

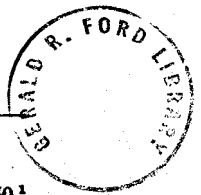
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Appendix 2

UNIFORM CODE OF MILITARY JUSTICE



The Uniform Code of Military Justice was enacted as part of the act of 5 May 1950,¹ which contained 16 additional sections. It was thereafter revised, codified, and enacted into law as part of title 10, United States Code, by the act of 10 August 1956, and has subsequently been further amended.² This appendix sets forth the code as thus codified and amended. The articles which have been amended between 10 August 1956 and 23 October 1968 are hereafter designated by an asterisk. The articles which have been amended by the act of 24 October 1968³ (Military Justice Act of 1968) are hereafter designated by a double asterisk. See title 10, United States Code, for details regarding these amendments. Other portions of title 10, including definitions, and other statutes, to which military personnel should have ready access, are set forth in appendix 3.

Chapter 47. UNIFORM CODE OF MILITARY JUSTICE

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Subchapter I. GENERAL PROVISIONS

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| 805. | 5 Territorial applicability of this chapter. |
| 806. | 6 Judge advocates and legal officers. |

§ 801. Art. 1. Definitions

In this chapter:

* (1) "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) "Commanding officer" includes only commissioned officers.

(4) "Officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) "Superior commissioned officer" means a commissioned officer superior in rank or command.

¹ 64 Stat. 108 (1950).

² See 10 U.S.C. § 801-940.

³ P.L. 90-632 (82 Stat. 1335).

or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

§ 879. Art. 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.

§ 880. Art. 80. Attempts

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

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

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

§ 881. Art. 81. Conspiracy

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

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

shall be punished as a court-martial may direct.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

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

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

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

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

- (1) fails to go to his appointed place of duty at the time prescribed;
- (2) goes from that place; or

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

§ 887. Art. 87. Missing movement

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

§ 888. Art. 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 the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.*

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who—

- (1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or
- (2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

§ 891. Art. 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 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 language or deportment toward a warrant officer, noncommissioned officer, or petty officer while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
- (3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

* See note 4 *supra*.

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

SEP 17 1974



MEMORANDUM FOR The Secretaries of the Military Departments

SUBJECT: Implementation of Presidential Proclamation No. 4313
of September 16, 1974

For the purpose of implementing Presidential Proclamation No. 4313
of September 16, 1974, the following instructions are provided:

1. Return to Military Control

- a. Military absentees seeking the benefits of the President's program will be required to return to military control as a condition of participation.
- b. The Secretaries of the Military Departments will establish and announce procedures whereby absentees may make initial contact with military authorities by mail or telephone to establish their eligibility for the program and obtain reporting instructions.

2. Centralized Clemency Processing Center

- a. The Secretary of the Army shall designate a centralized Clemency Processing Center to be utilized by all Services. The Army will provide facilities, medical, communications and logistic support for all Services on a reimbursable basis.
- b. Each Military Service will establish a Clemency Processing Unit at the site designated by the Secretary of the Army which will be responsible for the administrative processing of its own returnees.

3. Returnee Processing

- a. An enlisted member who meets the eligibility criteria established in the Proclamation (Enclosure 1) will be provided the opportunity to request discharge for the good of the service in accordance with the provisions of DoD Directive 1332.14 (Paragraphs VII. K. and VIII. D. 5).

The minimum requirements for the issuance of such a discharge under this program will be in accordance with DoD Directive 1332.14, as follows:

- (1) The member submits a resignation or a request for a discharge for the good of the service;
- (2) The member's prior conduct, which is the basis of his eligibility for the program, renders him triable by court-martial under circumstances which could lead to a punitive discharge.
- (3) No formal charges and specifications will be necessary, but the member must be advised that his prior conduct is characterized as a willful and persistent unauthorized absence;
- (4) The member has been afforded an opportunity to consult counsel and certifies in writing his understanding that he will receive a discharge under other-than-honorable conditions and that he understands the adverse nature of such a discharge and the possible consequences thereof.

The request for discharge will specifically indicate that it is submitted pursuant to the Presidential Proclamation. All requests submitted by eligible members will be approved. The separation will be under conditions other than honorable unless otherwise directed. (See Paragraph V. A. 5., DoD Directive 1332.14).

- b. Officer and warrant officer personnel who meet the eligibility criteria established in the Proclamation will be provided the opportunity to tender a resignation in lieu of trial by court-martial. The letter of resignation will indicate that it is submitted pursuant to the Presidential Proclamation.

