

**Montana National Guard 2017 Legislative Bill Drafts**  
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1. Federal Regulations to Govern- Amend § 10-1-104 to adopt most current federal laws and regulations.

**10-1-104. Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, 201~~5~~<sup>7</sup>, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to [10-1-105](#), apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, 201~~5~~<sup>7</sup>, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to [10-1-105](#), to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.

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2. Revise Laws Related to Military Courts- Amend § 10-1-408 to more appropriately match jurisdiction with operational realities.

**10-1-408. Trial by civil authority -- when authorized.** In a case where the offense ~~at issue~~~~charged~~ is also an offense against civil authority, the ~~convening authority of a court-martial~~adjutant general of the Montana national guard, or his designee, may, ~~upon~~ request ~~of~~ the civil authorities, order the person ~~charged~~ to be turned over to the appropriate civil authorities of this state for trial.

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3. Revise Montana Criminal Justice Information Act of 1979- Amend § 44-5-303 to permit the Montana National Guard to receive Confidential Criminal Justice Information for use in administrative actions.

**44-5-303. Dissemination of confidential criminal justice information -- procedure for dissemination through court.** (1) Except as provided in subsections (2) through (54), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a chief of a governmental fire agency organized under Title 7, chapter 33, or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, information relating to a member of the Montana army or air national guard may be disseminated to the adjutant general of the Montana national guard, or his designee, for use in administrative actions.

(43) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(54) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, child, and maternal mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(65) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any

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edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(76) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible.