge to a general court-martial for trial unless he has been advised in writing by the staff judge  
33 advocate that:

- 34 (1) the specification alleges an offense under the Code;  
35 (2) the specification is warranted by the evidence indicated in the report of  
36 investigation under §73718.2 of this Code, if there is such a report; and  
37 (3) a court-martial would have jurisdiction over the accused and the offense.

1 (B) The advice of the staff judge advocate under subitem (A) with respect to a specification  
2 under a charge shall include a written and signed statement by the staff judge advocate:

3 (1) expressing his conclusions with respect to each matter set forth in subitem (A);  
4 and

5 (2) recommending action that the convening authority take regarding the  
6 specification. If the specification is referred for trial, the recommendation of the Staff Judge  
7 Advocate shall accompany the specification.

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

12 **§63718.5. Service of charges.** The trial counsel to whom general or special court-  
13 martial charges are referred for trial shall cause to be served upon the accused a copy of the charges  
14 upon which trial is to be had. The summary court-martial convening authority shall, in the referral of a  
15 summary court-martial, cause to be served upon the accused a copy of the charges upon which the trial  
16 is to be had. Actual service of charges upon the accused in any court-martial authorized by this Code  
17 may be effectuated by any person authorized by the Territorial Judge Advocate General. In time of  
18 peace no person may, against his objections, be brought to trial, or be required to participate by  
19 himself or counsel in a session called by the military judge under §63719.3(A) of this Code in a  
20 general court-martial case within a period of five (5) days after service of charges upon him, or in a  
21 special court-martial case within a period of three (3) days after the service of charges upon him, or in  
22 a summary court-martial case within a period of twenty-four hours after the service of charges upon  
23 him.

24 **SUBARTICLE VII.**  
25 **TRIAL PROCEDURE.**

26 **§63719. Disciplinary Regulations.**

27 (A) Pretrial, trial, and post trial procedures, including burdens of proof, for cases arising  
28 under this Code triable in courts-martial, military commissions and other military tribunals, and  
29 procedures for courts of inquiry, may be prescribed by disciplinary regulations which shall, so far as  
30 practical, apply the principles of law generally recognized in the trial of courts-martial in the United  
31 States Armed Forces. However, such principles shall not be contrary to or inconsistent with this  
32 Code. The rules of evidence applicable under this Code shall be the rules of evidence as promulgated  
33 by the President in the United States Manual for Courts-Martial (Part III). If a member of the territorial  
34 military forces is tried in a territorial court for a violation of Title 9, Guam Code Annotated, under  
35 §63721.60 of this Code, then, in that event, the principals of law and the rules of evidence applicable  
36 shall be that recognized in the trial of criminal cases in the courts of the territory.

1 (B) The Adjutant General shall issue and promulgate regulations, including those regulations  
2 referred to herein as disciplinary regulations, in furtherance of the provisions of this Code. The  
3 regulations shall take effect by Executive Order of the Governor.

4 (C) The provisions of the Administrative Adjudication Law shall not apply to the issuance  
5 and promulgation of regulations pursuant to this Code.

6 **§63719.1. Unlawfully influencing action of court.**

7 (A) No authority convening a general, special or summary court-martial, nor any other  
8 commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the  
9 court or any member, military judge, or counsel thereof, with respect to the findings or sentence  
10 adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the  
11 proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means,  
12 influence the action of the court-martial or any other military tribunal or any member thereof, in  
13 reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing  
14 authority with respect to his judicial acts. The foregoing provisions of this subsection shall not apply  
15 with respect to general instructional or informational courses in military justice if such courses are  
16 designed solely for the purpose of instructing members of a command in the instructions given in open  
17 court by the military judge, president of a special court-martial, or counsel.

18 (B) In the preparation of an effectiveness, fitness, or efficiency report or any other report or  
19 document used in whole or in part for the purpose of determining whether a member of the territorial  
20 military forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a  
21 member of the territorial military forces or in determining whether a member should be retained in the  
22 territorial military forces, no person subject to this Code may, in preparing any such report

23 (1) consider or evaluate the performance of duty of any such member of a court-  
24 martial, or

25 (2) give a less favorable rating or evaluation of any member of the territorial military  
26 forces because of the zeal with which such member, as counsel, represented any accused  
27 before a court-martial.

28 **§63719.2. Duties of trial counsel and defense counsel.**

29 (A) The trial counsel of a general, special, or summary court-martial shall prosecute in the  
30 name of the Territory of Guam, and shall, under the direction of the court, prepare the record of the  
31 proceedings.

32 (B) (1) The accused has the right to be represented in his defense before a general, special,  
33 or summary court-martial or at an investigation under §63718.2 as provided in this subsection.

34 (2) The accused may be represented by civilian counsel if provided by him.

35 (3) The accused may be represented:

36 (a) by military counsel detailed under §63717; or

37 (b) by civilian attorney provided under §63717; or

1 (c) by military counsel of his own selection if that counsel is reasonably available as  
2 determined by the Territorial Judge Advocate General.

3 (4) If the accused is represented by civilian counsel, other than provided by §63717 and  
4 §63719.2B(3)(b) of this Subarticle, military counsel detailed or selected under subitem (3) shall act as  
5 associate counsel unless excused at the request of the accused. If military counsel cannot be detailed  
6 and a civilian counsel is provided under §63717, such counsel shall be excused if accused retains his  
7 own civilian counsel.

8 (5) Except as provided under subitem (3) of this Subarticle, if the accused is represented by  
9 military counsel of his own selection under subitem (3)(b) of this Subarticle, any military counsel  
10 detailed under subitem (3)(a) of this Subarticle shall be excused.

11 (6) The accused is not entitled to be represented by more than one counsel provided by the  
12 territory. However, the person authorized under regulations prescribed under §63717 of this Code to  
13 detail counsel in his sole discretion:

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

15 (b) if the accused is represented by military counsel of his own selection under  
16 subitem (3)(c) of this Subarticle, may approve a request from the accused that military counsel  
17 detailed under subitem (3)(a) of this Subarticle act as associate defense counsel.

18 (7) The Territorial Judge Advocate General shall define "reasonably available" for the  
19 purpose of subitem (3)(c) of this Subarticle and establish procedures for determining whether the  
20 military counsel selected by an accused under that paragraph is reasonably available.

21 (C) In any court-martial proceeding resulting in a conviction, the defense counsel:

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

25 (2) may assist the accused in the submission of any matter under §63721.1; and

26 (D) An assistant trial counsel of a general, special or summary court-martial may, under the  
27 direction of the trial counsel or when he is qualified to be a trial counsel as required by §63717 of this  
28 Code, perform any duty imposed by law, regulation, or the custom of the service upon the trial  
29 counsel of the court.

30 (E) An assistant defense counsel of a general, special or summary court-martial may, under  
31 the direction of the defense counsel or when he is qualified to be the defense counsel as required by  
32 §63717 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon  
33 counsel for the accused.

34 **§63719.3. Sessions.**

35 (A) At any time after the service of charges which have been referred for trial to a court-  
36 martial composed of a military judge and members, the military judge may, subject to §63718.5, call  
37 the court into session without the presence of the members for the purpose of:

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

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

6 (3) if permitted by disciplinary regulations, holding the arraignment and receiving the  
7 pleas of the accused; and

8 (4) performing any other procedural function which may be performed by the military  
9 judge under this Code or under rules prescribed pursuant to §63719 of this Code and which  
10 does not require the presence of the members of the court. These proceedings shall be  
11 conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be  
12 made a part of the record.

13 (B) When the members of a court-martial deliberate or vote, only the members may be  
14 present. All other proceedings, including any other consultation of the members of the court with  
15 counsel or the military judge, shall be made a part of the record and shall be in the presence of the  
16 accused, the defense counsel, the trial counsel, and in cases in which a military judge has been  
17 detailed to the court, the military judge.

18 **§63719.6. Continuances.** The military judge or a court-martial without a military  
19 judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may  
20 appear to be just.

21 **§63719.7. Challenges.**

22 (A) The military judge and members of a general and special court-martial may be challenged  
23 by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the  
24 court, shall determine the relevance and validity of challenges for cause, and may not receive challenge  
25 to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and  
26 decided before those by the accused are offered.

27 (B) Each accused and the trial counsel is entitled to one peremptory challenge, but the military  
28 judge may not be challenged except for cause.

29 **§63719.8. Oaths.**

30 (A) Before performing their respective duties, military judges, members of general and  
31 special court-martial, trial counsel, assistant trial counsel, defense counsel and assistant or associate  
32 defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The  
33 form of the oath, the time and place of the taking thereof, the manner of recording the same and  
34 whether the oath shall be taken for all cases in which these duties are to be performed or for a particular  
35 case, shall be as prescribed by the Territorial Judge Advocate General. The Territorial Judge Advocate  
36 General may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant  
37 trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by a

1 judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is  
2 taken it need not again be taken at the time the judge advocate, or other person is detailed to that duty.

