

Part I - Arts. 1-6.

(1)

Comment

Art 2.

Selective service 1945.

(1) Inductees.

Week-end flight training

(3) Reserve - inactive duty written orders

Excludes those in penitentiaries

(7) In custody of Armed Forces.

Art 3.

Present Navy provision

(a) Reserve ordered to active duty for trial.

Army and Navy regulations now.

(b) Fraudulent discharge. Also in custody for trial.

To avoid decisions holding contra.

(c) Deserter discharged from subsequent enlistment.

Art 4

Present A.W. 118 - preserved in Sec 10.

(a) Officer dismissed by Pres. in wartime without Court-martial.

Now reappointment ~~would~~ requires consent of Senate.

(c) Power of Pres. to reappoint if adm. discharge substituted.

Art. 5

No territorial limitation

Art 6

~~J.A.S. approves assignment of J.A. and Legal Specialists~~

Slightly different from from wording 47(a) 1948.

Assignments of J.A. and Legal Specialists - subject to approval of J.A.S.

No change from 47(a)

(b) Direct communication

Fact proviso of A.W. 11 1948.

(c) To make staff J.A. impartial in review

Part II, Arts. 7-14  
Apprehension and Restraint.

(2)

Art 7.

Apprehension on reasonable  
belief  
Authority to quell disorders

Present law

Art 8

Apprehension of deserters by civil  
officer

Art 9

Present practice as to ordering  
arrest or confinement

Art 10

The requirement of  
notice to accused is  
new.

No confinement on arrest for  
minor offense  
Immediate steps to inform  
accused or to dismiss charges.

Art 11.

Same as Art 71+72

(a) This protects subordinate  
who confines a superior.

Art 12

Art 16 as amended  
1948 - Slight change  
to allow same  
ldg - if segregation.

Confinement with enemy  
and foreign nationals.

Art 13

Some change from  
Present A.W. 16. - 1948  
Punishable for infractions  
during confinement

Only No punishment other than  
confinement while awaiting  
trial, A.W. 57 refers to forfeiture  
of pay on conviction

Part II (cont)

(3)

Art 14

This changes A.W. 74 by authorizing trial for civil offenses in peacetime - Delivery to civil authorities regulated by Secy.

Part III  
Disciplinary Punishment  
Art 15

Changes A.W. 104, 1948

List of disciplinary punishments.

- (a) 1 wk. changed to 2 wks
- (b) hard labor 1 wk to extra duty 2 wks
- (c) Confinement 9 days
- (d) bread and water 5 days.
- (e) adds forfeiture of pay

Gives Secretary power to impose limits. and to give option to refuse.

Part IV, Arts 16-21  
Classification of Courts  
Art 16

Uses Army nomenclature Gen'l.; special; summary.

Art 17.

Reciprocal juris. necessary for joint forces.

Each force juries over all personnel. Regulation for its exercise.

Art 18 General

Changed from customs of service

Any offense - any non-forbidden punishment.

Art 19

Art 14 amended 1948

Special - limited.

What is requiring perbatim record? How determine necessity?

Bad conduct discharge - record. Capital offense by regulation.

Capital  
...  
instead specific by Officer

Part II (cont.)

(3)

Non Judicial Punishment

Art 15

Part IV (cont)

4

Art. 20

Option to refuse  
new to Army.

Summary - limited.  
Right to refuse.

Art 21

AW 15 ~~is~~ construed in  
Ex parte Quinn, 317 U.S. 1

Jurisdiction not exclusive.

Part V Articles 22-29

Appointment and Composition of Courts

Arts 22-24: ~~Courts Martial~~

The specifications as  
suggested by the several  
forces plus those others  
designed by President or  
Secretary of Dept

Apparently omits  
Commandant of Coast  
Guard unless covered  
by general clause  
Note

Art 25

As in Art 4 and  
16, 1948 Amendment.  
Except excuse for non-  
apptment of enlisted  
Persons  
When is court convened?  
No definition

Adds warrant officers and  
enlisted persons to officers.  
Physical impossibility or  
military emergency excuses  
from appting enlisted persons  
who must not be of same unit.

Art 26

A.W. 8-1945 - is  
changed - must be lawyer  
whether J.A. or not.  
- is not a  
member of the court  
Note A.B.A wants J.A.G.  
to appoint.

Law officer - acts like a  
judge so far as  
consultation concerned.  
Certified by J.A.G.

Part VI.  
Pre-trial Procedure

(5)

Article 30

Left column  
Left column

- (a) Charges to be verified. <sup>Right</sup>  
This as in 46 a - Amendment of 1948.
- (b) Immediate action.  
(By Art. 98 unnecessary delay is an offence)

Article 31

Left column

Note the change from AW 24 - 1948

- (a) Compulsory self-crim prohibited
- (b) No person accused or suspected to be questioned or asked for a statement without a warning.
- (c) No degrading statement on immaterial issue.

Art 32

Left column

This is to prevent needless repetition. Also recent habeas corpus case in CCA 2d. (d) Malap error which might be ground for reversal.

- Investigation as in 46 b of 1948 Amendment.
- (c) Prior investigation need not be repeated.
- (d) Binding but not jurisdictional.

Art 33

Amend 1948 w.c. 8 days

Charges and investigation to be forwarded promptly 1948 Amend.

Art 34

Left column

This to allow change since accused has had evidence against him has opportunity to know the evidence.

- Reference to staff J.A.
- (a) As in 47 (b) 1948 Amendment
- (b) Changes in charges to conform to evidence etc.

Art 35

Service of charges as in 46 (c) 1948 Amendment. except add w.c. 3 days for special ct.

Part VII. (1)

Trial Procedure

Art. 36 - President prescribes rules.  
Left column ← { A.W. 38 as amended 1948.  
This assumes uniform rules

Art. 37 - Unlawfully ~~can~~ influencing  
court. - (A.W. 88 Amended 1948)  
Left column ←

Art. 38 - (a) - Duty of trial counsel  
(prosecuting).

(b) Counsel for accused.  
Left column ← As in A.W. 11 as amended.

(c) Defense counsel may forward  
brief. (~~this new~~)  
© This is new.

(d) Assistant counsel, when  
qualified may <sup>perform</sup> functions of  
counsel.

← (A.W. 116 as amended  
modified so as to assume  
competency of assistant)

Art. 39 - "Closed sessions" - Law officer  
to assist to put findings in  
proper form. - Otherwise no  
consultation except in presence of  
all parties.  
This is due to new  
functions of law officer

Art 40 - Continuances - No change in  
present law.

Part VII (2).

Art 41 - Challenges. - for cause and peremptory. Prosecution first decided by court. Law officer only for cause.

50

Left column Art 42 - Oaths of officers - No statutory form prescribed.  
A.W. 19 prescribes the form of oath.

Art 43 - Statute of limitations  
Left column. A.W. 39 as amended. Changes.  
(a) Adds "aiding the enemy".  
(b) No real change the offences in 43 and 44, and are in this and (e)  
(c) Alters 2 yrs.  
(d) = Periods of suspension  
~~(e) - Offences to be~~  
(f) adopts 18 U.S.C. § 3287.  
(g) - Prosecution detrimental to war or security - and wartime frauds against U.S.

Art 44 - Former jeopardy - but suited to automatic review.  
Left column. No jeopardy during review so as to make new trial possible altho debt has not asked for it.  
~~A.W. 40~~

Art 45 - Pleas - standing mute - ~~no~~ irregular pleas - no plea of guilty in Capital case.  
Left column. A.W. 21 revised so as to call for entry of plea of not guilty and to prohibit plea of guilty in Capital case.  
Art 46 - Equal opportunity to obtain witnesses and evidence.  
Left column. Changes from A.W. 22, 1948.



Part VII (3).

Art 47 - Refusal of Civilians to appear or testify. Made punishable in civilian Courts as at present A.W. 23.

Left column  
Substantially the same as A.W. 32.  
Should this be summary punishment?

Art 48 - Contempt by violence or threats of it in presence of Court.

A.W. 25 - 1948  
but this authority is promised is new

Art 49 - Depositions - Authority to take at any time <sup>after due notices</sup> in absence of prohibition ~~after notice~~ by authority.

A.W. 25 requires the unavailability when taken. Seems a mistake.

Use of deposition limited to cases of unavailable witnesses - but not the taking.

A.W. 27 requires consent of accused. No reason why civilian practice should not be followed here.

Art 50 - Records of Courts of inquiry admissible - if accused a party and accorded rights of a party.

Left column  
Follows A.W. 31 except law officer acts as a judge, and charge includes elements of offense.

Art 51 - Voting and rulings  
(a) Secret ballot findings, challenge sentence  
(b) Directed verdict - sanity - law officer subject to objection other - Law Officer;  
(c) - Charging the Court by law officer and president.

Left column (Art 52) Member of Votes required  
 in vote provision ~~is same as in A W 43, 1948~~  
 new: ~~Context of ~~the~~ ~~provision~~ ~~is~~ ~~the~~ ~~same~~ ~~as~~ ~~in~~ ~~A~~ ~~W~~ ~~43~~ ~~1948~~~~  
~~Others - 2/3~~  
 Same as ~~all~~ ~~over~~ ~~10~~ ~~years~~ ~~3/4~~  
 A W 43 amended 1948. ~~all~~ ~~over~~ ~~10~~ ~~years~~ ~~3/4~~  
~~all others 2/3.~~

Left column. Art. 53 - Court must announce findings and sentence ~~to~~ to the parties as soon as determined.  
 This modifies A W. 29  
 Modified A W. 29 by making mandatory this limited announcement.

Art 54 - Record of Trial  
 (a) Genl. court must keep. Authentication by law officer and president.  
 (b) Special and summary must keep record  
 (c) Accused given gen. and spm. record as soon as authenticated.

This article is practically A W. 33 and 34, with (c) added, and substituting the law officer for the J.A. in (a). No statute prescribes a verbatim record of testimony for gen. but regulations do.

Part VIII. (5)  
Sentences.

Art 55 - Cruel and unusual prohibited  
AW 41 plus prohibition of irons  
Left column

Art 56 - President may prescribe limit  
to punishments "which a Gen. may  
direct".  
Left column.  
Should there not be  
an express prohibition  
of capital sentence  
except where specifically  
authorized by Congress?  
Art 57

See Article 13 *supra*  
with reference to A.W.  
16 - punishment while  
awaiting trial.  
The article is new.

- Effective date of sentence
- (a) Forfeiture of pay begins at date of approval by convening authority.
  - (b) Confinement - from date of sentence
  - (c) Others - date ordered executed.

Art 58 - Execution of Confinement,  
(a) Regulations for confinement  
in penal or correctional  
institutions. (~~Bennett - Bureau~~  
~~of Prisons.~~)

(a) This article  
drafted in consultation  
with Mr. Bennett  
& Bureau of Prisons.  
(b) is from A.W. 37

(b) "Hard labor" included.

Part ~~IX~~ (1)

Review ~~of~~

Left column  
Art 59  
is from A.W. 37  
(b) Is AW 47 (b) (1)  
of 1948.

- Errors -
- (a) Non-material errors disregarded.
- (b) Reviewing authority affirms as to lesser included offence.

Art 60

This is ~~AW~~ AW 47  
as amended by 47(a)  
1948

- By convening authority or successor. ~~Same as 47(a) amended 1948.~~

Art 61

This is taken from  
47(c) 1948.

- Staff judge-advocate must examine and give opinion, which by article 65 is made part of record.

Art 62

The prohibitions in this article come from A.W. 40. The rest is new but follows prevailing practice.

- Reconsideration and Revision (a) where dismissal which doesn't amount to not guilty (b) errors which can be rectified without prejudice to accused.

Art 63

This is derived from A.W. 52. The exception is new. In civilian practice the accused would have been in jeopardy.

- Rehearing.
- (a) Conviction dismissed or sent back ~~except where no evidence~~.
- (b) Different members required - no retrial of non guilty - etc.
- ~~A.W. 52 as amended 1948.~~

Left  
Form of  
approval  
is often  
of sentence.  
Substance  
7-47(c)  
and (f) 1948

Art. 64 - Part IX (2)  
Convening authority approves correct  
binding of plea. No limit on power to "bust".

- Art. 65. Records transmitted by Convening  
authority. ~~genl com.~~
- (a) All genl com. to J.A.G.
  - (H) Special bad conduct discharge  
to J.A.G. after approval by  
J.C.M. authority, or directly  
to J.A.G.
  - (c) All other special and  
summary must be reviewed  
by a J.A.G. officer.

(b) is AW 36, 1948,  
except option to send  
direct to J.A.G. Some-  
times no staff J.A.G.  
available for  
sp. c.m. authority.

Art. 66 Review by Board of Review.

Left  
This article  
requires review  
by J.A.G. as  
in present  
articles as  
amended, but  
the functions  
of the J.A.G.  
are different

- (a) Officers or civilians - Lawyers.
- (b) All cases down to 1 yr confinement.
- (c) Law and fact and sentence - Refer  
as guilt ~~confirm~~ approved below
- (d) No new trial where no evidence.
- (e) J.A. - reconsideration
- (f) J.A. has to instruct Convening  
Auth. unless Pres. Secy or J.A.C.
- (g) Uniform rules.

Art 67 Review by Jnd Council.  
Admitted to U.S. Sup. Ct. - Part of C.C.A.A.  
1. Automatic - Death or general officer

Left  
This article  
new and  
entirely different  
from present  
Judicial Council provision

- (H) { 2. Order of J.A.G. - Decisions of Bd of Review
- 3. All other Bd of Review - on cert. petition  
within 30 days. Action 15 days

Part II (3)

(d.) Review only issues of law which are submitted to it.

(e.) May order rehearing except where lack of evidence

(f) Sends to J.A. with directions

(g) Jud Council and JAGs form advisory council.

Art 68 - Branch offices

(a) Branch Office and Asst. J.A.G.

(b) Emergency Judicial Councils

Similar to  
50(c) 1948,  
as to (a), different  
as to (b).

Art 69. - All records of general court-martial not otherwise reviewable to be reviewed by

Same as  
AW 50(f) 1948, a J.A.G. officer -  
If error or if J.A.G. orders,  
final review made by  
Bd of Review.

Art 70. - Appellate Council for both parties before Bd of Review and Jud. Council

Entirely new.

# Part IX (4)

## Art 71 - Execution of Sentence

~~No execution of the action~~  
(a) Death - or genl officer - approval by President - cut down or Commute. Suspend except death.

(b) Dismissal - Secy. of Dept. May cut down, commute, suspend. - ~~Art 48(b) 49(c) amend 1948~~  
In war time, reduce to enlisted grade. ~~Art. 48 amend 1948~~

(c) Unuspended dishonorably <sup>by army</sup> discharge or confinement for over year requires opinion of Board of Review and in proper cases, by Jud. Council.

(d) All others may be ordered executed when approved by convening auth. ~~Art. 47(d)~~

## Art 72 - Vacation of Suspension of Sentence

- (a) No Vacating ~~of~~ <sup>gcm</sup> suspension or bad conduct ~~of~~ <sup>spcm</sup> without a hearing by special cm authority
- (b) Forwarded to general cm authority.
- (c) Vacating dismissed - must be approved by Secy.

Left

(a) No change in present law.

(b) AW 48(b) and 49(c) 1948 but nothing as to J.G. L's dissent  
Art 44-1948 as to reduction

(c) Derived from 50(b), 1948

(d) AW 47(d), 1948

This is new as to requiring a hearing.  
15(b) authorizes vacation of suspended sentences.

~~amend 1948~~

Part IX (5)

(d) Suspension of other than dismissal by ~~the~~ authority competent to convene et. which imposed it.

Art 73 - Petition for New Trial

Left

Derived from AW 53 1948, but limits the time to 1 yr. after confirmation and limits the grounds.

To J.A.G. w. one year after approval by convening authority, for newly discovered evidence or fraud on Court. Heard by body reviewing, or if none by J.A.G.

Art 74 - Remission and Suspension

From AW 57(b) 1948

(a) ~~Secy~~ Secy and deleg. officials designated may remit or suspend any unexecuted part, except sentence approved by President.

(b) Secy may substitute admin. discharge.

Art 75 - Restoration

Art. 53 but the restoration is made mandatory.

(a) Where sentence set aside unless rehearing ordered, - all rights privileges etc restored.

(b) Dismissal or discharge discharge substitute admin. discharge

(c) Dismissal substitute adm. discharge



Part IX (6)

est  
This  
is  
A W  
50(h)  
1948

Art 76 - Court martial judgments and  
execution on them final  
and conclusive

~~A. W. 50 (h)~~