The minimum requirements for the acceptance of a resignation under this program will be as follows:

- (1) The member's prior conduct, which is the basis of his eligibility for the program, renders him triable by court-martial under circumstances which could lead to a dismissal;
- (2) No formal charges and specifications will be necessary, but the member must be advised that his prior conduct is characterized as a willful and persistent unauthorized absence;
- (3) The member has been afforded an opportunity to consult counsel and certifies in writing his understanding that he will be separated under other-than-honorable conditions and that he understands the adverse nature of such a separation and the possible consequences thereof.

All resignations meeting the foregoing requirements which are submitted by eligible officers and warrant officers will be approved. The separation will be under conditions other than honorable unless otherwise directed by the Secretary concerned.

- c. Members eligible for participation in this program who are currently awaiting trial will be provided the opportunity to request discharge or tender a resignation as appropriate. Any such member who is in confinement will be released therefrom.

d. Members returning to military control and who are eligible to participate in the program will not be placed in confinement.

4. Former members punitively discharged pursuant to sentence of a court-martial or separated with an undesirable discharge

Former members who:

- have been dismissed from the service or discharged with a dishonorable or bad conduct discharge pursuant to the sentence of a court-martial imposed upon conviction of an absentee offense (10 U. S. C. § 885, 886, and 887) or other purely military offense directly related thereto committed during the qualifying period, or
- were separated with an undesirable discharge based on an act or acts committed during the qualifying period which rendered the member subject to trial by court-martial for an absentee offense (10 U. S. C. § 885, 886, and 887) or other purely military offense directly related thereto

may apply to the Presidential Clemency Board prior to 31 January 1975 for an examination of their case. The Board will be empowered to recommend to the President that a Clemency Discharge be issued and to qualify such recommendation with a requirement for alternate service in appropriate cases. The Military Departments will not participate either in this review process or in monitoring performance of alternate service.

5. Members or former members serving a sentence to confinement

A member or a former member serving a sentence to confinement based upon conviction of an absentee offense (10 U. S. C. § 885, 886, and 887) committed during the qualifying period or other purely military offense directly related thereto may apply to the Presidential Clemency Board prior to 31 January 1975 for an examination of his case. The Board will be empowered to



recommend clemency in such cases. Where a member or former member makes such an application, and where his sentence to confinement is based solely on qualifying offenses, his sentence to confinement should be suspended pending the Board's review.

6. Alternate Service

- a. The period of alternate service for military members who apply under the President's program will be determined in individual cases by the Secretary of the Military Department concerned or his designee. The period will be indicated in the agreement signed by the individual as a condition of eligibility for the President's program. The period of alternate service will normally be twenty-four (24) months, but may be reduced in appropriate cases. Factors which will be considered in determining the existence of an appropriate case are as follows:
 - (1) length of satisfactory service completed prior to absence
 - (2) length of service in Southeast Asia in hostile fire zone
 - (3) awards and decorations received
 - (4) wounds incurred in combat
 - (5) nature of employment during the period of absence
 - (6) such additional guidelines as experience indicates appropriate and which are promulgated by future memorandums
- b. Members separated under this program will be notified that they must report to their State Director of Selective Service within 15 days of the date of receipt of discharge to arrange for performance of alternate service.

7. Members against whom other offenses are pending

Members who would otherwise be eligible for consideration under the Proclamation, but against whom other offenses under the



Uniform Code of Military Justice are pending, will not be eligible to participate in the foregoing programs until the final disposition of such other offenses in accordance with the law and Service regulations.

8. Members who fail to meet the eligibility criteria

Members who fail to meet the eligibility criteria or fail or refuse to execute the required documents, or decline to submit requests for discharge or letters of resignation, as appropriate, remain subject to trial by court-martial or administrative disposition in accordance with existing law and regulation.

9. Records and accounting

- a. Statistical records accounting will be accomplished in accordance with the provisions of DoD Directive 5000.12M, Manual for Standard Data Elements, 1 March 1970, as changed. The appropriate computer designators for Separation Type and the specific Separation Reason as noted below will be entered on Service retained copies of DD Form 214. The reason for separation shall be "Separation for the good of the service by reason of a willful and persistent unauthorized absence, pursuant to Presidential Proclamation No. 4313 abbreviation SEP-PRES PROC, data code NL. The copy for Veterans Administration and the Selective Service System will contain only the narrative type of separation and reason for separation. All copies of the DD Form 214 will have entered in the remarks section the following statement:
"Subject member has agreed to serve _____ months alternate service pursuant to Presidential Proclamation No. 4313."
Those military services which have not implemented Change 10 to DoD Directive 5000.12M will establish appropriate documentation and accounting procedures consistent with the respective type of separation and the exact wording of the reason for separation.
- b. Military Departments will establish procedures to recognize the alternate service by issuance of the Clemency Discharge certificate DD Form 1953 (Enclosure 2) which is established

by this memorandum pursuant to Presidential Proclamation No. 431. Such certificates will be issued only upon receipt of certification of satisfactory completion of alternate service by the Selective Service System. Procedures should also include issuance of a DD Form 215, "Correction of DD Form 214, Armed Forces of the United States Report of Transfer or Discharge," reflecting the reason for separation as stated above and noting the issuance of the DD Form 1953 (Enclosure 2). The DD Form 215 should be included in the master military personnel record.