3 (B) Each witness before a court-martial shall be examined on oath.

4 **§63719.9. Statute of limitations.**

5 (A) A person charged with desertion or absence without leave in time of insurrection, or with  
6 aiding the enemy or with mutiny may be tried and punished at any time without limitation.

7 (B) Except as otherwise provided by this Subarticle, a person charged with desertion in time  
8 of peace or with the offenses punishable under §§63722.40, 63722.41, and 63722.42 of this Code is  
9 not liable to be tried by court-martial if the offense was committed more than three (3) years before the  
10 receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction  
11 over the command.

12 (C) Except as otherwise provided in this Subarticle, a person charged with any offense is not  
13 liable to be tried by court-martial or punished under §63714 of this Code if the offense was committed  
14 more than two (2) years before the receipt of sworn charges and specifications by an officer exercising  
15 summary court-martial jurisdiction over the command, or before the imposition of punishment under  
16 §63714 of this Code.

17 (D) Periods in which the accused is absent from the territory in which Guam has authority to  
18 apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in  
19 computing the period of limitation prescribed by this Subarticle.

20 **§63719.10. Former jeopardy.**

21 (A) No person tried by a court provided for by this code shall for the same offense be tried by  
22 another court of this territory.

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

26 (C) A proceeding which, after the introduction of evidence but before a finding, is dismissed  
27 or terminated by the convening authority or on motion of the prosecution for failure of available  
28 evidence or witnesses without any fault of the accused is a trial in the sense of this article.

29 **§63719.11. Pleas of the accused.**

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

35 (B) With respect to any charge or specification to which a plea of guilty has been made by the  
36 accused and accepted by the military judge, or by a court-martial without a military judge, a finding of  
37 guilty of the charge and specification may, if permitted by regulations of the Adjutant General, be



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

4 **§63719.12. Opportunity to obtain witnesses.**

5 (A) The trial counsel, the defense counsel, the accused, and the court-martial shall have equal  
6 opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process  
7 for obtaining witnesses.

8 (B) The presiding officer of a court-martial may:

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

12 (2) Issue subpoenas duces tecum and other subpoenas;

13 (3) Enforce by attachment the attendance of witnesses and the production of books  
14 and papers; and

15 (4) Sentence for refusal to be sworn or to answer, as provided in actions before civil  
16 courts of Guam.

17 (C) Process issued in court-martial cases to compel witnesses to appear and testify and to  
18 compel the production of other evidence shall run to any part of Guam and shall be executed by civil  
19 officials or peace officers as prescribed by the laws of Guam.

20 **§63719.13. Refusal to appear or testify.**

21 (A) Any person not subject to this Code who:

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

26 (2) has been duly paid or tendered the fees and mileage of a witness at the rates  
27 allowed to witnesses under §63723.11 of this Code; and provided; and

28 (3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to  
29 testify or to produce any evidence which that person may have been legally subpoenaed to  
30 produce; is guilty of an offense against the Territory of Guam and may be punished by fine not  
31 to exceed Five Hundred Dollars (\$500) or confinement not to exceed sixty (60) days in jail, or  
32 by both fine and confinement, and such witness shall be prosecuted in the Superior Court of  
33 Guam.

34 (B) Any prosecution under this Subarticle shall be by the Attorney General of Guam after  
35 submission of a complaint to him by the presiding officer of a military court, commission, court of  
36 inquiry or board.

1           **§63719.14. Contempt.** A military court may punish for contempt any person who uses  
2 any menacing word, sign, or gesture in its presence, or who disrupts its proceedings by any riot or  
3 disorder. The punishment may not exceed confinement of thirty (30) days or a fine of One Hundred  
4 Dollars (\$100), or both.

5           **§63719.15. Deposition.**

6           (A) Oral or written deposition, may be taken by any party, at any time, after charges have  
7 been signed in accordance with §63718 of this Code, unless prohibited by a military judge or a court-  
8 martial without a military judge hearing the case, or, if the case is not being heard, an authority  
9 competent to convene a court-martial for the trial of those charges, if such prohibition is based on good  
10 cause.

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

13           (C) Depositions may be taken before and authenticated by any military or civil officer  
14 authorized by the laws of Guam or by the laws of the place where the deposition is taken to administer  
15 oaths.

16           (D) Any duly authenticated deposition taken upon reasonable notice to the other parties, so far  
17 as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of  
18 audiotape, videotape, or similar material, may be played in evidence before any military court or  
19 commission in any case, or in any proceeding before a court of inquiry or military board, if it appears:

20           (1) that the witness is beyond the boundaries of Guam or the State, Territory,  
21 Commonwealth of the United States, or District of Columbia in which the court, commission,  
22 or board is ordered to sit, or beyond one hundred (100) miles from the place of trial or hearing;  
23 or

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

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

28           **§63719.16. Admissibility of records of courts of inquiry.**

29           (A) The sworn testimony, contained in the duly authenticated record of proceedings of a court  
30 of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under  
31 the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party  
32 before the court of inquiry and if the same issue was involved or if the accused consents to the  
33 introduction of such evidence.

34           (B) Such testimony may also be read in evidence before a court of inquiry or a military board.

35           (C) In all courts of inquiry both enlisted men and officers shall have the right to counsel and  
36 the right to cross examination of all witnesses. Testimony obtained in violation of this subsection

1 cannot be read in evidence before a court of inquiry or court-martial except by the accused or with the  
2 consent of accused.

3 **§63719.17. Voting and rulings.**

4 (A) Voting by members of a general or special court-martial on the findings and on the  
5 sentence, and by members of a court-martial without a military judge upon questions of challenge,  
6 shall be by secret written ballot. The junior member of the court shall count the votes. The count shall  
7 be checked by the president, who shall forthwith announce the result of the ballot to the members of  
8 the court.

9 (B) The military judge and, except for questions of challenge, the president of a court-martial  
10 without a military judge shall rule upon all questions of law and all interlocutory questions arising  
11 during the proceedings. Any such ruling made by the military judge upon any question of law or any  
12 interlocutory question other than the factual issue of mental responsibility of the accused, or by the  
13 president of a court-martial without a military judge other than a motion for a finding of not guilty, is  
14 final and constitutes the ruling of the court. However, the military judge or the president of a court-  
15 martial without a military judge may change his ruling at any time during the trial. Unless the ruling is  
16 final, if any member objects thereto, the court shall be cleared and closed and the question decided by a  
17 voice vote as provided in §63719.18, beginning with the junior in rank.

18 (C) Before a vote is taken on the findings, the military judge or the president of a court-  
19 martial without a military judge shall, in the presence of the accused and counsel, instruct the members  
20 of the court as to the elements of the offense and charge them:

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

23 (2) that in 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 he must be acquitted;

25 (3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in  
26 a lower degree as to which there is no reasonable doubt; and

27 (4) that the burden of proof to establish the guilt of the accused beyond a reasonable  
28 doubt is upon the Territory of Guam.

29 (D) Subsections (A), (B), and (C) do not apply to a court-martial composed of a military  
30 judge only. The military judge of such a court-martial shall determine all questions of law and fact  
31 arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The  
32 military judge of such a court-martial shall make a general finding and shall on request find the facts  
33 specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact  
34 appear therein.

35 **§63719.18. Number of votes required.**

36 (A) No person shall be convicted, if charged under §63722.60 of this Code of an offense  
37 which is a violation of the Guam penal laws and the punishment assessable is that which Guam Penal

1 statutes authorizes, unless the court-martial is before an appropriate court of the territory following the  
2 rules and procedures concerning criminal trials of the Territory of Guam after arraignment.

3 (B) No person shall be convicted of an offense in any other case, except by concurrence of  
4 two-thirds ( $\frac{2}{3}$ ) of the members present at the time the vote is taken.

5 (C) Except for sentences for convictions under subsection (a) which shall be determined by  
6 Guam penal statutes and criminal procedures, all sentences shall be determined by concurrence of two-  
7 thirds ( $\frac{2}{3}$ ) of the members present at the time the vote is taken.

8 (D) All other questions to be decided by the members of a general or special court-martial  
9 shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to  
10 reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which  
11 indicates that the reconsideration is not opposed by the number of votes required for that finding or  
12 sentence. A tie vote on a challenge disqualifies a member challenged. A tie vote on a motion for a  
13 finding of not guilty or on a motion relating to the question of the accused's sanity is a determination in  
14 favor of the accused.

15 **§63719.19. Court to announce action.** A court-martial shall announce its findings  
16 and sentence to the parties as soon as determined.

17 **§63719.20. Record of trial.**

18 (A) Each general court-martial shall keep a separate record of the proceedings in each case  
19 brought before it, and the record shall be authenticated by the signature of the military judge. If the  
20 record cannot be authenticated by the military judge by reason of his death, disability, or absence, it  
21 shall be authenticated by the signature of the trial counsel or if the trial counsel is unable to authenticate  
22 it by reason of his death, disability, or absence it shall be authenticated by a member. In a court-  
23 martial consisting of only a military judge the record shall be authenticated by the court reporter under  
24 the same conditions which would impose such a duty on a member under this subsection. Records of  
25 trials in the territorial courts as provided by this Code shall be authenticated as any other record before  
26 the territorial court.

