** What You Should Know about the **

**Uniform Code of Military Justice**

**1.1.** **The Uniform Code of Military Justice (UCMJ) is the military’s criminal code.** It was enacted in 1950 and became effective in 1951. It has been amended in numerous years since then. The UCMJ, which is part of the US Code (USC), is implemented through executive orders of the President. Those executive orders form a comprehensive volume of law known as the **Manual for Courts-Martial (MCM).**

**1.1.1.** **Its Purpose:** The MCM’s preamble explains that the purpose of military law **“is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States**.**”** In the opinion of many legal scholars, the UCMJ has not only kept pace with innovations in civilian criminal jurisprudence, but has actually led the way, ***establishing more safeguards to protect the rights of those accused of criminal offenses***. For instance, the military had its own broader version of the “Miranda rights” fifteen years before the US Supreme Court recognized that right for civilian suspects. In addition, an accused facing the potential of a general court-martial (the most serious level of courts-martial) has far greater rights during a pretrial “Article 32” investigation than does a civilian suspect before a grand jury, the civilian counterpart.

Almost annually, changes are made to both the UCMJ and the MCM. These changes are typically in the form of “fine-tuning,” but also occasionally encompass more sweeping changes. The Air Force provides inputs for proposed changes through the Joint Service Committee on Military Justice. In addition to the UCMJ and the MCM, one should not overlook appellate court decisions by the Air Force Court of Criminal Appeals, the United States Court of Appeals for the Armed Forces, and the Supreme Court of the United States. These decisions serve to interpret and shape military law, sometimes in profound ways. For example, in the landmark 1987 case of *Solorio v. United States*, the Supreme Court expanded the military’s jurisdiction over offenses committed by servicemembers. No longer were prosecutors required to prove a “service connection” between an offense and a member’s military status. The Supreme Court ruled that the military status of the member alone gives jurisdiction. Any violation of the UCMJ is now within the military’s jurisdiction, regardless whether the member was on leave or far away from any military installation.

**1.2.** **Unique Military Crimes:** The UCMJ is essentially a complete set of criminal laws. It includes many crimes punished under civilian law (e.g., murder, rape, drug use, larceny, drunk driving, writing bad checks, etc.), and it goes ***beyond that*** to punish other conduct which affects good order and discipline in the military. Those unique military crimes include, for example, such offenses as desertion, absence without leave, disrespect towards superiors, failure to obey orders, dereliction of duty, wrongful disposition of military property, drunk on duty, malingering, and conduct unbecoming an officer. The UCMJ also includes provisions punishing misbehavior before the enemy, improper use of countersign, misbehavior of a sentinel, misconduct as a prisoner, aiding the enemy, spying, and espionage. Some of those offenses are capital offenses, meaning the maximum punishment is death. The UCMJ reflects the seriousness and importance of the military mission and recognizes what ultimately is being protected: the security of our nation.

**1.3. Nonjudicial Punishment:** Under the UCMJ, disciplinary action for minor offenses generally is taken via “nonjudicial punishment” under **Article 15,** as supplemented by Part V, MCM, and **Air Force Instruction 51-202**. This allows commanders to dispose of certain offenses without trial by court-martial unless the service member objects. Service members first must be notified by their commanders of the nature of the charged offense, the evidence supporting the offense, and of the commander's intent to impose nonjudicial punishment. The service member may then consult with a defense counsel to determine whether to accept nonjudicial punishment proceedings or demand trial by court-martial. Accepting Article 15 proceedings is simply a **choice of forum**; it is ***not*** an admission of guilt. In other words, the member can elect to have his or her commander decide if the member committed the offense and the extent of punishment, if any, or the member can elect to have a court-martial hear the case. Either way, the member can still “fight” the case if he or she wishes.

A member accepting nonjudicial punishment proceedings may have a hearing with the commander. The member may have a spokesman at the hearing, may request that witnesses appear and testify, and may present evidence. The commander must consider any information offered during that hearing and must be convinced by reliable evidence that the member committed the offense before imposing punishment. Members who wish to contest their commander's determination or the severity of the punishment imposed may appeal to the next higher commander. The appeal authority may set aside the punishment, decrease its severity, or deny the appeal, but cannot increase the punishment. Nonjudicial punishment does not constitute a criminal conviction. Various kinds of punishments are allowed under Article 15 and its implementing regulations, with the most serious being reduction in grade (for enlisted personnel), forfeiture of pay and extra duties. There are maximum limits for each category of punishment and maximum punishments for an officer and enlisted offender.

