**Section 400.905 Sentencing**

a) Cruel and Unusual Punishment Prohibited

1) Persons subject to the Code will be afforded all constitutional protections against cruel and unusual punishment, in accordance with U.S. Supreme Court and Illinois Supreme Court case law.

2) *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 the Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited*. (Code Section 55)

b) Maximum Limits

1) *The punishment a court-martial may direct for an offense may not exceed the limits prescribed by the Code,* *but in no instance may a sentence exceed more than 10 years for a military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial of any military offense for which an accused may receive a sentence of confinement for more than one year is a felony offense. All other military offenses are misdemeanors*.

2) *The limits of punishment for violations of the punitive articles described in Subpart J shall be equal to, or the lesser of, the sentences prescribed by the MCM. In no instance shall any punishment exceed that authorized by* *the* *Code*. (Code Section 56)

c) *Effective Dates of Sentences*

1) Forfeiture of Pay or Allowances. *Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date*.

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

3) *All other sentences of courts-martial are effective on the date ordered executed,* subject to Code Section 71(see Section 400.1075). (Code Section 57)

d) Reconsideration of Sentence

1) Reconsideration. A sentence may be reconsidered at any time before it is announced in open session of the court.

2) The procedures detailed in RCM 1009 shall apply.

e) Report of Result of Trial; Post-Trial Restraint

1) After final adjournment of the court-martial, trial counsel shall promptly notify the accused's immediate commander, the convening authority or designee and, if appropriate, the officer in charge of the confinement facility of the findings and the sentence.

2) Confinement

A) General. An accused may be placed in post-trial confinement if the sentence adjudged by the court-martial includes confinement.

B) Who May Order. Unless limited by superior authority, a commander of the accused may order the accused into post-trial confinement when post-trial confinement is authorized under this subsection (e)(2). A commander authorized to order post-trial confinement may delegate this authority to the trial counsel.

f) *Deferment of Sentences*

1) *On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in that person's sole discretion, defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned*.

2) Process

A) *In any case in which a court-martial sentences an accused referred to in* subsection (f)(2)(B) *to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the SMF by a state, the United States, or a foreign country*.

B) Subsection (f)(2)(A) *applies to a person subject to* the *Code who*:

i) *while in the custody of a state, the United States or a foreign country is temporarily returned by that state, the United States or foreign country to the SMF for trial by court-martial; and*

ii) *after the court-martial, is returned to that state, the United States or foreign country under the authority of a mutual agreement or treaty, as the case may be*.

3) *In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under Code Section 57a(a) is pending*, *the Adjutant General may defer further service of the sentence to confinement while that review is pending*. (Code Section 57a)

g) Execution of Confinement

1) Confinement for one year or more. If a person subject to the Code and this Manual is convicted at court-martial for an offense punishable by more than one year confinement, and is sentenced to confinement of one year or more, at the conclusion of post-trial motions, that person will be transported to, and incarcerated with, the Illinois Department of Corrections.

2) Confinement for less than one year. If a person subject to the Code and this Manual is convicted at court-martial for an offense punishable by less than one year confinement, and is sentenced to confinement, that person will be transported to, and incarcerated in, the county jail.

3) Notwithstanding subsections (g)(1) and (2), the military judge, in his or her discretion, may always order confinement at any civilian county jail, department of corrections facility, or military confinement facility authorized under the Code that he or she deems reasonable and appropriate. The military judge should consider the interests of national security, State security, good order and discipline, and other applicable federal or State laws and this Manual.

4) *A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by the Code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement*.

5) *The omission of hard labor as a sentence authorized under the Code does not deprive the State confinement facility from employing it, if it otherwise is within the authority of that facility to do so*.

6) *No place of confinement may require payment of any fee or charge for receiving or confining a person, except as otherwise provided by law*. (Code Section 58)

h) *Sentences: Reduction in Enlisted Grade Upon Approval*

1) *A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, reduces that member to pay grade E-1, effective on the date of that approval,* if the sentence includes:

A) *a dishonorable or bad-conduct discharge; or*

B) *confinement*. (Code Section 58a(a))

2) *If the sentence of a member who is reduced in pay grade under subsection* (h)(1) *is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection* (h)(1), *the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances*. (Code Section 58a(b))

i) *Sentences: Forfeiture of Pay and Allowances During Confinement*

1) General

A) *A court-martial sentence described in* *subsection* (i)(1)(B) *shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this subsection* (i) *shall take effect on the date determined under Code Section 57(a) and may be deferred as provided by that Section*. *The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during the period of confinement or parole and, in the case of a special court-martial, shall be ⅔ of all pay due the member during that period*.

B) *A sentence covered by this subsection* (i) *is any sentence that includes*:

i) *confinement for more than 6 months; or*

ii) *confinement for 6 months or less and a dishonorable or bad-conduct discharge or dismissal*.

2) *In a case involving an accused who has dependents, the convening authority or other person acting under Code Section 60 may waive any or all of the forfeitures of pay and allowances required by subsection* (i)(1) *for a period not to exceed 6 months. Any amount of pay or allowances subject to the waiver will be paid, as the convening authority or other person taking action directs, to the dependents of the accused*.

3) *If the sentence of a member who forfeits pay and allowances under subsection* (i)(1) *is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection* (i)(1)(B), *the member shall be paid the pay and allowances that he or she would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect*. (Code Section 58b)