**Section 400.625 Warnings About Rights**

a) General. A statement obtained in violation of this Section is involuntary and shall be treated under Section 400.620.

b) Definitions. As used in this Section:

1) "Person Subject to the Code" means a person acting as a knowing agent of a military unit or of a person subject to the Code.

2) "Interrogation" means any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of that questioning.

c) Warnings Concerning the Accusation, Right to Remain Silent, and Use of Statements. *A person subject to the Code* who is required to give warnings under Code Section 31 *may not interrogate or request any statement from an accused or a person suspected of an offense without first*:

1) *informing the accused or suspect of the nature of the accusation;*

2) *advising the accused or suspect that the accused or suspect has the right to remain silent;* and

3) *advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.* (Code Section 31(b))

d) Counsel Rights and Warnings

1) General. When evidence of a testimonial or communicative nature within the meaning of the Fifth Amendment to the U.S. Constitution either is sought or is a reasonable consequence of an interrogation, an accused or a person suspected of an offense is entitled to consult with counsel as provided in subsection (d)(2), to have counsel present at the interrogation, and to be warned of these rights prior to the interrogation if:

A) The interrogation is conducted by a person subject to the Code who is required to give warnings under Code Section 31 and the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way; or

B) The interrogation is conducted by a person subject to the Code acting in a law enforcement capacity, or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of the charges.

2) Counsel. When a person entitled to counsel under this subsection (d) requests counsel, a judge advocate or an individual certified in accordance with Code Section 27(b) shall be provided by the State at no expense to the person and without regard to the person's indigency or lack of indigency before the interrogation may proceed. In addition to counsel supplied by the State, the person may retain civilian counsel at no expense to the State. Unless otherwise provided by regulations of the Adjutant General, an accused or suspect does not have a right under this subsection (d) to have military counsel of his or her own selection.

e) Presence of Counsel

1) Custodial Interrogation. Absent a valid waiver of counsel under Section 400.610(b), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described in subsection (d)(1)(A), and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

2) Post-Preferral Interrogation. Absent a valid waiver of counsel under Section 400.610(b), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subsection (d)(1)(B), and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed.

f) Exercise of Rights

1) The Privilege Against Self-Incrimination. If a person chooses to exercise the privilege against self-incrimination under this Section, questioning must cease immediately.

2) The Right to Counsel. If a person subjected to interrogation under the circumstances described in subsection (d)(1) chooses to exercise the right to counsel, questioning must cease until counsel is present. (Il. Mil. R. Evid. 305)