**1.4. Courts-Martial:**  There are three types of courts-martial --- **summary**, **special** and **general**. Trial by **summary** court-martial provides a simple procedure for resolution of charges involving minor incidents of misconduct. The summary court-martial consists of one individual, typically a judge advocate. The maximum punishment imposable by a summary court-martial is considerably less than a special or general court-martial. The accused must consent to trial by summary court-martial before the court can commence. A **special** court-martial is the intermediate level of courts. An accused facing a special court-martial can be sentenced to no more than twelve months confinement (or a lesser amount if the offense has a lower maximum), forfeiture of two-thirds pay per month for twelve months, a bad conduct discharge (for enlisted personnel), and certain lesser punishments. In a **general** court-martial, the maximum punishment is that set for each offense under the MCM, and may include death (for certain offenses), confinement, a dishonorable or bad conduct discharge for enlisted personnel, a dismissal for officers, or a number of other forms of punishment. Before a case goes to a general court-martial, a pretrial investigation under Article 32 must be conducted, unless waived by the accused. An accused before any Air Force court-martial is entitled to free legal representation by an Air Force defense counsel, and can also retain civilian counsel at his or her own expense.

There are procedures for post-trial review in every case, although the extent of those appellate rights depends upon the punishment imposed by the court and approved by the convening authority. Cases involving a punitive discharge or dismissal or confinement for one year or more will undergo automatic review by the Air Force Court of Criminal Appeals, unless the accused waives such review. The Court of Criminal Appeals has fact-finding powers and must determine whether the evidence adduced at trial is sufficient to sustain a conviction. The Court can also correct any legal error it may find, and it can reduce an excessive sentence. The accused will be assigned an Air Force appellate defense counsel to represent him or her at no cost before the Court. Civilian counsel may be retained at the accused’s own expense. Beyond the Court of Criminal Appeals, the accused can usually petition the United States Court of Appeals for the Armed Forces for further review (Some appeals are automatic). That court consists of civilian judges, and it can correct any legal error it may find. Air Force appellate defense counsel will also be available to assist the accused at no charge. Again, the accused can also be represented by civilian counsel, but at his or her own expense. Beyond that court, it may be possible to petition the Supreme Court of the United States to review the case.

**2.1. Punitive and Administrative Discharges:** One topic that is the subject of much misinformation from “barracks lawyers” is that of discharges from the military, and particularly the distinction between punitive and administrative discharges. **“Punitive”** discharges can only be issued by a court-martial. **“Administrative”** discharges, on the other hand, are issued when a member separates administratively. Punitive discharges include a **bad conduct discharge (BCD)**,a **dishonorable discharge (DD)** and a **dismissal**. A dismissal applies only to officers and cadets, while a BCD and DD apply only to enlisted members. Administrative discharges include honorable discharges; under honorable conditions (general) discharges; under other than honorable conditions (UOTHC) discharge; and entry level separations.

A discharge is defined as a complete separation from all military status, duties, obligations, and responsibilities that have been gained by entry into the Air Force. The type of discharge a person receives could affect his or her ability to get a civilian job in the future. A person may find it difficult to be hired, simply because he or she did not have an honorable discharge.

Airmen should recognize that the type of discharge they receive is a serious matter and that if they receive any discharge other than an honorable discharge it may have future implications. Also, as a general rule, failure to complete at least 2 years of continuous active duty may make members ineligible for certain benefits, including any benefit administered by the Department of Veterans Affairs. This restriction does not apply to airmen discharged for hardship, separated for physical disability under AFI 36-2902, or discharged or released from active duty within 3 months of their ETS under 10 USC 1171. For more information, see 38 USC 5303 and 5303A.

**2.1.1. Honorable Discharge.**  This is the highest form of discharge. This type of discharge is separation from the Air Force with honor. An honorable discharge means the person has served the Air Force well by meeting or exceeding the required standards of duty performance and personal conduct. The honorable discharge reflects to the world that the member has satisfactorily completed a commitment to military service. All veterans benefits are given to an eligible person with an honorable discharge. It is important to know that the Montgomery GI Bill (MGIB) requires personnel to receive an honorable discharge in order to qualify for educational benefits.

**2.1.2. Under Honorable Conditions (General) Discharge.** This is separation from the Air Force with honor, but to a lesser degree than the honorable discharge. This discharge is given when normally faithful service is marred by negative aspects of a person’s duty performance or personal conduct. Most veterans benefits are given to an eligible person with an under honorable conditions (general) discharge. (The MGIB is a notable exception.)

**2.1.3. Under Other Than Honorable Conditions (UOTHC) Discharge.** This means separation from the Air Force with the worst possible administrative discharge. A person receives a UOTHC discharge when his or her personal conduct falls significantly below acceptable military standards. This discharge may result from one or more acts, or failures to act, which are considered to be an obvious departure from the high standards of conduct expected of military members. This type of discharge may be given only after a person has had the opportunity to request a hearing by an administrative discharge board, unless the discharge is requested by an accused in lieu of trial by court-martial. Significant veterans benefits are denied by a UOTHC discharge.