27 (B) Each special and summary court-martial shall keep a separate record of the proceedings in  
28 each case, and the record shall be authenticated by the signature of the military judge. If the record  
29 cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be  
30 authenticated by the signature of the trial counsel or if the trial counsel is unable to authenticate it by  
31 reason of death, disability, or absence, it shall be authenticated by a member. In a court-martial  
32 consisting of only a military judge the record shall be authenticated by the court reporter under the  
33 same conditions which would impose such duty on a member under this section.

34 (C) (1) A complete record (verbatim or, if allowed by the regulations of the territorial  
35 military forces, videotape or similar record) of the proceedings and testimony shall be prepared:

36 (a) in each general court-martial case in which the sentence adjudged includes a  
37 dismissal or discharge, or, if the sentence adjudged does not include a discharge, any other

1 punishment which exceeds that which may otherwise be adjudged by a special court-martial;  
2 and

3 (b) in each special court-martial case in which the sentence adjudged includes a bad-  
4 conduct discharge.

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

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

### 9 SUBARTICLE VIII.

### 10 SENTENCES.

11 **§63720. Cruel and unusual punishments prohibited.** Punishment by flogging, or  
12 by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be  
13 adjudged by a court-martial or inflicted upon any person subject to this Code. The use of irons, single  
14 or double, except for the purpose of safe custody, is prohibited.

15 **§63720.1. Maximum sentence limits.** The punishment which a court-martial may  
16 direct for an offense may not exceed such limits prescribed by Guam law and/or this Code nor limits  
17 prescribed by disciplinary regulations.

#### 18 **§63720.2. Effective day of sentences.**

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

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

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

34 (D) In territorial military forces not in federal service, no sentence of dismissal, dishonorable  
35 discharge, or bad-conduct discharge may be executed until it is approved by the Governor.

36 (E) All other sentences of court-martial are effective on the date ordered executed.

#### 37 **§63720.3. Execution of confinement.**

1 (A) A sentence of confinement adjudged by a military court, whether or not the sentence  
2 includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may  
3 be carried into execution by confinement in any place of confinement under the control of the territorial  
4 military forces or in penal or correctional institution under the control of the Territory of Guam, or  
5 which the Territory of Guam or any political subdivision thereof may control or be allowed to use.  
6 Persons so confined in penal or correctional institution not under the control of territorial military  
7 forces are subject to the same discipline and treatment as persons confined or committed by the courts  
8 of Guam or in the place in which the institution is situated.

9 (B) The omission of the words "hard labor" from any sentence or punishment of a court-  
10 martial adjudging confinement does not deprive the authority executing that sentence or punishment of  
11 the power to require hard labor as a part of the punishment.

12 (C) The keepers, officers, wardens and directors of correctional facilities, jails,  
13 penitentiaries, prisons or any institution utilized for the purpose of holding or housing prisoners for the  
14 Territory of Guam, or by such person as he may authorize to act under §63708(F) of this Code, shall  
15 receive persons ordered into confinement before trial and persons committed to confinement by a  
16 military court and shall confine them according to the law. No such keeper, officer, warden or director  
17 may require payment of any fee or charge for so receiving or confining a person.

18 **§63720.4. Sentences: reduction in enlisted grade upon approval.**

19 (A) Unless otherwise provided in regulations to be prescribed by the Adjutant General, a  
20 court-martial sentence of a member, as approved by the convening authority, that includes a  
21 dishonorable or bad-conduct discharge reduces that member to pay grade E-1, effective on the date of  
22 that approval.

23 (B) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside  
24 or disapproved, or, as finally approved, does not include punishment of reduction in rank, the rights  
25 and privileges of which he was deprived because of that reduction shall be restored to him and he is  
26 entitled to the pay and allowances to which he would have been entitled for the period the reduction  
27 was in effect, had he not been so reduced.

28 **SUBARTICLE IX.**

29 **POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL.**

30 **§63721. Error of law; lesser included offense.**

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

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

35 **§63721.1. Action by the convening authority.**

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

1 (B) The accused may submit to the convening authority matters for consideration by the  
2 convening authority with respect to the findings and the sentence. Such submissions shall be made  
3 within thirty (30) days after the accused has been given an authenticated record of trial and, if  
4 applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). If the  
5 accused shows that additional time is required for the accused to submit such matters, the convening  
6 authority or other person taking action under this article, for good cause, may extend the period:

7 (1) in the case of a general court-martial or special court-martial which has adjudged a  
8 bad-conduct discharge, for not more than an additional thirty (30) days;

9 (2) in the case of all other courts-martial, for not more than an additional twenty (20)  
10 days;

11 (3) (a) The time periods used in this subsection shall not apply to accused and his  
12 counsel, if said counsel is detailed military counsel, counsel and accused are or were on active  
13 duty during the trial and continuously thereafter in which case the time limitations of Article 60,  
14 Uniform Code of Military Justice, Chapter 47, Title 10 United States Code are applicable were  
15 the accused and his military counsel are or were on duty for the necessary period of time  
16 considering time requirements of said article.

17 (b) If accused has retained civilian counsel the time limitations in which to make a  
18 submission under paragraph (1) shall be governed by Article 60, Uniform Code of Military  
19 Justice, Chapter 47, Title 10 United States Code.

20 (c) The accused may waive his right to make a submission to the convening  
21 authority. Such waiver must be in writing and may not be revoked. For the purposes of  
22 subsection (c)(2), the time within which the accused may make a submission under this  
23 subsection shall be deemed to have expired upon the submission of such a waiver to the  
24 convening authority.

25 (C) (1) The authority under this article to modify the findings and sentence of a court-  
26 martial is a matter of command prerogative involving the sole discretion of the convening authority.  
27 Under disciplinary regulations, a commissioned officer commanding for the time being, a successor in  
28 command, or any person exercising general court-martial jurisdiction may act under this article in place  
29 of the convening authority.

30 (2) Action on the sentence of a court-martial shall be taken by the convening authority or by  
31 another person authorized to act under this Subarticle. Subject to the disciplinary regulations, such  
32 action may be taken only after consideration of any matters submitted by the accused under subsection  
33 (b) and, if applicable, under subsection (d), or after the time for submitting such matters expires,  
34 whichever is earlier. The convening authority or any other person taking such action, in his sole  
35 discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

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

- 1 (a) dismiss any charge or specification by setting aside a finding of guilty thereto; or  
2 (b) change a finding of guilty to a charge or specification to a finding of guilty of an  
3 offense that is a lesser offense of the offense stated in the charge or specification.

4 (D) Before acting under this Subarticle on any general court-martial or special court-martial  
5 case that includes a bad-conduct discharge, the convening authority or other person taking action  
6 under this article shall obtain and consider the written recommendation of the staff judge advocate or  
7 legal officer. The convening authority or other person taking action under this article shall refer the  
8 record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer  
9 shall use such record in the preparation of his recommendation. The recommendation of the staff  
10 judge advocate or legal officer shall include such matters as may be prescribed by regulation and shall  
11 be served on the accused, who shall have a reasonable time from the date of receipt in which to submit  
12 any matter in response. In no case shall such period of time be less than periods set out in  
13 §63721.1(D). Failure to object in the response to the recommendation or to any matter attached to the  
14 recommendation waives the right to object thereto.

15 (E) (1) The convening authority or other person taking action under this article, in his sole  
16 discretion, may order a proceeding in revision or a rehearing.

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

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

23 (b) reconsider a finding of not guilty of any charge, unless there has been a finding of  
24 guilty under a specification laid under that charge, which sufficiently alleges a violation of  
25 some Subarticle of this Code;

26 (c) increase the severity of some part of the sentence unless the sentence prescribed  
27 for the offense is mandatory.

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

34 **§63721.2. Reserved.**

35 **§63721.3. Reserved.**

36 **§63721.4. Rehearings.** Each rehearing under the Code shall take place before a court-  
37 martial composed of members of the first court-martial which first heard the case. Upon a rehearing



1 the accused may not be tried for any offense of which he was found not guilty by the first court-  
2 martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless  
3 the sentence is based upon a finding of guilty of an offense not considered upon the merits in the  
4 original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence  
5 approved after the first court-martial was in accordance with a pretrial agreement and the accused at the  
6 rehearing changes his plea with respect to the charges or specifications upon which the pretrial  
7 agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to  
8 those charges or specifications may include any punishment not in excess of that lawfully adjudged at  
9 the first court-martial.