- c. Service Secretaries will submit reports on a monthly basis at the end of each calendar month to OASD(M&RA)(MPP) by the 10th of the following month. Reports will include information specified in Enclosure 3.

10. Public Affairs Guidance

Because of the overriding national interest in the President's announcement on clemency procedures for draft evaders and military deserters, the Assistant Secretary of Defense (Public Affairs) is responsible for direction and coordination of all public affairs activities concerning deserters, discharges and clemency. Maximum information will be disseminated to the public while at the same time giving due consideration of the rights of the individual. The Clemency Processing Center (CPC) will be manned by representatives of all the Military Departments, and the CPC information chief will report directly to the ASD(PA) for all public affairs matters.

Public affairs guidance, recommendations and accompanying Service implementing instructions to all commands, will be coordinated in advance with OASD(PA).

James R. Schlesinger

Enclosures



Enclosure 1

Conditions of Eligibility Pursuant to Presidential Proclamation No. 4313

1. Unauthorized absence in violation of Article 85, 86, or 87, or other purely military offense directly related thereto under the Uniform Code of Military Justice, commenced during the period August 4, 1964, through March 28, 1973.
2. Other pending offenses under the Uniform Code of Military Justice have been finally disposed of in accordance with law.
3. The member reported to military authorities in a manner prescribed by the Military Department concerned not later than 31 January 1975.
4. The member has executed a statement or statements reaffirming his allegiance and pledging to perform a specified period of alternate service.

Attached to this enclosure are form statements for use by the Military Departments in securing the reaffirmation of allegiance, admission of absence, and pledge to perform alternate service. These forms may be modified or combined with other documents for ease of administration provided the substantive content is retained.



Attachment to Enclosure 1

PLEDGE TO COMPLETE ALTERNATE SERVICE

On or about _____, I voluntarily absented myself from my military unit without being properly authorized in contravention of the oath taken upon entering the nation's military service. Recognizing that my obligations as a citizen remain unfulfilled, I am ready to serve in whatever alternate service my country may prescribe for me, and pledge to faithfully complete a period of _____ months service.

REAFFIRMATION OF ALLEGIANCE

I, _____, do hereby solemnly reaffirm my allegiance to the United States of America. I will support, protect and defend the Constitution of the United States against all enemies, foreign and domestic; and will hereafter bear true faith and allegiance to the same.

I take this obligation freely without any mental reservation or purpose of evasion.



CLEMENCY DISCHARGE

FROM THE ARMED FORCES OF THE
UNITED STATES OF AMERICA

THIS IS TO CERTIFY THAT

WAS DISCHARGED FROM THE
UNITED STATES

ON THE DAY OF

THIS CERTIFICATE IS ISSUED ON THE DAY OF
IN RECOGNITION OF SATISFACTORY COMPLETION OF ALTERNATE
SERVICE PURSUANT TO PRESIDENTIAL PROCLAMATION NO. 4313
SEPTEMBER , 1974.



REPORTING REQUIREMENTS

I. Number of applicants for President's Program

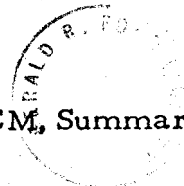
A. Number accepted and processed

1. type of separation (Manual for Standard Data Elements)
2. character of discharge
3. length of alternate service.
 - a. None
 - b. 6-12
 - c. 13-18
 - d. 19-24
4. race/ethnic group (Manual for Standard Data Elements)
5. date of absence by year.

B. Number pending

C. Number not accepted

1. Reason not accepted
 - a. Offense not within period
 - b. Other offenses pending
 - c. Failed to execute required statements
 - d. Other
2. Disposition
 - a. Referred to trial by court-martial (GCM, SPCM, Summary)
 - b. Administrative separation
 - c. Article 15



d. Reprimand

e. No action/returned to duty

f. Other

D. Number processed in medical channels

II. Number of absentees from the period 4 August 1964 to 28 March 1973

who return to military control but do not apply for President's Program.