**2.1.4. Entry Level Separation.** This type of separation is given only when the person is in his or her first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. This is a discharge that does not attempt to characterize the type of service as either good or bad. It is not the only type of separation authorized during the first 180 days of military service, as it is possible for a person to receive another type of discharge depending on the reason for discharge.

Generally, characterization of service is based solely on the member’s record during the current enlistment or period of service to which the separation pertains, plus any extensions of enlistment prescribed by law or regulation, or made with the consent of the member. In some cases, evidence in the member’s record may be used to show that a basis for discharge exists but may not be used to determine service characterization. See AFI 36-3208, paragraph 1.21 for details.

**2.1.5. Bad Conduct Discharge:** A BCD may be adjudged by a court-martial when it is an authorized punishment for the charged offense(s) and the court believes the accused warrants such severe punishment. Such a discharge deprives one of substantially all benefits administered by the Department of Veterans Affairs and the Air Force. However, vested benefits from a prior period of honorable service are not forfeited by receipt of a BCD that would terminate the member’s current term of service.

**2.1.6. Dishonorable Discharge:** A dishonorable discharge is more severe than a BCD, and is usually reserved for those who, in the opinion of the court-martial, should be separated under conditions of dishonor after conviction of a serious offense. A dishonorable discharge, like a BCD, deprives one of substantially all benefits administered by the Department of Veterans Affairs and the Air Force for the member’s current term of service.

**2.1.7. Dismissal:** A dismissal of a commissioned officer or a cadet is, in general, the equivalent of a dishonorable discharge of an enlisted member. A dismissal deprives one of substantially all benefits administered by the Department of Veteran Affairs and the Air Force.

**3.1. Laws on Sexual Conduct by Members of the Armed Forces:** Federal law (10 USC 654(d)) and Air Force Instruction 51-201, paragraph 13.2.5.6, require a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces. There are several UCMJ provisions which involve sexual misconduct. These include Article 93 (which prohibits sexual harassment, a form of maltreatment); Article 120 (rape and sexual assault generally); Article 120a (stalking); Article 120b (rape and sexual assault of a child); Article 120c (other sexual misconduct); Article 125 (sodomy); Article 133 (conduct unbecoming an officer); and Article 134 (which includes, but is not limited to, adultery and fraternization). **Attachment 1** has a summary of these and other punitive articles. In addition, you should be aware specifically of the rules governing fraternization and unprofessional relationships (para 3.1.2).

**3.1.2. Fraternization and Unprofes-sional Relationships.** Fraternization, unprofessional relationships and related misconduct may be the subject of punitive and/or administrative action under several theories. These include Article 134 (fraternization), Article 133 (conduct unbecoming an officer), Article 92 (for violating AFI 36-2909), and other UCMJ articles prohibiting certain conduct, such as adultery, sodomy, and cruelty and maltreatment (which includes sexual harassment).

 AFI 36-2909, dated 1 May 1999, contains certain specific prohibitions in paragraph 5.1, the violation of which is punishable under Article 92(1), UCMJ, for violating a lawful general regulation. Under paragraph 5.1, officers may not:

 1. gamble with enlisted members;

 2. borrow money from, or otherwise become indebted to, enlisted members (except for infrequent, non-interest bearing loans of small amounts to meet exigent circumstances);

 3. engage in sexual relations with or date enlisted members; or

 4. share living accommodations with enlisted members (except where military operations reasonably require the sharing of living accommodations); or

 5. engage, on a personal basis, in business enterprises with enlisted members, or solicit or make solicited sales to enlisted members, except as permitted by the Joint Ethics

Regulation.

While an officer marriage to an enlisted member is not by itself misconduct, it may lead to appropriate command action based on prior fraternization. It is possible, though, to have an officer/enlisted marriage without prior fraternization. For instance, some are created by commissioning civilians married to enlisted members; others by commissioning an enlisted member married to another enlisted member. A small number of these marriages occur by operation of law following force reductions and nonselection of some officers with prior enlisted service. When evidence of fraternization exists, however, the fact that the officer and enlisted member subsequently marry does not preclude appropriate command action for earlier fraternization. In any event, regardless of how the marriage came to be, married members are expected to respect all customs and courtesies observed by members of different grades when they are on duty or in uniform in public, or at official social functions.