10 **§63721.5. Review by a judge advocate.**

11 (A) Each case in which there has been a finding of guilty shall be reviewed by a judge  
12 advocate or legal officer. A judge advocate or legal officer may not review a case under this  
13 subsection if he has acted in the same case as an accuser, investigating officer, member of the court,  
14 military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge  
15 advocate's or legal officer's review shall be in writing and shall contain the following:

16 (1) Conclusions as to whether:

- 17 (a) the court had jurisdiction over the accused and the offense;
- 18 (b) the charge and specification stated an offense; and
- 19 (c) the sentence was within the limits prescribed as a matter of law.

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

21 (3) If the case is sent for action under subsection (b), a recommendation as to the  
22 appropriate action to be taken and an opinion as to whether corrective action is required as a  
23 matter of law.

24 (B) The record of trial and related documents in each case reviewed under subsection (a) shall  
25 be sent for action to the person exercising general court-martial jurisdiction over the accused at the  
26 time the court was convened, or to that of the person's successor in command, if:

27 (1) the judge advocate or legal officer who reviewed the case recommends corrective  
28 action;

29 (2) the sentence approved under §63721.1 of this Code extends to dismissal, a bad-  
30 conduct discharge or dishonorable discharge, or confinement of more than six (6) months; or

31 (3) such action is otherwise required by regulations.

32 (C) (1) The person to whom the record of trial and related documents are sent under  
33 subsection (b) may:

34 (a) disapprove or approve the findings or sentence, in whole or in part;

35 (b) remit, commute, or suspend the sentence in whole or in part;

36 (c) except where the evidence was insufficient at the trial to support the findings,  
37 order a rehearing on the findings, on the sentence, or on both; or

1 (d) dismiss the charges.

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

4 (3) If the opinion of the judge advocate or the legal officer in the judge advocate's or legal  
5 officer's review under subsection (a) is that corrective action is required as a matter of law and if the  
6 person required to take action under subsection (b) does not take action that is at least as favorable to  
7 the accused as that recommended by the judge advocate or legal officer, the record of trial and action  
8 thereon shall be sent to the Territorial Judge Advocate General for review and/or action under  
9 §63721.11 of this Code.

10 (D) If the final action of the court-martial has resulted in an acquittal of all charges and  
11 specifications, the opinion of the judge advocate or legal officer is limited to questions of jurisdiction.

12 **§63721.6. Disposition of records.**

13 (A) In a case subject to review by §63721.11 of this Code in which the right to such review  
14 is not waived, the record of trial and action thereon shall be transmitted to the Territorial Judge  
15 Advocate General for appropriate action.

16 (B) Except as otherwise required by the Code, all other records of trial and related documents  
17 shall be transmitted to the Territorial Judge Advocate General and disposed of as he sees fit or as the  
18 Adjutant General may prescribe by regulation.

19 **§63721.7. Reserved.**

20 **§63721.8. Reserved.**

21 **§63721.9. Judicial review by territorial appellate court.**

22 (A) An accused, who was tried by a court-martial and who still deems himself aggrieved after  
23 he has exhausted all of his rights of military review under this Code, may, if provided for by  
24 disciplinary regulations, appeal the judgment or sentence of the court-martial, as may have been  
25 modified on review under this Code prior to judicial review under this article to appellate courts as may  
26 be available to cases appealed from the Superior Court of Guam.

27 (B) The filing of an appeal pursuant to subsection (a) shall not of itself stay the execution of  
28 the judgment or sentence appealed from, but the appellate court may stay the same upon motion upon  
29 such conditions as it may deem proper, notwithstanding any conflicting or contrary provision of this  
30 Code or disciplinary regulations relating to the effective date or execution of sentences or any other  
31 contrary provision of law.

32 (C) Counsel on appeal shall be at the expense of the accused unless the accused, upon written  
33 request to the Territorial Judge Advocate General, requests representation on appeal and furnishes  
34 documentation of his or her financial inability to retain counsel, and the Territorial Judge Advocate  
35 certifies the accused's financial inability to the Adjutant General, then in that case the Adjutant General  
36 may authorize the Territorial Judge Advocate General to provide representation for the accused on said  
37 appeal and said counsel must be certified competent as provided by this Code. The Territory of Guam

1 shall be responsible for any compensation owed counsel appointed by this article and said counsel  
2 shall be paid as any other attorney in criminal court appointment matters.

3 **§63721.10. Reserved.**

4 **§63721.11. Review in the office of the Territorial Judge Advocate General.**

5 (A) The record of trial in each general court-martial that was not reviewed by the Territorial  
6 Judge Advocate General in the §63721.5 judge advocate or legal officer review of this Code shall be  
7 examined by the Territorial Judge Advocate General if there is a finding of guilty and the accused does  
8 not waive or withdraw his right to review. If any part of the findings or sentence is found to be  
9 unsupported in law or, if reassessment of the sentence is appropriate, the Territorial Judge Advocate  
10 General may modify or set aside the findings or sentence or both.

11 (B) The findings or sentence, or both, in a court-martial case not reviewed under subsection  
12 (A) may be modified or set aside, in whole or in part, by the Territorial Judge Advocate General on the  
13 ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the  
14 offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the  
15 sentence. If such case is considered upon application of the accused, the application must be filed in  
16 the office of the Territorial Judge Advocate General by the accused on or before the last day of the two-  
17 year period beginning on the date the sentence is approved under §63721 of this Code, unless the  
18 accused established good cause for failure to file within that time.

19 (C) If the Territorial Judge Advocate General sets aside the findings or sentence, he may,  
20 except when the setting aside is based on lack of sufficient evidence in the record to support the  
21 findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing,  
22 he shall order that the charges be dismissed. If the Territorial Judge Advocate General orders a  
23 rehearing but the convening authority finds a rehearing impractical, the convening authority shall  
24 dismiss the charges.

25 **§63721.12. Reserved.**

26 **§63721.13. Execution of sentence of dismissal, bad-conduct discharge or**  
27 **dishonorable discharge; suspension of sentence.**

28 (A) When a sentence extends to dismissal or a dishonorable or bad-conduct discharge, that  
29 part of the sentence providing for dismissal, or dishonorable or bad-conduct discharge may not be  
30 executed until approved by the Governor. The Governor may commute, remit, or suspend the  
31 sentence, or any part of the sentence, as he sees fit.

32 (B) All other court-martial sentences, unless suspended or deferred, may be ordered executed  
33 by the convening authority when approved by him. The military judge, summary court officer, or the  
34 convening authority may suspend the execution of any sentence.

35 **§63721.14. Vacation of suspension.**

36 (A) Before the vacation of the suspension of any court-martial sentence which includes  
37 dismissal, dishonorable or bad-conduct discharge, the officer having general court-martial jurisdiction

1 over officer or enlisted probationer or special court-martial jurisdiction over enlisted probationer shall  
2 hold a hearing on the alleged violation of probation. The probationer shall be represented by counsel if  
3 he so desires.

4 (B) The record of the hearing and the recommendation of the officer having special court-  
5 martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction  
6 over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a  
7 dismissal, dishonorable or bad-conduct discharge, shall be executed. The vacation of the suspension  
8 of a dismissal, dishonorable or bad-conduct discharge is not effective until approved by the Governor.

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

12 **§63721.15. Petition for new trial.** At any time within two (2) years after approval  
13 by the convening authority and/or the Governor of a court-martial sentence, the accused may petition  
14 the Territorial Judge Advocate General for a new trial on the grounds of newly discovered evidence or  
15 fraud on the court.

16 **§63721.16. Remission and suspension.**

17 (A) The Governor may and, when designated by him, the Adjutant General, Territorial Judge  
18 Advocate General or commanding officer may remit or suspend any part or amount of the unexecuted  
19 sentence, including all uncollected forfeitures.

20 (B) The Governor may, for good cause, substitute an administrative form of discharge for a  
21 discharge or dismissal

22 **§63721.17. Restoration.**

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

28 (B) If a previously executed sentence of dishonorable discharge or bad-conduct discharge is  
29 not imposed on a new trial, the Governor may substitute therefore a form of discharge authorized for  
30 administrative issuance unless the accused is to serve out the remainder of his enlistment.

31 (C) If a previously executed sentence of dismissal is not imposed on a new trial, the  
32 Governor may substitute therefore a form of discharge authorized for administrative issue. The  
33 commissioned officer dismissed by that sentence may be, to correct an injustice, reappointed by the  
34 Governor alone, to such commissioned grade and with such rank as in the opinion of the Governor  
35 that former officer would have attained had he not been dismissed. The reappointment of such former  
36 officer may not be made if a position vacancy is not available under applicable tables of organization.  
37 Reappointment may not be made if the commissioned officer dismissed was convicted of criminal acts

1 which would be grounds for elimination under administrative personnel regulations. If the dismissed  
2 commissioned officer is reappointed all the time between the dismissal and reappointment shall be  
3 considered as service for all purposes.

4 **§63721.18. Reserved.**

5 **§63721.19. Reserved.**

6 **SUBARTICLE X.**  
7 **PUNITIVE ARTICLES.**

8 **§63722. Principals.**

9 Any person punishable under this Code who:

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

12 (2) causes an act to be done which if directly performed by him would be punishable  
13 by this Code, is a principal.

14 **§63722.1. Accessory after the fact.** Any person subject to this Code who knowing  
15 that an offense punishable by this Code has been committed, receives, comforts, or assists the  
16 offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a  
17 court-martial may direct.

18 **§63722.2. Conviction of lesser included in the offense.** An accused may be  
19 found guilty of an offense necessarily included in the offense charged or of an attempt to commit either  
20 the offense charged or an offense necessarily included therein.

21 **§63722.3. Attempts.**

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

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

27 (C) Any person subject to this Code may be convicted of an attempt to commit an offense  
28 although it appears on the trial that the offense was consummated.

29 **§63722.4. Conspiracy.** Any person subject to this Code who conspires with any other  
30 person to commit an offense under this Code shall, if one or more of the conspirators does an act to  
31 effect the object of the conspiracy, be punished as a court-martial may direct.

32 **§63722.5. Solicitation.**

33 (A) Any person subject to this Code who solicits or advises another or others to desert in  
34 violation of §63722.8 of this Code or mutiny in violation of §63722.17 of this Code shall, if the  
35 offense solicited or advised is attempted or committed, be punished with the punishment provided for  
36 the commission of the offense, but if the offense solicited or advised is not committed or attempted, he  
37 shall be punished as a court-martial may direct.

1 (B) Any person subject to this Code who solicits or advises another or others to commit an  
2 act of misbehavior before the enemy or opposing forces or individuals in violation of §63722.22 of  
3 this Code or sedition in violation of §63722.17 of this Code shall, if the offense solicited or advised is  
4 committed, be punished with the punishment provided for the commission of the offense, but, if the  
5 offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

6 **§63722.6. Fraudulent enlistment, appointment, or separation.** Any person  
7 who:

8 (1) procures his own enlistment or appointment in the territorial military forces by  
9 knowingly false representation or deliberate concealment as to his qualifications for the  
10 enlistment or appointment and receives pay or allowances there- under, or

11 (2) procures his own separation from the armed forces by knowingly false  
12 representation or deliberate concealment as to his eligibility for that separation, shall be  
13 punished as a court-martial may direct.

14 **§63722.7. Unlawful enlistment, appointment, or separation.** Any person  
15 subject to this Code who effects an enlistment or appointment in or separation from the territorial  
16 military forces of any person who is known to him to be ineligible for that enlistment, appointment, or  
17 separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may  
18 direct.

19 **§63722.8. Desertion.**

20 (A) Any member of the territorial military forces who:

21 (1) without authority goes or remains absent from his unit,

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

24 (3) without being regularly separated from one of the territorial military forces enlists  
25 or accepts an appointment in the same or another of the territorial military forces or one of the  
26 armed forces without fully disclosing the fact that he has not been regularly separated, or enters  
27 any foreign armed service except when authorized by the United States and the Territory of  
28 Guam; is guilty of desertion.

29 (B) Any commissioned officer of the territorial military forces who, after tender of his  
30 resignation and before notice of its acceptance, quits his post or proper duties without leave and with  
31 intent to remain away therefrom permanently is guilty of desertion.

32 (C) Any person found guilty of desertion or attempt to desert shall be punished as a court-  
33 martial may direct.

34 **§63722.9. Absence without leave.** Any member of the territorial military forces  
35 who, without authority:

36 (A) fails to go to his appointed place of duty at the time prescribed;

37 (B) goes from that place; or

1 (C) absents himself or remains absent from his unit, organization, or place of duty at which  
2 he is required to be at the time prescribed; shall be punished as a court-martial may direct.

3 **§63722.10. Missing movement.** Any person subject to this Code who through  
4 neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the  
5 course of duty to move shall be punished as a court-martial may direct.

6 **§63722.11. Contempt toward officials.** Any commissioned officer who uses  
7 contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the  
8 Secretary of Army, the Secretary of Air Force, the Governor or Legislature of Guam or any State,  
9 Territory, Commonwealth of the United States in which he is on duty or present shall be punished as a  
10 court-martial may direct.

11 **§63722.12. Disrespect toward superior commissioned officer.** Any person  
12 subject to this Code who behaves with disrespect toward his superior commissioned officer shall be  
13 punished as a court-martial may direct.

14 **§63722.13. Assaulting or willfully disobeying superior commissioned  
15 officer.** Any person subject to this Code who:

16 (A) strikes his superior commissioned officer or draws or lifts up any weapon or offers any  
17 violence against him while he is in the execution of his office; or

18 (B) willfully disobeys a lawful command of his superior commissioned officer; shall be  
19 punished as a court-martial may direct.

20 **§63722.14. Insubordinate conduct toward warrant officer or  
21 noncommissioned officer.** Any warrant officer or enlisted member who:

22 (A) strikes or assaults a warrant or noncommissioned officer while that officer is in the  
23 execution of his office;

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

25 (C) treats with contempt or is disrespectful in language or deportment toward a warrant  
26 officer or noncommissioned officer while that officer is in the execution of his office; shall be punished  
27 as a court-martial may direct.

28 **§63722.15. Failure to obey order or regulation.** Any person subject to this Code  
29 who:

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

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

33 (C) is derelict in the performance of his duties; shall be punished as a court-martial may  
34 direct.

35 **§63722.16. Cruelty and maltreatment.** Any person subject to this Code who is  
36 guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be  
37 punished as a court-martial may direct.

1           **§63722.17. Mutiny or sedition.**

2           (A) Any person subject to this Code who:

3                   (1) with intent to usurp or override lawful military authority, refuses, in concert with  
4                   any other person, to obey orders or otherwise do his duty or creates any violence or  
5                   disturbance is guilty of mutiny;

6                   (2) with intent to cause the overthrow or destruction of lawful civil authority, creates,  
7                   in concert with any other person, revolt, violence, or other disturbance against that authority is  
8                   guilty of sedition;

9                   (3) fails to do his utmost to prevent and suppress a mutiny or sedition being  
10                  committed in his presence, or fails to take all reasonable means to inform his superior  
11                  commissioned officer or commanding officer of a mutiny or sedition which he knows or has  
12                  reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

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

15           **§63722.18. Resistance, breach of arrest, and escape.** Any person subject to this  
16           Code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be  
17           punished as a court-martial may direct.

18           **§63722.19. Releasing prisoner without proper authority.** Any person subject  
19           to this Code who, without proper authority, releases any prisoner committed to his charge, or who  
20           through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may  
21           direct, whether or not the prisoner was committed in strict compliance with the law.

22           **§63722.20. Unlawful detention.** Any person subject to this Code who, except as  
23           provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may  
24           direct.

25           **§63722.21. Noncompliance with procedural rules.** Any person subject to this  
26           Code who:

27                   (A) is responsible for unnecessary delay in the disposition of any case of a person accused of  
28                   an offense under this Code; or

29                   (B) knowingly and intentionally fails to enforce or comply with any provision of this Code  
30                   regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-  
31                   martial may direct.

32           **§63722.22. Misbehavior before the enemy.** Any person subject to this Code who  
33           before or in the presence of the enemy, opposing forces or individuals:

34                   (A) runs away;

35                   (B) shamefully abandons, surrenders, or delivers up any command, unit, place, or military  
36                   property which it is his duty to defend;



1 (C) through disobedience, neglect, or intentional misconduct endangers the safety of any  
2 such command, unit, place, or military property;

3 (D) casts away his arms or ammunition;

4 (E) is guilty of cowardly conduct;

5 (F) quits his place of duty to plunder or pillage;

6 (G) causes false alarms in any command, unit, or place under control of the territorial  
7 military forces;

8 (H) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy  
9 troops, insurgents, combatants, vessels, aircraft, or any other thing, which it is his duty so to  
10 encounter, engage, capture, or destroy; or

11 (I) does not afford all practicable relief and assistance to any troops, combatants, vessels, or  
12 aircraft of the territorial military forces and/or armed forces belonging to the United States or their allies  
13 when engaged in battle; shall be punished as a court-martial may direct.

14 **§63722.23. Subordinate compelling surrender.** Any person subject to this Code  
15 who compels or attempts to compel the commander of any place, vessel, aircraft, or other military  
16 property, or of any body of members of the territorial military forces, to give it up to an enemy without  
17 proper authority, shall be punished as a court-martial may direct.

18 **§63722.24. Improper use of countersign.** Any person subject to the Code who in  
19 time of insurrection or civil disturbance discloses the parole or countersign to any person not entitled to  
20 receive it or who gives to another who is entitled to receive and use the parole or countersign a  
21 different parole or countersign from that which, to his knowledge, he was authorized to give, shall be  
22 punished as a court-martial may direct.

23 **§63722.25. Forcing a safeguard.** Any person subject to this Code who forces a  
24 safeguard shall be punished as a court-martial may direct.

25 **§63722.26. Captured or abandoned property.**

26 (A) All persons subject to this Code shall secure all public property taken from the enemy or  
27 insurrectionist for the service of the Territory and/or the United States, and shall give notice and turn  
28 over to the proper authority without delay all captured or abandoned property in their possession,  
29 custody, or control.

30 (B) Any person subject to this Code who:

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

32 (2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned  
33 property, whereby he receives or expects any profit, benefit, or advantage to himself or another  
34 directly or indirectly connected with himself; or

35 (3) engages in looting or pillaging; shall be punished as a court-martial may direct.

36 **§63722.27. Aiding the enemy or insurrectionist.** Any person who:

1 (A) aids, attempts to aid, the enemy or insurrectionist with arms, ammunition, supplies,  
2 money, or other things; or

3 (B) without proper authority, knowingly harbors or protects or gives intelligence to or  
4 communicates or corresponds with or holds intercourse with the enemy or insurrectionist, either  
5 directly or indirectly; shall be punished as a court-martial may direct.

6 **§63722.28. Misconduct of a prisoner.** Any person subject to this Code who, while  
7 in the hands of the enemy or an insurgent in time of insurrection:

8 (A) for the purpose of securing favorable treatment by his captors acts without proper  
9 authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever  
10 nationality held by the enemy or insurgents as civilian or military prisoners; or

11 (B) while in a position of authority over such persons maltreats them without justifiable  
12 cause; shall be punished as a court-martial may direct.

13 **§63722.29. Reserved.**

14 **§63722.30. Reserved.**

15 **§63722.31. False official statements.** Any person subject to this Code who, with  
16 intent to deceive, signs any false record, return, regulation, order, or other official document, knowing  
17 it to be false, or makes any other false official statement knowing it to be false, shall be punished as a  
18 court-martial may direct.

19 **§63722.32. Military property of United States and/or the Territory of Guam-**  
20 **loss, damage, destruction, or wrongful disposition.** Any person subject to this Code  
21 who, without proper authority:

22 (A) sells or otherwise disposes of;

23 (B) willfully or through neglect damages, destroys, or loses; or

24 (C) willfully or through neglect suffers to be lost, damaged, sold, or wrongfully disposed of;  
25 any military property of the United States and/or the Territory of Guam, shall be punished as a court-  
26 martial may direct.

27 **§63722.33. Property other than military property of the United States and/or**  
28 **the Territory of Guam-Waste, spoilage, or destruction.** Any person subject to this Code  
29 who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages  
30 any property other than military property of the United States and/or the Territory of Guam shall be  
31 punished as a court-martial may direct.

32 **§63722.34. Improper hazarding of vessel.**

33 (A) Any person subject to this Code who willfully and wrongfully hazards or suffers to be  
34 hazard by any vessel of the territorial military forces and/or the Armed Forces of the United States shall  
35 be punished as a court-martial may direct.

1 (B) Any person subject to this Code who negligently hazards or suffers to hazard any vessel  
2 of the territorial military forces and/or the Armed Forces of the United States shall be punished as the  
3 court-martial may direct.

4 **§63722.35. Reserved.**

5 **§63722.36. Drunk on duty.** Any person subject to this Code other than a sentinel or  
6 look-out who is found drunk on duty, shall be punished as a court-martial may direct.

7 **§63722.37. Wrongful use, possession, etc., of controlled substances.**

8 (A) Any person subject to this Code who wrongfully uses, possesses, manufactures,  
9 distributes, imports into the Territory of Guam or the customs territory of the United States, or  
10 introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the Armed  
11 Forces a substance described in subsection (B) shall be punished as a court-martial may direct.

12 (B) The substances referred to in subsection (A) are the following:

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

16 (2) Any substance not specified in clause (1) that is listed on a schedule of controlled  
17 substances prescribed by the President of the United States for purposes of this article.

18 (3) Any other substance not specified in clause (1) or contained on a list prescribed  
19 by the President of the United States under clause (2) that is listed in schedules I through V of  
20 §202 of the Controlled Substances Act (21 U.S.C. 812).

21 **§63722.38. Misbehavior of sentinel.** Any sentinel or look-out who is found drunk  
22 or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished as a court-  
23 martial may direct.

24 **§63722.39. Reserved.**

25 **§63722.40. Malingering.** Any person subject to this Code who for the purpose of  
26 avoiding work, duty, or service:

27 (A) feigns illness, physical disablement, mental lapse or derangement; or

28 (B) intentionally inflicts self-injury; shall be punished as a court-martial may direct.

29 **§63722.41. Reserved.**

30 **§63722.42. Provoking speeches or gestures.** Any person subject to this Code  
31 who uses provoking or reproachful words or gestures toward any other person subject to this Code  
32 shall be punished as the court-martial may direct.

33 **§63722.43. Reserved.**

34 **§63722.44. Reserved.**

35 **§63722.45. Reserved.**

36 **§63722.46. Wrongful appropriation.** Any person subject to this Code who  
37 wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any

1 other person any money, personal property, or article of value of any kind with intent temporarily to  
2 deprive or defraud another person of the use and benefit of property or to appropriate it to his own use  
3 or the use of any other person other than the owner, is guilty of wrongful appropriation and shall,  
4 upon conviction, be punished as the court-martial may direct.

5 §63722.47. Reserved.

6 §63722.48. Reserved.

7 §63722.49. Reserved.

8 §63722.50. Reserved.

9 §63722.51. Reserved.

10 §63722.52. Reserved.

11 §63722.53. Reserved.

12 §63722.54. Reserved.

13 §63722.55. Reserved.

14 §63722.56. Reserved.

15 §63722.57. Reserved.

16 §63722.58. **Fraud against the United States and/or the Territory of**  
17 **Guam.** Any person subject to this Code:

18 (A) who, knowing it to be false or fraudulent-

19 (1) makes any claim against the United States or officer thereof;

20 (2) makes any claim against the Territory of Guam or officer thereof: or

21 (3) presents to any person in the civil or military service thereof, for approval or  
22 payment, any claim against the United States or any officer thereof; or

23 (4) presents to any person in the civil or territorial military service thereof, for  
24 approval or payment, any claim against the Territory of Guam or any officer thereof;

25 (B) who, for the purpose of obtaining the approval, allowance, or payment against the United  
26 States or any officer thereof and/or the Territory of Guam or any officer thereof-

27 (1) makes or uses any writing or other paper knowing it to contain any false or  
28 fraudulent statements;

29 (2) makes any oath to any fact or to any writing or other paper knowing the oath to be  
30 false; or

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

33 (C) who, having charge, possession, custody, or control of any money, or other property of  
34 the United States and/or the Territory of Guam, forces of the United States, knowingly delivers to any  
35 person having authority to receive it, any amount thereof less than that for which he receives a  
36 certificate or receipt; or

1 (D) who, being authorized to make or deliver any paper certifying the receipt of any property  
2 of the United States and/or the Territory of Guam furnished or intended for the territorial military  
3 forces or the Armed Forces of the United States, makes or delivers to any person such writing without  
4 having full knowledge of the truth of the statements therein contained and with intent to defraud the  
5 United States or the Territory of Guam; shall, upon conviction, be punished as a court-martial may  
6 direct.

7 **§63722.59. Conduct unbecoming of an officer and gentleman.** A n y  
8 commissioned officer or cadet who is convicted of conduct unbecoming an officer and a gentleman  
9 shall be punished as a court-martial may direct.

10 **§63722.60. General article.**

11 (A) Though not specifically mentioned in this Code, all violations of the criminal laws of the  
12 Territory of Guam or the criminal laws of the federal government of the United States, of which  
13 persons subject to the Code may be guilty, shall be taken cognizance of by a general, special or  
14 summary court-martial according to the nature and degree of the offense, and punishment shall, at the  
15 discretion of that court, be limited to the maximum punishment allowed for such crime or offense by  
16 the criminal statutes of said Territory or United States.

17 (B) Although not specifically mentioned in this Code, all disorders and neglects to the  
18 prejudice of good order and discipline in the territorial military forces, all conduct of a nature to bring  
19 discredit upon the territorial military forces, and crimes and offenses not capital, of which persons  
20 subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary  
21 court-martial, according to the punishment allowed for such crime or offense by the criminal statutes of  
22 said Territory or United States.

23 (C) Although not specifically mentioned in this Code, all disorders and neglects to the  
24 prejudice of good order and discipline in the territorial military forces, all conduct of a nature to bring  
25 discredit upon the territorial military forces, and crimes and offenses not capital, of which persons  
26 subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary  
27 court-martial, according to the nature and degree of the offense, and shall be punished at the discretion  
28 of that court.

29 (D) Specifically mentioning a violation in this Code does not preclude the general, special or  
30 summary court-martial from taking cognizance of all violations of the criminal laws of the Territory of  
31 Guam or the criminal laws of the federal government of the United States as authorized in (A) and (B)  
32 above, of which persons subject to this Code may be guilty, and punishment shall, at the discretion of  
33 that court, be limited to the maximum punishment allowed for such crime or offense by the criminal  
34 statutes of said territory or United States. It is within the sole discretion of the convening authority to  
35 determine whether to charge under the specific provision of this Code or under this article. The  
36 convening authority may charge, at his own discretion, either under a specific article or a general article  
37 for the same offense but not both.

1           **§63722.61. Civilian jurisdiction.** Inclusion of offenses within this Code does not  
2 preclude the prosecution of such criminal conduct under other territorial laws in the Superior Court of  
3 Guam unless prohibited by the United States Constitution; **provided**, however, that nothing in this  
4 Code shall be construed to give jurisdiction of the courts established by this Code over any person not  
5 in the territorial military forces.

6   **SUBARTICLE XI.**  
7   **MISCELLANEOUS PROVISIONS.**

8           **§63723. Courts of inquiry.**

9           (A) Courts of inquiry to investigate any matter may be convened by any person authorized to  
10 convene a general court-martial or by any other person designated by the Adjutant General for that  
11 purpose, whether or not the persons involved have requested such inquiry.

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

14           (C) Any person subject to this Code whose conduct is subject to inquiry shall be designated  
15 as a party. Any person subject to the Code or employed by the Department of Military Affairs who has  
16 a direct interest in the subject of inquiry has the right to be designated as a party upon request to the  
17 court. Any person designated as a party shall be given due notice and has the right to be present, to be  
18 represented by counsel, to cross-examine witnesses, and to introduce evidence.

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

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

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

25           (G) Courts of inquiry shall make findings of fact but may not express authority.

26           (H) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated  
27 by the signatures of the president and counsel for the court and forwarded to the convening authority.  
28 If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the  
29 president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a  
30 member in lieu of the counsel.

31           **§63723.1. Authority to administer oaths and to act as notary public.**

32           (A) The following persons on duty status with the territorial military forces may administer  
33 oaths for the purposes of military administration, including military justice, and have the general power  
34 of a notary public in the performance of all notarial acts to be executed by members of the territorial  
35 military forces and/or their dependents, wherever they may be:

36                   (1) The Territorial Judge Advocate General and all judge advocates;

37                   (2) all summary courts-martial;

- 1 (3) all Adjutants, Assistant Adjutants, Acting Adjutants, and Personnel Adjutants;  
2 (4) all Staff Judge Advocates and Legal Officers, and Acting or Assistant Staff Judge  
3 Advocates and Legal Officers;  
4 (5) all other persons designated by regulation of the Adjutant General or Territory  
5 law.

6 (B) The following persons on duty status with the territorial military forces may administer  
7 oaths necessary in the performance of their duties:

- 8 (1) The president, military judge, trial counsel, and assistant trial counsel;  
9 (2) The president, counsel for the court, and recorder of any court of inquiry;  
10 (3) All officers designated to take a deposition;  
11 (4) All persons detailed to conduct an investigation;  
12 (5) All recruiting officers; and  
13 (6) All other persons designated by regulations of the Adjutant General or Territory  
14 law.

15 (C) No fee may be paid to or received by any person for the performance of any notarial act  
16 herein authorized.

17 (D) The signature without seal of any such person acting as notary, together with the title of  
18 his office, is prima facie evidence of his authority.

19 **§63723.2 Articles to be explained.** §§63702, 63703, 63705, 63706-63714,  
20 63716.3, 63717.1, 63718.1, 63719.1, 63719.2, 63720, 63722-63722.60, and 63723.2-63723.4 of  
21 this Code shall be carefully explained to every enlisted member at the time of his enlistment or transfer  
22 or induction into, or at the time of his order to duty in or withany of the territorial military forces or  
23 within 30 days thereafter. They shall be explained annually to each unit of the territorial military  
24 forces. A complete text of this Code and of the regulations prescribed by the Adjutant General  
25 thereunder shall be made available to any member of the territorial military forces, upon his request,  
26 for his personal examination.

27 **§63723.3. Complaints of wrongs.**

28 (A) Any member of the territorial military forces who believes himself wronged by his  
29 commanding officer, and who, upon due application to that commanding officer, is refused redress,  
30 may complain to any superior officer who shall examine into the complaint and take proper measures  
31 for redressing the wrong complained of; and he shall, as soon as possible, send to the Adjutant  
32 General a true statement of that complaint with the proceedings had thereon.

33 (B) When an action or proceeding is commenced in any court, other than a military court,  
34 against any member of the territorial military forces for any act done in the lawful performance of their  
35 duty, as determined by a finding of fact made by a court of inquiry under §63723 of this Code, while  
36 such member was on active territorial duty, the member may be represented, pursuant to §30108 of  
37 Title 5, Guam Code Annotated, by the Attorney General's office. The Adjutant General, upon the

1 written request of the member involved, shall forward the member's request for representation to the  
2 Attorney General, and instruct the Territorial Judge Advocate General, a judge advocate or legal officer  
3 to assist the Attorney General's office in the preparation and trial of such case.

4 (C) Members of the territorial military forces on active territorial duty by order of the  
5 Governor or other proper authority, shall not be liable, civilly or criminally, for any act or acts done by  
6 them while in the lawful performance of their duty.

7 (D) Members of the territorial military forces on active territorial duty shall have the powers  
8 of peace officers when they are,

9 (1) called or ordered into active territorial duty by the Governor pursuant to the  
10 provisions of §63500, Title 10, Guam Code Annotated,

11 (2) serving within the area wherein military assistance is required, and

12 (3) directly assisting civil authorities in any of the situations specified in §63500,  
13 Title 10, Guam Code Annotated. The authority of any such peace officer extends to the area  
14 wherein military assistance is required as to a public offense committed or which there is  
15 reasonable cause to believe has been committed within that area.

16 **§63723.4. Redress of injuries to property.**

17 (A) Whenever complaint is made to any commanding officer that willful damage has been  
18 done to the property of any person or that his property has been wrongfully taken by members of the  
19 territorial military forces, he may, subject to such regulations as the Adjutant General may prescribe,  
20 convene a board to investigate the complaint. The board shall consist of from one to three  
21 commissioned officers, and for the purpose of that investigation, it has the power to summon  
22 witnesses and examine them upon oath or affirmation, to receive depositions or other documentary  
23 evidence, and to assess the damages sustained against the responsible parties. The assessment of  
24 damages made by the board is subject to the approval of the commanding officer, and in the amount  
25 approved by him shall be charged against the pay of the offenders. The order of the commanding  
26 officer directing charges herein authorized is conclusive, except as provided in subsection (C), on any  
27 disbursing officer for the payment by him to the injured parties of the damages assessed and approved.

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

33 (C) Any person subject to this Code who is accused of causing willful damage to property  
34 has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine  
35 those appearing against him. He has the right to appeal to the next higher commander.

36 **§63723.5. Immunity for action of military courts.** No accused may bring an  
37 action or proceeding against the convening authority or a member of military court, board convened



1 under this Code or military regulations, or officer or person acting under its authority or reviewing its  
2 proceedings because of the approval, imposition, or execution of any sentence or the imposition or  
3 collection of a fine or penalty, or the execution of any process or mandate of a military court, board  
4 convened under this Code, or military regulation.

5 **§63723.6. Delegation of authority.**

6 (A) The Governor may delegate any authority vested in him under this Code, and may  
7 provide for the sub-delegation of any such authority, except the power given him by §§63720.2 and  
8 63723.15 of this Code.

9 (B) In the absence of the Territorial Judge Advocate General, the Adjutant General may, upon  
10 the recommendation of his senior judge advocate, appoint or designate legal officers and delegate  
11 required legal duties as appropriate.

12 **§63723.7. Execution of process and sentence.**

13 (A) In the territorial military forces not in federal service, the processes and sentences of its  
14 courts-martial shall be executed by the civil officers prescribed by the laws of the Territory.

15 (B) When the sentence of a court-martial, as approved and ordered executed, adjudges  
16 confinement, and the convening authority, or the convening authority for the time being, as the case  
17 may be, shall issue a warrant of commitment to a peace officer, directing such peace officer to take the  
18 body of the person so sentenced and confine him in the appropriate confinement facility for the period  
19 named in such sentence, as approved, or until he or the confinement facility official in charge may be  
20 directed to release him by proper authority.

21 **§63723.8. Process of military courts.**

22 (A) Military courts may issue any process or mandate necessary to carry into effect their  
23 powers. Said court(s) may issue subpoenas and subpoenas duces tecum and enforce by attachment  
24 attendance of witnesses and production of books and records, when it is sitting within the Territory  
25 and the witnesses, books and records sought are also so located.

26 (B) Process and mandates may be issued by summary courts-martial, provost courts, or the  
27 president of other military courts as well as any military judge and may be directed to and may be  
28 executed by the marshals of the military court or any peace officer and shall be in such form as may be  
29 prescribed by regulations issued under this Code.

30 (C) All officers to whom process or mandates may be so directed shall execute them and  
31 make return of their acts thereunder according to the requirement of those documents. Except as  
32 otherwise specifically provided in this Code, no such officer may demand or require payment of any  
33 fee or charge for receiving, executing, or returning such a process or mandate or for any service in  
34 connection therewith.

35 (D) A military judge, president of any court-martial, and any summary court officer, shall  
36 have authority to issue under his hand, in the name of the Territory of Guam, process and mandates  
37 directed to the marshal, his deputy, any peace officer of the Territory, or any official of Guam

1 authorized to serve process, and it shall be the duty of said party to serve and execute in the same  
2 manner in which like process is served or executed under court procedures of the Territory for  
3 necessary process, subpoenas, attachments, warrants of arrest and warrant of commitment.

4 **§63723.9. Payment of fines, costs, and disposition thereof.**

5 (A) All fines and forfeitures imposed by general or special courts-martial, shall be paid to the  
6 officer ordering such court, and/or to the officer commanding at the time being and by said officer,  
7 within five (5) days from receipt thereof, paid to the Adjutant General, who shall cause said monies to  
8 be placed in the fund for the Department of Military Affairs to be used to defray the cost of the  
9 administration of military justice for the Guam National Guard.

10 (B) All fines and forfeitures imposed by a summary court-martial or an §63714 shall be paid  
11 to the officer ordering said court, or the officer commanding for the time being, and by such officer,  
12 within five (5) days from the receipt thereof, placed to the credit of the military unit fund of the unit of  
13 which the person fined was a member when the fine was imposed.

14 (C) When a fine is imposed by an §63714 or the sentence of a court-martial adjudges a fine  
15 against any person, and such fine has not been fully paid within ten (10) days after the confirmation  
16 thereof, the convening authority or the Adjutant General may issue a warrant of commitment directed  
17 to a peace officer directing him to take the body of the person so convicted and confine him in a  
18 confinement facility for one (1) day for any fine not exceeding One Dollar (\$1) and one (1) additional  
19 day for every dollar above that sum. However, if the Adjutant General so requests, the fine shall be  
20 enforced by the office of Attorney General in the same manner as a money judgment in a civil case or  
21 by the withholding of any funds due the accused from the Territory or any of its agencies in  
22 accordance with regulations prescribed by the Adjutant General. To the extent not prohibited by  
23 federal laws or regulations, a fine may be enforced by withholding federal funds due the accused.

24 **§64723.10. Presumption of jurisdiction.** The jurisdiction of the military courts and  
25 boards established by this Code shall be presumed and the burden of proof rest on any person seeking  
26 to oust those courts or boards of jurisdiction in any action or proceeding.

27 **§63723.11. Witnesses expenses.**

28 (A) Persons in the employ of this Territory, not belonging to the territorial military forces,  
29 when traveling upon summons as witnesses before Territorial Military Courts, Territory or defense,  
30 are entitled to the same reimbursements for costs as if testifying for any other Territory agency.

31 (B) A person not in the employ of this Territory and not belonging to the military forces  
32 thereof, who has been duly summoned to appear as a witness before a military court, Territory or  
33 defense, will receive the same fees and reimbursement as any witness called to testify on behalf of the  
34 Territory in court proceedings before the Superior Court of Guam. Civilian witnesses will be paid by  
35 the Department of Military Affairs.

1 (C) The charges for return journeys of witnesses will be made upon the basis of the actual  
2 charges allowed for travel to the court, and the entire account thus completed will be paid upon  
3 discharge from attendance without waiting for completion of return travel.

4 (D) No fees shall be allowed to a person as witness fees, unless such person has been  
5 subpoenaed, attached, or recognized as a witness in the case.

6 **§63723.12. Arrest, bonds, laws applicable.**

7 (A) When charges against any person in the military forces of this Territory are made or  
8 referred to a convening authority authorized to convene a court-martial for the trial of such person, and  
9 a convening authority, believing that such charges can be sustained, and has reason to believe that the  
10 person so charged will not appear for trial, or intends to flee from justice, a convening authority may  
11 issue a warrant of arrest to any peace officer commanding said peace officer to take the body of the  
12 person so the case may be finally disposed of; and a peace officer, on the order of the convening  
13 authority, shall bring the person so charged before the court-martial for trial, or turn him over to  
14 whomever the order may direct; the convening authority issuing the warrant of arrest, shall indorse  
15 thereon the amount of bail to be required and such bail shall not exceed two hundred fifty dollars by a  
16 summary court-martial convening authority, one thousand dollars by a special court-martial convening  
17 authority and two thousand dollars by a general court-martial convening authority unless said offense  
18 alleged is under §63722.60 as a violation of Guam Penal Law, in which case the bond shall be the  
19 same as that required for the violation alleged; and it shall be a violation of duty on the part of any  
20 peace officer, including Department of Correction personnel, to permit a person so committed to  
21 remain out of jail or a confinement facility, except that he may, when such person desires it, permit  
22 him to give bail in the sum indorsed on the warrant, on the following conditions: for his appearance,  
23 from time to time before the court-martial as he may be ordered for trial or court appearance, to keep  
24 his unit of the territorial military forces of which he is a member advised of his current home and work  
25 addresses and telephone numbers, to accept and receipt for all mail sent to him by the territorial  
26 military forces, to satisfactorily attend and participate in all territorial military duty which he is ordered  
27 to perform and to be responsible for obtaining information concerning all duty dates, times, places of  
28 his territorial military unit or duty assignment, until his case is finally disposed of, or until such time as  
29 he may surrender to a peace officer as directed by the convening authority of the court-martial before  
30 which he may be ordered for trial.

31 (B) Upon the failure of any person, who has been admitted to bail to appear as a witness in  
32 any case before a court-martial, as conditioned in the bail bond of any such person, the court-martial  
33 shall certify the fact of failure to so appear to the convening authority, or to the convening authority  
34 for the time being, as the case may be; and such officer shall cause a judge advocate or the Attorney  
35 General to file suit in the appropriate courts of Guam to take action on the same.

36 (C) The rules laid down in Title 8, Guam Code Annotated (Criminal Procedure) of this  
37 Territory relating to giving of bail, amount of bail, the number of sureties, the property exempt from

1 liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent  
2 with this Code are applicable to bail taken as provided herein.

3 (D) A warrant of arrest issued by a convening authority authorized to order a court-martial,  
4 and all process, subpoenas, attachments, warrants of commitment and other process issued by courts-  
5 martial and courts of inquiry shall extend to every part of the Territory.

6 (E) When any lawful process, issued by the proper officer of any court-martial, comes to the  
7 hands of any peace officer or other official authorized by Guam law to serve process, subpoenas,  
8 and/or attachments, he shall perform the usual duties of such officer and perform all acts and duties by  
9 this Code imposed or authorized to be performed by any peace officer or other official authorized to  
10 serve process, subpoenas, and/or attachments. Failure of any peace officer or official authorized to  
11 serve process, subpoenas, and/or attachments to perform the duties required by this Code shall be a  
12 misdemeanor offense punishable by a fine of not more than One Thousand Dollars (\$1,000) and a  
13 confinement of not more than twelve (12) months in jail.

14 (F) In any case whereby the offense alleged is a violation of Guam Penal law charged under  
15 §63722.60 of this Code and the punishment to be assessed is to be that authorized by the laws of  
16 Guam for such offense the rules of bail shall be the same as set out in Title 8, Guam Code Annotated  
17 (Criminal Procedure) of the Territory law, except that the conditions set out in subsection (A) shall be  
18 applicable as the Adjutant General so desires.

19 **§63723.13. Expenses of administration.** The Adjutant General shall have authority  
20 to pay all expenses incurred in the administration of Territorial Military Justice, including the expenses  
21 of courts-martial and expenses incurred under §§63721.8, 63723, 63723.3, 63723.4, and 63723.11  
22 of this Code, from any funds appropriated to the Department of Military Affairs.

23 **§63723.14. Powers of commanding officers.** Persons in the position of  
24 commanding officer in any unit or organization of the territorial military forces, whether in said  
25 capacity as a regularly assigned commander or, if assumption or delegation of command letter has been  
26 published designating acting commander, the acting commander, whether on duty status or not, shall  
27 be vested with the authority to perform all acts necessary for the purpose of administration of military  
28 justice or those acts necessary for the administration of general military matters.

29 **§63723.15. Regulations.** The Adjutant General shall issue and promulgate appropriate  
30 and/or necessary disciplinary or military justice regulations for the administration of military justice  
31 under this code and such regulations shall take effect by Executive Order of the Governor. The  
32 provisions of the Administrative Adjudication Act shall not apply to the issuance and promulgation of  
33 regulations in furtherance of the provisions of this Code."

34 **Section 2. Annual report.** The Adjutant General shall submit, to the Speaker of the  
35 Guam Legislature, no later than ninety (90) days after the anniversary date of the enactment hereof, a  
36 detailed statistical report detailing all actions taken by the National Guard relative to the enforcement or  
37 implementation of the provisions of the Guam Code of Military Justice. Without the use of individual

1 names or identifications, the statistical report required herein shall contain all information necessary for  
2 the determination of the extent the provisions of the Code are being cited, and/or charged.