**3.1.2.1. Consequences of Unprofessional Conduct.** All military members, officers and enlisted, are subject to lawful orders. When a member has been lawfully ordered to cease an unprofessional relationship or refrain from certain conduct, the military member is subject to prosecution under the UCMJ for violation of the order. Similarly, all military members are subject to prosecution for criminal offenses committed incidental to an unprofessional relationship (e.g., gambling, adultery, assault). As indicated above, officers may also be prosecuted for violation of the specific prohibitions of AFI 36-2909, paragraph 5 and all its subparagraphs; violation of the custom against fraternization; and conduct unbecoming an officer. For more guidance, you should read AFI 36-2909.

**Attachment 1**

**Summary of Selected Provisions of**

**The Uniform Code of Military Justice**

**Article 137, UCMJ, requires that you receive an explanation of the following articles at various times in your career. Please note that since this is only a *summary*, you should not consider it a complete analysis of these provisions. If you would like more information, you should consult with your servicing legal office or area defense counsel.**

**Article 2. Persons Subject to the UCMJ.** The following persons are subject to the Uniform Code of Military Justice:

1. Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.
2. Cadets, aviation cadets, and midshipmen.
3. Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard or Air National Guard only when in Federal service.
4. Retired members of a regular component of the armed forces who are entitled to pay.
5. Retired members of a reserve component who are receiving hospitalization from an armed force.
6. Members of the Fleet Reserve and Fleet Marine Corps Reserve.
7. Persons in custody of the armed forces serving a sentence imposed by a court-martial.
8. Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.
9. Prisoners of war in custody of the armed forces.
10. In time of war, persons serving with or accompanying an armed force in the field.
11. Subject to any treaty or agreement to which the US is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the US and outside Puerto Rico, Guam, and the Virgin Islands.

**Article 3. Jurisdiction to Try Certain Persons.** This article explains, among other matters, the effect of discharge and reenlistment upon UCMJ jurisdiction. Article 3(a) was amended for offenses occurring on or after 23 Oct 92 so that a person who reenlists following discharge may be tried for offenses committed during the earlier term of service. The rules for offenses prior to that date are more involved and are summarized in the Discussion to Rule for Courts-Martial (RCM) 202(a) of the MCM. Article 3 also addresses continuing jurisdiction over those who were fraudulently discharged or deserted, as well as reservists. Article 3(d) provides that a member of a reserve component who is subject to this chapter (see Article 2 above) is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from being subject to UCMJ jurisdiction for offenses committed during that period of active duty or inactive-duty training.

**Article 7. Apprehension.** This is the military’s term for what civilians usually refer to as an “arrest.” It means the taking of a person into custody, when an authorized person has a reasonable belief that an offense has been committed and that the person apprehended committed it. Authorized personnel include military law enforcement officials and commissioned, warrant, petty and noncommissioned officers.

**Article 8. Apprehension of Deserters.** In addition to Article 7, above, any civil officer having authority to apprehend offenders under the laws of the US or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him or her into the custody of those forces.

**Article 9. Imposition of Restraint.**

(a) “Arrest” is the restraint of a person by an order, not imposed as a punishment for an offense, directing him or her to remain within certain specified limits. “Confinement is the physical restraint of a person.”

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his or her command or subject to his or her authority into arrest or confinement.

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

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

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

**Article 10. Restraint of Persons Charged with Offenses.**  If charged with an offense, a member shall be ordered into arrest or confinement “as circumstances may require,” but when charged only with an offense normally tried by a summary court-martial, shall not ordinarily be placed in confinement. When placed in arrest or confinement prior to trial, immediate steps shall be taken to inform accused of the specific wrong of which he or she is accused and to try the accused or to dismiss the charges and release the accused from confinement.

**Article 11. Reports and Receiving Prisoners.**  No provost marshal, commander or a guard, or master at arms may refuse to receive or keep any prisoner committed to his or her charge when the committing officer furnishes a statement, signed by him or her, of the offense charged against the prisoner.

**Article 12. Confinement with Enemy Prisoners Prohibited.** A member of the armed forces may not be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

**Article 13. Punishment Prohibited Before Trial.** While being held for trial, a member may not be subjected to punishment or penalty other than arrest or confinement upon the changes pending, nor shall the arrest of confinement imposed be any more rigorous than the circumstances required to insure presence, but a member may be subjected to minor punishment during that period for infractions of discipline.

**Article 14. Delivery of Offenders to Civil Authorities.** (a) If accused of an offense against civil authority, a member may be delivered to the civil authority for trial.

(b) When delivery to any civil authority is made of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his or her offense shall be returned to military custody for the completion of his or her sentence.

**Article 15. Commanding Officer’s Non-Judicial Punishment.** *See paragraph 1.3, above, for a discussion of Article 15 nonjudicial punishment. See also AFI 51-202 and Part V of the Manual for Courts-Martial.*

**Article 25. Who May Serve on Courts-Martial.**

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial except for those of commissioned officers.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial if the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, enlisted members must comprise at least one-third of the total membership of the court.

(d) When it can be avoided, no member may be tried by any member junior to him in rank or grade.

Members selected by the convening authority should be the best qualified by reason of age, education, training, experience, length of service, and judicial temperament.

**Article 27. Detail of Trial Counsel and Defense Counsel.** Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court martial.

No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

**Article 31. Compulsory Self-Incrimination Prohibited.**

(a) No one subject to the UCMJ may compel any person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate him or her.

(b) No person subject to the UCMJ may interrogate, or request any statement from an accused or a person suspected of an offense without first informing that individual of the nature of the accusation and advising the individual that he/she does not have to make any statement regarding the suspected offense, and that any statement may be used as evidence against him or her in a trial by court-martial.

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

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him or her.

**Article 32. Investigation.** Before a case can be referred to a general court-martial, an Article 32 investigation must be held, unless waived by the accused. The purpose is to inquire into the truth of the charges, the form of the charges, and a recommendation as to the disposition of the charges which should be made in the interest of justice and discipline. An accused has various rights at the Article 32 hearing, including the right to be present with counsel, to cross examine witnesses if they are available, and to present anything he or she may desire in his or her own behalf.

**Article 38. Duties of Trial Counsel and Defense Counsel.** (a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his or her defense before a general or special court-martial or at an Article 32 investigation.

(2) Accused may be represented by: civilian counsel if provided by him; detailed military counsel; or by reasonably available military counsel of his or her own selection.

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

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

(2) may assist the accused in the submission of matters for consideration by the convening authority with respect to the findings and sentence.

**Article 55. Cruel and Unusual Punishments Prohibited.** Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a court martial or inflicted upon any person subject to this chapter. Use of irons, single or double, except for the purpose of safe custody, is prohibited.

**Article 77. Principals.** Any person subject to the UCMJ who commits an offense punishable by the UCMJ, or aids, abets, counsels, commands, or procures its commission; or causes an act to be done which if directly performed by him or her would be punishable, is a “principal” and can be punished to the same extent as the one who commits the crime directly.

**Article 78. Accessory After the Fact.** Any person who, knowing that an offense has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment, is an accessory after the fact.

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

**Article 80. Attempts.** An act, done with specific intent to commit an offense, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense. A person may be convicted of an attempt to commit an offense although it appears at the trial that the offense was consummated.

**Article 81. Conspiracy.** A person who conspires with any other person to commit an offense under the UCMJ commits the offense of conspiracy if one or more of the conspirators does an act to effect the object of the conspiracy.

**Article 82. Solicitation.** A person who solicits or advises another to desert, mutiny, or commit an act of misbehavior or sedition before the enemy, shall be punished for that offense if the other person commits or attempts that offense. If the offense solicited is not attempted or committed, the accused may, however, still be punished for solicitation. (Note that a solicitation to commit an offense other than the four named in Article 82 may be charged as a violation of Article 134.)

**Article 83. Fraudulent Enlistment, Appointment, or Separation.**  A person who procures his or her own enlistment or appointment by knowingly false representation or deliberate concealment as to his or her qualifications and receives pay or allowances thereunder; or procures his or her own separation by knowingly false representation or deliberate concealment as to eligibility for separation, is punishable under this article.

**Article 84. Unlawful Enlistment, Appointment, or Separation.**  A person who effects an enlistment, appointment, or separation of any person known to be ineligible is punishable under this article.

**Article 85. Desertion.** (a) A person, who without authority, goes or remains absent from his or her unit, organization, or place of duty, with the intent to remain away therefrom permanently; or who quits his or her unit, organization, or place of duty, with the intent to avoid hazardous duty or to shirk important service; or without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces or enters any foreign armed service without authority, commits the offense of desertion.

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

(c) Desertion or attempting to desert during war may be punishable by death.

**Article 86. Absence Without Leave.**  A person who, without authority, fails to go to his or her appointed place of duty at the time prescribed; goes from that place; or absents himself or herself for remains absent from his or her unit, organization, or place of duty at which he or she is required to be at prescribed time, violates this article.

**Article 87. Missing Movement.**  A person, who through neglect or design, misses the movement of ship, aircraft, or unit with which he or she is required in the course of duty to move, commits the offense of missing movement.

**Article 88. Contempt Toward Officials.** Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he or she is on duty or present, violates this article.

**Article 89. Disrespect Toward Officials.** Any member who behaves with disrespect toward a superior commissioned officer commits this offense.

**Article 90. Assaulting or Willfully Disobeying Superior Commissioned Officer.**  A member who strikes a superior commissioned officer or draws or lifts up any weapon or offers any violence against such an officer while he or she is in the execution of his or her office; or willfully disobeys a lawful command of a superior commissioned officer, violates this article. If committed during wartime, the maximum punishment is death.

**Article 91. Insubordinate Conduct Toward Warrant Officer, Noncommissioned Officer, or Petty Officer.** Any warrant officer or enlisted member who--

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

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

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

**Article 92. Failure to Obey Order or Regulation.** A member who violates or fails to obey any lawful general order or regulation; or, having knowledge of any other lawful order, fails to obey the order; or is derelict in the performance of his or her duties, violates Article 92.

**Article 93. Cruelty and Maltreatment.** A member who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders, commits this offense. Under the Manual for Courts-Martial, this offense includes “sexual harassment,” which is defined as including “influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature.”

**Article 94. Mutiny or Sedition.**  A member who, with intent to usurp or override lawful military authority, refuses in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance, is guilty of mutiny. A person who, with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority, is guilty of sedition. Furthermore, a member who fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition. Violations of this article can be punished by death.

**Article 95. Resistance, Breach of Arrest, and Escape.** A member who resists apprehension, flees from apprehension, breaks arrest, or escapes from custody or confinement, violates this article.

**Article 96. Releasing Prisoner Without Proper Authority.** A member, who without proper authority, releases any prisoner committed to his or her charge, or though neglect or design suffers any such prisoner to escape, violates this article, whether or not the prisoner was committed in strict compliance with the law.

**Article 97. Unlawful Detention.** A member who, except as provided by law, apprehends, arrests, or confines any person, violates this article.

**Article 98. Noncompliance With Procedural Rules.**  A member who is responsible for unnecessary delay in the disposition of any case of an accused, or who knowingly and intentionally fails to enforce or comply with any provision regulating the proceedings before, during, or after an accused’s trial, commits this offense.

**Article 99. Misbehavior Before the Enemy.**  This offense occurs when a member does any of the following acts before or in the presence of the enemy:

 (1) runs away;

 (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property;

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

 (4) casts away arms or ammunition;

 (5) is guilty of cowardly conduct;

 (6) quits his or her place of duty to plunder or pillage;

 (7) causes false alarms in any command, unit, or place under control of the armed forces;

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

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

 This offense may be punishable by death.

**Article 100. Subordinate Compelling Surrender.** A member who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, commits this offense. The maximum punishment is death.

**Article 101. Improper Use of Countersign.**  A member who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole and countersign a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, violates this article. This offense may be punishable by death.

**Article 102. Forcing a Safeguard.** A member who forces a safeguard may be punishable by a maximum punishment of death. “Forcing a safeguard” means to perform an act which is in violation of a guard, detail or order posted by a commander for the protection of persons, places or property of the enemy or of a neutral nation. (It does not include a device adopted by a belligerent for the protection of its own property or nationals.) The effect of a safeguard is to pledge the honor of the nation that the persons or property shall be respected by the national armed forces.

**Article 103. Captured or Abandoned Property.** A member who: fails to secure all public property taken from the enemy for the service of the United States; fails to turn it over to the proper authority; disposes of captured/abandoned property so as to benefit himself or herself or another connected to himself or herself; or engages in looting or pillaging, violates this article.

**Article 104. Aiding the Enemy.** A member who aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, intelligence, or other things; or who, without proper authority, knowingly harbors or protects or gives intelligence to or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly, violates this article and may be punished by death.

**Article 105. Misconduct as Prisoner.** A member who, while in the hands of the enemy in time of war (1) for the purpose of securing favorable treatment by his or her captors, acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or (2) while in a position of authority over such persons maltreats them without justifiable cause, violates this article.

**Article 106. Spies.** Spying carries a mandatory punishment of death. A person can be a spy only when, acting clandestinely or under false pretenses, that person obtains or seeks to obtain information with the intent to convey it to a hostile party during a time of war.

**Article 106a. Espionage.** A member who, with intent or reason to believe that it is to be used to injure the United States (or used to the advantage of a foreign nation), communicates, delivers, or transmits or attempts to communicate, deliver, or transmit to a foreign government or a faction, entity or agent thereof, any information relating to the national defense, commits espionage. Under certain circumstances, it is punishable by death.

**Article 107. False Official Statements.** A member who, with intent to deceive, signs any false official document or makes any other false official statement, knowing it to be false, commits this offense.

**Article 108. Military Property of United States --- Loss, Damage, Destruction, or Wrongful Disposition.** A member who, without proper authority: sells or otherwise disposes of; willfully or through neglect damages, destroys, or loses; or willfully or through neglect suffers to be lost, damaged, sold, or wrongfully disposed of, any military property of the United States, violates this article.

**Article 109. Property Other Than Military Property of United States ---Waste, Spoilage, or Destruction.** A member who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States, commits this offense.

**Article 110. Improper Hazarding of Vessel.** A member who willfully, wrongfully, or negligently hazards or suffers to be hazarded any vessel of the armed forces commits this offense. Willful or wrongful hazarding may be punishable by death. “Hazard” means to put in danger of loss or injury.

**Article 111. Drunken or Reckless Operation of a Vehicle, Aircraft or Vessel**. A member who (1) operates or physically controls any vehicle, aircraft or vessel in a reckless or wanton manner or while impaired by a substance described in Article 112a, or (2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person’s blood or breath exceeds

1. for incidents within the U.S.: the lesser of the blood alcohol content limit under the laws of the State in which the conduct occurred, or 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis;

(B) for incidents outside the U.S.: the lesser of a limit prescribed by Department of Defense regulation or 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath; or

(C) on installations located in more than one State, if those States have different blood alcohol content limits: a blood alcohol content limit of one of those States selected by the Secretary of Defense to apply uniformly on that installation; commits a violation of Article 111.

**Article 112. Drunk on Duty.** A member, other than a sentinel or look-out, who is found drunk on duty, violates Article 112. (For sentinels or look-outs, see Article 113.)

**Article 112a. Wrongful Use, Possession, etc., of Controlled Substances.** This includes the wrongful use, possession, manufacture, distribution, importation, exportation, or introduction into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces, a controlled substance, including, but not limited to, opium, heroin, cocaine, amphetamine, LSD, methamphetamine, phencyclidine, barbituric acid, marijuana and any compound or derivative thereof, as well as any substance included in Schedules I through V of section 202 of the Controlled Substances Act of 1970 (21 USC 812).

**Article 113. Misbehavior of Sentinel.** A **s**entinel or look-out who is found drunk or sleeping upon post, or who leaves it before being regularly relieved, violates this article. During wartime, it may be punishable by death.

**Article 114. Dueling.** Fighting, promoting, or failing to report a scheduled duel to the proper authority, is an offense under this article.

**Article 115. Malingering.** A member who, for the purpose of avoiding work, duty, or service, feigns illness, physical disablement, mental lapse or derangement; or intentionally inflicts self-injury, commits this offense.

**Article 116. Riot or Breach of the Peace.**  A member who causes or participates in any riot or breach of the peace violates this article.

**Article 117. Provoking Speeches or Gestures.** Using provoking or reproachful words or gestures toward another member is an offense.

**Article 118. Murder.** A member commits the offense of “murder” by unlawfully killing, without justification or excuse, another human being, when the member:

 (1) has a premeditated design to kill;

 (2) intends to kill or inflict great bodily harm;

 (3) is engaged in an act inherently dangerous to another and evinces a wanton disregard of human life; or

 (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson. (For (1) and (4) above, the maximum punishment is death and the mandatory minimum is life.)

**Article 119. Manslaughter.** (a) A member who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter. (b) A member who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being (1) by culpable negligence; or (2) while perpetrating or attempting to perpetrate an offense, other than those listed in Article 118(4), directly affecting the person, is guilty of involuntary manslaughter.

**Article 120. Rape and Sexual Assault Generally.** (a) A member who commits a sexual act upon another person by (1) using unlawful force against that other person; (2) using force causing or likely to cause death or grievous bodily harm to any person; (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm or kidnapping; (4) first rendering that other person unconscious; or (5) administering to that other person by force or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; is guilty of rape. (b) A member who (1) commits a sexual act upon another person by (A) threatening or placing that other person in fear; (B) causing bodily harm to that other person; (C) making a fraudulent representation that the sexual act serves a professional purpose; or (D) inducing a belief by any artifice, pretense, or concealment that the member is another person; (2) commits a sexual act upon another person when the member knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or (3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to (A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the member; or (B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the member; is guilty of sexual assault. (c) a member who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact. (d) Any member who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact. A Sexual Act is defined as (1) contact between the penis and the vulva or anus or mouth, and contact involving the penis occurs upon penetration, however slight; or (2) the penetration, however slight, of the vulva or anus or mouth of another by any part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

**Article 120a. Stalking.** A member who engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family;

( 2 ) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family; and (3) whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or to a member of his or her immediate family; is guilty of stalking**.**

**Article 120b. Rape and Sexual Assault of a Child.** (a) Any member who (1) commits a sexual act upon a child who has not attained the age of 12 years; or (2) commits a sexual act upon a child who has attained the age of 12 years by (A) using force against any person; ( B ) threatening or placing that child in fear; (C) rendering that child unconscious; or (D) administering to that child a drug, intoxicant, or other similar substance; is guilty of rape of a child. (b) Any member who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child. (c) A member who commits a lewd act upon a child is guilty of sexual abuse.

**Article 120c. Other Sexual Misconduct.** ( a ) A member who, without legal justification or lawful authorization (1) knowingly and wrongfully views the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy; (2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy; or (3) knowingly broadcasts or distributes any such recording that the member knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2); is guilty of indecent viewing, visual recording, or broadcasting. (b) Any member who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering. (c) Any member who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure.

**Article 121. Larceny and Wrongful Appropriation.** Wrongfully taking, obtaining, or withholding any money, personal property, or article of value of any kind, with the intent to permanently deprive the owner, is larceny. Doing the same but with the intent to only temporarily deprive is called wrongful appropriation.

**Article 122. Robbery.** A member who, with the intent to steal, takes anything of value from the person or in the presence of another, against his or her will, by means of force or violence or fear of immediate or future injury to his or her person or property or to the person or property of a relative or member of his or her family or of anyone in his or her company at the time, commits the offense of robbery.

**Article 123. Forgery.** This offense is committed when a member, with intent to defraud: (1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his or her legal right or liability to his or her prejudice; or (2) utters, offers, issues, or transfers such a writing, known to be so made or altered.

**Article 123a. Making, Drawing, or Uttering Check, Draft, or Order Without Sufficient Funds.** This offense is committed when a member, (1) for the procurement of any article or thing of value, with intent to defraud; or (2) for the payment of any past due obligation, or for any other purpose, with intent to deceive, makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment.

**Article 124. Maiming.**  This offense occurs when a member, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which (1) seriously disfigures his or her person by a mutilation thereof; (2) destroys or disables any member or organ of his or her body; or (3) seriously diminishes his or her physical vigor by the injury of any member or organ.

**Article 125. Sodomy.** This offense occurs when a member engages in unnatural carnal copulation (e.g., oral or anal sex) with another person of the same or opposite sex, or with an animal.

**Article 126. Arson.** Willfully and maliciously burning or setting on fire an inhabited dwelling, or any other structure, movable or immovable, knowing there is at the time a human being inside, constitutes aggravated arson. Willfully and maliciously burning or setting fire to the property of another in any other situation is simple arson.

**Article 127. Extortion.** A member who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity, commits the offense of extortion.

**Article 128. Assault.** (a) A member who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault. (b) A member who (1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or (2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon; is guilty of aggravated assault.

**Article 129. Burglary.** This offense is committed when a member, with intent to commit certain offenses (i.e. Articles 118 to 128), breaks and enters, in the nighttime, the dwelling house of another.

**Article 130. Housebreaking.** A member who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking.

**Article 131. Perjury.**  A member who, in a judicial proceeding or in a course of justice willfully and corruptly (1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or (2) in any declaration, certificate, verification, or statement under penalty or perjury, subscribes any false statement material to the issue or matter of inquiry, commits perjury.

**Article 132. Frauds Against the United States.**  Making or submitting a false or fraudulent claim against the U.S. is punishable under this article.

**Article 133. Conduct Unbecoming an Officer.** Any commissioned officer, cadet, or midshipman who engages in conduct unbecoming an officer violates this article. This is an extremely broad article which can cover many different types of dishonorable or disgraceful behavior by officers. An officer can be punished under this article even though his or her conduct may also violate another specific article of the UCMJ.

**Article 134. The General Article.** Though not specifically mentioned, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, shall be taken cognizance of by a general, special, or summary court martial, according to the nature and degree of the offense, and can be punished under Article 134. The list of offenses punishable under this article includes, but is not limited to, such offenses as adultery, bribery and graft, writing worthless checks, wrongful cohabitation, dishonorably failing to pay a debt, drunk or disorderly conduct, false swearing, fraternization, gambling with a subordinate, negligent homicide, kidnapping, obstructing justice, straggling, communicating a threat, wearing an unauthorized decoration, and carrying a concealed weapon.

**Article 137. Articles to be Explained.** This article requires that certain sections of the Uniform Code of Military be “carefully explained” to enlisted members when they enter active duty and at specified other times, such as reenlistment. (This briefing paper contains the information covered by Article 137.)

**Article 138. Complaints of Wrongs.** Any member who believes himself or herself wronged by his or her commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall investigate the complaint and take proper measures for redressing the wrong complained of; and he or she shall, as soon as possible, send to the Secretary of the Service involved a report of the complaint and the investigation.

**Article 139. Redress of Injuries to Property.**  Whenever a complaint is made to any commanding officer that willful damage has been done to the property of any person or that property has been wrongfully taken by members of the armed forces, that officer may convene a board to investigate the complaint. If damages are assessed, the offending member’s pay is then assessed accordingly. If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted.