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Wallace
8/11/15

CS FOR HOUSE BILL NO. 126()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the administration of military justice; relating to the adoption of a**
2 **code of military justice by the adjutant general; relating to the authority of the adjutant**
3 **general; relating to appeals of convictions and sentences of courts-martial; establishing**
4 **the Military Appeals Commission; relating to the detention and incarceration of**
5 **members of the militia; relating to the jurisdiction of the Supreme Court; relating to**
6 **involuntary commitment for evaluation or treatment of a mental disease or defect before**
7 **court-martial proceedings; relating to offenses subject to court-martial proceedings; and**
8 **providing for an effective date."**

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 *** Section 1.** AS 22.05.010 is amended by adding a new subsection to read:

11 (f) The supreme court may review a final decision of the Military Appeals
12 Commission made under AS 26.05.540 for which a sentence of confinement is

imposed, the right to appeal to the Military Appeals Commission under AS 26.05.538 has been exhausted, and a right to appeal is granted under AS 26.05.540.

* **Sec. 2.** AS 26.05.140(a) is amended to read:

(a) Members of the militia ordered into active service for the state by order of the governor are not liable civilly [OR CRIMINALLY] for any act done by them in their official capacity while in this such service. If a suit is commenced in a court against an officer or enlisted person of the militia as a result of an act done by the officer or enlisted person in an official capacity while in active service, the defendant may require the person instituting the suit to give security for the payment of costs. If judgment is for the defendant, treble costs shall be assessed against the plaintiff. The defendant in the action shall be defended by the attorney general at the expense of the state but the defendant may employ private counsel. **Nothing in this subsection applies to a proceeding or action brought under this chapter or the code of military justice.**

* **Sec. 3.** AS 26.05.228(b) is amended to read:

(b) All income of the fund and all disbursements made by the fund shall be credited or charged, whichever is appropriate, to the following accounts:

(1) an individual account for each retired member of the system that records the benefits paid under this system to the member or surviving beneficiary;

(2) a separate account for the Department of Military and Veterans' Affairs' contribution to fund the system based on the actuarial requirements of the system as established by the commissioner of administration under **AS 26.05.222 - 26.05.229** [THIS CHAPTER];

(3) an expense account for the system; this account is charged with all disbursements representing administrative expenses incurred by the system; expenditures from this account are included in the governor's budget for each fiscal year.

* **Sec. 4.** AS 26.05 is amended by adding new sections to read:

Article 2. Code of Military Justice.

Sec. 26.05.400. Statement of policy on military justice. Courts-martial have primary jurisdiction over military offenses as defined in this chapter. A proper

1 civilian court has primary jurisdiction of a nonmilitary offense when an act or
2 omission violates both this chapter and local criminal law, foreign or domestic. In
3 that case, a court-martial may be initiated only after the civilian court has declined
4 to prosecute or dismissed the charge, provided jeopardy has not attached.
5 Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory
6 crimes must be determined by the underlying offense. These jurisdictional
7 requirements do not apply to nonjudicial punishment or administrative action taken by
8 military authorities.

9 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** (a) The
10 code of military justice applies to a member of the militia at all times. The code of
11 military justice does not apply to a member of the militia while in active federal
12 service.

13 **Sec. 26.05.405. Jurisdiction to try certain personnel.** (a) A person
14 discharged from the militia of the state who is later charged with having fraudulently
15 obtained a discharge is subject to trial by court-martial on that charge and is, after
16 apprehension, subject to the code of military justice while in custody under the
17 direction of the militia of the state for the trial. Upon conviction of the charge, the
18 person is subject to trial by court-martial for all military offenses committed before the
19 fraudulent discharge.

20 (b) A person who has deserted from the militia of the state may not be relieved
21 from amenability to jurisdiction under the code of military justice by virtue of a
22 separation from a later period of service.

23 **Sec. 26.05.408. Territorial applicability.** (a) The code of military justice
24 applies to a member of the militia accused of or charged with a military offense that is
25 committed outside the state if the member is in active state service under this chapter
26 and is serving outside the state at the time the military offense is committed.

27 (b) Courts-martial may be convened and held in units of the militia of the state
28 while those units are serving outside the state with the same jurisdiction and powers
29 granted under the code of military justice as if the proceedings were held inside the
30 state. Military offenses committed outside the state may be tried and punished either
31 inside or outside the state.

1 **Sec. 26.05.410. Judge advocates.** (a) The senior force judge advocate of each
2 force of militia of the state, or the delegate of the senior force judge advocate, shall
3 make frequent inspections in the field in supervision of the administration of military
4 justice in the force.

5 (b) A convening authority shall communicate directly with the authority's
6 judge advocates in matters relating to the administration of military justice. The judge
7 advocate of a command is entitled to communicate directly with the judge advocate of
8 a superior or subordinate command or with the State Judge Advocate.

9 (c) A person who has acted as member, military judge, trial counsel, defense
10 counsel, or investigating officer, or who has been a witness in a case may not later act
11 as a judge advocate to an authority reviewing the same case.

12 (d) A person may not serve as a judge advocate under the code of military
13 justice unless the person is a commissioned officer of the organized militia of a state
14 or of an active or reserve component of the armed forces or another uniformed service
15 of the United States, is a member in good standing of the bar of the highest court of a
16 state, and is

17 (1) certified or designated as a judge advocate in the Judge Advocate
18 General's Corps of the United States Army, Air Force, Navy, or the Marine Corps or
19 designated as a law specialist as an officer of the United States Coast Guard, or a
20 reserve component of one of them; or

21 (2) certified as a nonfederally recognized judge advocate, under the
22 code of military justice, by the senior judge advocate of the commander of the force in
23 the component of the militia of the state of which the accused is a member, as
24 competent to perform the military justice duties required by the code of military
25 justice; if a judge advocate is not available, the certification may be made by the
26 senior judge advocate of the commander of another force in the militia of the state, as
27 the convening authority directs.

28 **Sec. 26.05.420. Apprehension.** (a) A member of the militia or a person
29 authorized under 10 U.S.C. 801 - 946 or the code of military justice to apprehend
30 persons subject to the code of military justice, a marshal of a court-martial, and a
31 peace officer or civil officer having authority to apprehend offenders under the laws of

1 the United States or of a state may apprehend a person subject to the code of military
2 justice upon probable cause that a military offense has been committed and that the
3 person apprehended committed the military offense.

4 (b) Commissioned officers, warrant officers, petty officers, and
5 noncommissioned officers have authority to suppress disorder or mutual combat
6 among members of the militia and to apprehend a person who participates in the
7 disorder or mutual combat.

8 (c) If an offender is apprehended outside the state, the offender's return to the
9 area must be in accordance with applicable extradition procedures, if any, or by
10 reciprocal agreement.

11 (d) A person authorized by this section to apprehend, restrain, or confine
12 persons subject to the code of military justice may not require payment of a fee for
13 apprehending, restraining, or confining a person except as otherwise provided by law.

14 **Sec. 26.05.423. Imposition of restraint.** (a) An enlisted member of the militia
15 may be arrested or confined by an oral or written order issued by a commissioned
16 officer or another member of the militia of the state acting at the commissioned
17 officer's direction. A commanding officer may authorize warrant officers, petty
18 officers, or noncommissioned officers to order enlisted members of the commanding
19 officer's command or subject to the commanding officer's authority into arrest or
20 confinement.

21 (b) A commissioned officer, warrant officer, or civilian subject to the code of
22 military justice may be arrested or confined only by a commanding officer who has
23 authority over the commissioned officer, warrant officer, or civilian. The commanding
24 officer shall deliver the order orally or in writing, in person or by another
25 commissioned officer. A commanding officer may not delegate the authority granted
26 in this subsection.

27 (c) A person may not be arrested or confined unless the officer issuing the
28 order for arrest or confinement has probable cause to believe that a military offense
29 has been committed and that the person has committed the military offense.

30 (d) This section does not limit the authority of persons authorized to
31 apprehend offenders to secure the custody of an alleged offender until proper authority

may be notified.

Sec. 26.05.425. Restraint of persons charged with offenses. (a) A person charged with a military offense may be arrested or confined as circumstances may require. A person arrested or confined before trial is entitled to prompt notice of the military offense of which the person is accused.

(b) A person subject to the code of military justice who is charged with a minor offense normally tried by a summary court-martial or subject to the code of military justice may not be placed in confinement.

(c) When a person subject to the code of military justice is placed in confinement before summary court-martial or nonjudicial punishment, the person shall be conditionally released pending disposition of the charges.

Sec. 26.05.428. Place of confinement; reports and receiving of prisoners. (a) A person confined as a prisoner under the code of military justice shall be confined in a civilian or military confinement facility.

(b) Unless otherwise authorized by law, a person authorized to receive a prisoner under (a) of this section may not refuse to receive or keep the prisoner committed to the person's charge by a commissioned officer of the militia of the state if the officer furnishes the person with a statement signed by the officer identifying the military offense charged against the prisoner.

(c) A person authorized to receive a prisoner under (a) of this section shall, within 24 hours after receiving the statement of commitment under (b) of this section, or as soon as the person is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the military offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

Sec. 26.05.430. Delivery of offenders to a civil authority. (a) A person accused of a criminal offense against a civil authority may be delivered, upon request, to a civil authority for trial or confinement.

(b) When a sentence imposed in a court-martial proceeding under the code of military justice is interrupted by the delivery of the offender to a civil authority under this section, and the offender is later convicted and sentenced by the civil authority, competent military authority shall request the civil authority to return the offender to

the custody of the military authority for completion of the sentence imposed by court-martial.

(c) The adjutant general, with the approval of the governor, may enter into an agreement with a civil authority to ensure the return of an offender under this section.

Sec. 26.05.433. Courts-martial classified. The military courts for the militia of the state are

(1) a general court-martial, consisting of

(A) a military judge and not fewer than five members; or

(B) only a military judge, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed of only a military judge and the military judge approves;

(2) a special court-martial, consisting of

(A) a military judge and not fewer than three members; or

(B) only a military judge, if one has been detailed to the court, and the accused so requests under the conditions prescribed in (1)(B) of this section; and

(3) a summary court-martial, consisting of one commissioned officer.

Sec. 26.05.435. Jurisdiction of courts-martial in general. Each force of the militia of the state in active military service has court-martial jurisdiction over all members of the militia. The exercise of jurisdiction by one force over personnel of another force must be in accordance with the code of military justice.

Sec. 26.05.438. Jurisdiction of a general court-martial. Subject to AS 26.05.435, a general court-martial has jurisdiction to try a member of the militia for a military offense and may impose a punishment not forbidden by the code of military justice.

Sec. 26.05.440. Jurisdiction of a special court-martial. Subject to AS 26.05.435, a special court-martial has jurisdiction to try a member of the militia for a military offense and may impose a punishment not forbidden by the code of military justice, other than dishonorable discharge, dismissal, confinement for more than one year, forfeiture of pay exceeding two-thirds pay a month, or forfeiture of pay for more

1 than one year.

2 **Sec. 26.05.443. Jurisdiction of a summary court-martial.** (a) Subject to
3 AS 26.05.435, a summary court-martial has jurisdiction to try a member of the militia
4 except officers, cadets, candidates, and midshipmen for a military offense.

5 (b) A person over whom a summary court-martial has jurisdiction may not be
6 brought to trial before a summary court-martial if the person objects.

7 (c) If a person accused of a military offense objects to a summary court-
8 martial under (b) of this section, the person may be ordered tried by special or general
9 court-martial, as appropriate.

10 (d) A summary court-martial may, under the limitations as the governor may
11 prescribe, impose a punishment not forbidden by the code of military justice, other
12 than dismissal, dishonorable or bad-conduct discharge, confinement for more than one
13 month, restriction to specified limits for more than two months, or forfeiture of more
14 than two-thirds of one month's pay.

15 **Sec. 26.05.444. Grand jury requirement.** (a) A general court-martial in
16 which confinement of more than one year is sought may not be convened until a grand
17 jury of the state has returned a true bill indicating that there is probable cause to
18 believe that the accused member of the militia committed the offense or offenses at
19 issue.

20 (b) The general court-martial convening authority shall designate one or more
21 judge advocates to represent the authority at the grand jury, except that at the request
22 of the adjutant general, and with the consent of the attorney general, a district attorney
23 or an attorney from the Department of Law may represent the convening authority at
24 the grand jury.

25 **Sec. 26.05.445. Venue for grand jury and court-martial.** The venue for
26 convening a court-martial, trial, preliminary hearing, and presentation of charges to a
27 state grand jury shall be determined at the discretion of the appropriate court-martial
28 convening authority.

29 **Sec. 26.05.446. Who may convene a general court-martial.** (a) A general
30 court-martial may be convened by

31 (1) the governor;

(2) the adjutant general;

(3) the commanding officer of a force of the militia of the state;

(4) the commanding officer of a division or a separate brigade;

(5) the commanding officer of a separate wing.

(b) If a commanding officer who is authorized to convene a general court-martial is the accuser in a matter, the court hearing the matter shall be convened by superior competent authority.

(c) A superior authority may convene a case if the superior authority considers it desirable.

Sec. 26.05.448. Who may convene a special court-martial. (a) A special court-martial may be convened by

(1) a person who may convene a general court-martial;

(2) the commanding officer of a garrison, fort, post, camp, station, Air National Guard base, or naval base or station;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the United States Army;

(4) the commanding officer of a wing, group, separate squadron, or corresponding unit of the United States Air Force; or

(5) a commanding officer or officer in charge of any other command when empowered to do so by the adjutant general.

(b) If an officer who is authorized to convene a special court-martial is the accuser in the matter, the court hearing the matter shall be convened by superior competent authority.

(c) A superior authority may convene a case if the superior authority considers it desirable.

Sec. 26.05.450. Who may convene a summary court-martial. (a) A summary court-martial may be convened by

(1) a person who may convene a general or special court-martial;

(2) the commanding officer of a detached company or other detachment or the commanding officer of a corresponding unit of the United States Army;

(3) the commanding officer of a detached squadron or other detachment or the commanding officer of a corresponding unit of the United States Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered to do so by the adjutant general.

(b) If only one commissioned officer is present with a command or detachment, that officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases.

(c) A superior competent authority may convene a summary court-martial if the superior authority considers it desirable.

Sec. 26.05.452. Who may serve on courts-martial. (a) A commissioned officer of the militia of a state or of an active duty component of the armed forces of the United States is eligible to serve on a general, special, or summary court-martial for the trial of a member of the militia.

(b) A warrant officer of the militia of a state or of an active duty component of the armed forces of the United States is eligible to serve on a general or special court-martial for the trial of any person, other than a commissioned officer.

(c) An enlisted member of the militia of the state who is not a member of the same unit as the accused is eligible to serve on a general or special court-martial for the trial of an enlisted member, but only if the accused has, before the conclusion of a session of the court-martial called by the military judge under AS 26.05.528, personally requested, orally on the record or in writing, that enlisted members serve on the court-martial.

(d) After a request is made under (c) of this section, the accused may not be tried by a general or special court-martial unless enlisted members make up at least one-third of the total membership of the court. If eligible enlisted members are not available because of physical conditions or military exigencies, the court may proceed to try the accused without enlisted members, but the convening authority shall place on the record a detailed written explanation of why eligible enlisted members were not available.

(e) The accused may not be tried by a court-martial that includes a member

who is junior in rank or grade to the accused, unless the inclusion cannot be avoided.

(f) When convening a court-martial, the convening authority shall detail the members of the militia of a state or of an active duty component of the armed forces of the United States who are, in the convening authority's opinion, the best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. A person is not eligible to serve as a member of a general or special court-martial if the person is the accuser, is a witness, or has acted as investigating officer or as counsel in the same case.

(g) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. The convening authority may delegate the authority under this subsection to a judge advocate or to a principal assistant.

Sec. 26.05.453. Military judge of a general or special court-martial. (a) A senior force judge advocate who is in the same force as the accused, or a designee, shall detail a military judge to a general and special court-martial. The military judge shall preside over an open session of the court-martial to which the military judge has been detailed.

(b) A military judge must be

(1) an active or retired commissioned officer of the militia of a state or of an active or reserve component of the armed forces or another uniformed service of the United States;

(2) licensed to practice law in a state or a member of the bar of a federal court for at least five years;

(3) certified as qualified for duty as a military judge by a senior force judge advocate who is in the same force as the accused.

(c) The convening authority or a staff member of the convening authority may not prepare or review a report concerning the effectiveness, fitness, or efficiency of the military judge detailed to the case that relates to performance of duty as a military judge.

(d) A person may not act as military judge in a case if that person is the accuser or a witness or has acted as investigating officer or counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, or vote with the members of the court-martial.

Sec. 26.05.455. Detail of trial counsel and defense counsel. (a) For each general and special court-martial, the convening authority shall detail trial counsel, defense counsel, and assistants, as appropriate.

(b) A person who has acted as investigating officer, military judge, witness, or court member in a case may not act as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, defense counsel or assistant or associate defense counsel in the case.

(c) A person who has acted for the prosecution may not act in the same case for the defense. A person who has acted for the defense may not act in the same case for the prosecution.

(d) Trial counsel or defense counsel detailed in a general or special court-martial must be

(1) a judge advocate, or, if serving as defense counsel, otherwise certified by the senior force judge advocate; and

(2) admitted to the practice of law in this state or otherwise permitted to appear in an action in the courts of this state.

Sec. 26.05.458. Detail or employment of reporters and interpreters. (a) The convening authority of a general or special court-martial shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court and may detail or employ interpreters to interpret for the court.

(b) A person may not act as a reporter or interpreter under this section in a case if the person is the accuser, a witness, an investigating officer, counsel for a party, or, if the trial is a rehearing, a member of a prior court-martial in the same case.

Sec. 26.05.460. Absent and additional members. (a) A member of a general or special court-martial may not be absent or excused after the court has been assembled for the trial of the accused unless the member is excused

(1) as a result of a challenge; or

(2) for good cause by the military judge or by order of the convening

1 authority.

2 (b) If a general court-martial, other than a general court-martial composed of
3 only a military judge, is reduced below five members, the trial may not proceed unless
4 the convening authority assigns new members sufficient in number to restore the court
5 to five members. The trial may proceed with the new members present after the
6 recorded evidence previously introduced before the members of the court has been
7 read to the court in the presence of the military judge, the accused, and counsel for
8 both sides.

9 (c) If a special court-martial, other than a special court-martial composed of
10 only a military judge, is reduced below three members, the trial may not proceed
11 unless the convening authority details new members in sufficient number to restore the
12 court to three members. The trial shall proceed with the new members present as if no
13 evidence had been introduced previously at the trial, unless a verbatim record of the
14 evidence previously introduced before the members of the court or a written
15 stipulation of the evidence is read to the court in the presence of the military judge, the
16 accused, and counsel for both sides.

17 (d) If the military judge of a court-martial composed of only a military judge
18 is unable to proceed with a trial because of a challenge or for other good cause, the
19 senior force judge advocate shall detail a new military judge. The trial shall proceed as
20 if no evidence had previously been introduced, unless a verbatim record of the
21 evidence previously introduced or a written stipulation of the evidence is read in court
22 in the presence of the new military judge, the accused, and counsel for both sides.

23 **Sec. 26.05.463. Charges and specifications.** (a) Charges and specifications
24 must be signed by a member of the militia under oath before a commissioned officer
25 authorized by AS 26.05.545 to administer oaths. The charges and specifications must
26 state

27 (1) that the signer has personal knowledge of, or has investigated, the
28 facts set out in the charges and specifications;

29 (2) that the charges and specifications are true in fact to the best of the
30 signer's knowledge and belief.

31 (b) The person proffering the charges and specifications shall present them to

1 the proper authority. The proper authority receiving the charges and specifications
2 shall immediately determine the disposition of the charges in the interest of justice and
3 discipline, and the person accused shall be informed of the charges as soon as
4 practicable.

5 **Sec. 26.05.465. Compulsory self-incrimination prohibited.** (a) A member of
6 the militia may not compel a person to make a self-incriminating statement or to
7 answer a question if the answer may incriminate the person.

8 (b) A member of the militia may not interrogate or request a statement from a
9 person suspected of a military offense without first informing the person of the nature
10 of the accusation and advising the person that the person does not have to make any
11 statement regarding the military offense of which the person is accused or suspected
12 and that any statement made by the person may be used as evidence against the person
13 in a trial by court-martial.

14 (c) A member of the militia may not compel a person to make a statement or
15 produce evidence before a military court if the statement or evidence is not material to
16 the issue before the court and may tend to degrade the person.

17 (d) A statement obtained from a person in violation of this section or through
18 the use of coercion, unlawful influence, or unlawful inducement may not be admitted
19 into evidence against the person in a trial by court-martial.

20 **Sec. 26.05.468. Investigation.** (a) A charge or specification may not be
21 referred to a general court-martial for trial until an investigating officer makes a
22 thorough and impartial investigation of all the matters set out in the charge or
23 specification. The investigating officer shall inquire into the truth of the matters set
24 out in the charges, consider the form of the charges, and recommend a disposition
25 of the case in the interest of justice and discipline.

26 (b) The accused has the right to be represented by counsel at an
27 investigation. If the accused requests the appointment of military counsel, the
28 investigating officer shall refer the request to the senior force judge advocate, who
29 shall promptly detail defense counsel to represent the accused at the investigation.
30 Defense counsel detailed under this section shall meet the criteria for counsel under
31 AS 26.05.455(d).

1 (c) The investigating officer shall

2 (1) advise the accused of the charges against the accused and of the
3 accused's right to be represented by counsel under (b) of this section;

4 (2) give the accused the opportunity to cross-examine witnesses
5 against the accused, if the witnesses are available; a victim may not be required to
6 testify at a preliminary hearing; a victim who declines to testify is considered
7 unavailable for the purposes of the preliminary hearing;

8 (3) give the accused the opportunity to present evidence on the
9 accused's own behalf, either in defense or mitigation relevant to the limited purposes
10 of the hearing; the investigating officer shall examine available witnesses requested
11 by the accused.

12 (d) The presentation of evidence and examination of witnesses at a
13 preliminary hearing, including cross-examination, shall be limited to matters relevant
14 to the limited purposes of the hearing.

15 (e) If, after the investigation, the charges are referred to the court-martial,
16 the investigating officer shall prepare a statement of the charges and the
17 substance of the testimony taken, and a copy shall be given to the accused.

18 (f) If an investigation of a military offense is conducted before the accused is
19 charged with the military offense and the accused is present at the investigation and
20 provided with counsel and an opportunity to cross-examine witnesses and present
21 evidence under (c) of this section, no further investigation of that charge is necessary
22 under this section unless the accused demands further investigation after the accused
23 is informed of the charge. A demand for further investigation entitles the accused to
24 recall witnesses for further cross-examination and to offer new evidence in the
25 accused's own behalf.

26 (g) If evidence adduced in an investigation under this section indicates that
27 the accused committed an uncharged military offense, the investigating officer may
28 investigate the subject matter of that offense without the accused's having first been
29 charged with the military offense if the accused is

30 (1) present at the investigation;

31 (2) informed of the nature of each uncharged military offense

1 investigated; and

2 (3) provided with counsel and an opportunity to cross-examine
3 witnesses and present evidence under (c) of this section.

4 (h) In this section, "victim" means a person who is alleged to have suffered a
5 direct physical, emotional, or pecuniary harm as a result of the matters set out in a
6 charge or specification being considered and who is named in a specification being
7 considered.

8 **Sec. 26.05.470. Forwarding of charges.** (a) When a person is held for trial by
9 general court-martial, the commanding officer shall, within eight days after the
10 accused is ordered into arrest or confinement, if practicable, forward the charges,
11 together with the investigation and associated records, to the person exercising general
12 court-martial jurisdiction.

13 (b) If it is not practicable to forward the charges and investigation and
14 associated records under (a) of this section, the commanding officer shall provide the
15 person with a written explanation for the delay.

16 **Sec. 26.05.473. Advice of judge advocate and reference for trial.** (a) Before
17 directing the trial of a charge by general court-martial, the convening authority shall
18 refer it to a judge advocate for consideration and advice. The convening authority may
19 not refer a specification under a charge to a general court-martial for trial unless the
20 convening authority has been advised in writing by a judge advocate that

21 (1) the specification alleges a military offense;

22 (2) the specification is warranted by the evidence set out in the report
23 of investigation under AS 26.05.468, if there is a report; and

24 (3) a court-martial has jurisdiction over the accused and the military
25 offense.

26 (b) The advice of the judge advocate under (a) of this section with respect to a
27 specification under a charge shall include a written and signed statement by the judge
28 advocate

29 (1) stating the judge advocate's conclusions with respect to each matter
30 set out in (a) of this section; and

31 (2) recommending to the convening authority what action to take

1 regarding the specification; if the specification is referred for trial, the
2 recommendation of the judge advocate must accompany the specification.

3 (c) If a charge or specification is not in the correct form or does not conform
4 to the substance of the evidence set out in the investigating officer's report, the
5 convening authority, with the advice of the judge advocate, may correct the charge or
6 specification to conform to the evidence.

7 **Sec. 26.05.475. Service of charges.** A trial counsel shall serve or cause to be
8 served on the accused a copy of the charges. A person may not, against the person's
9 objection, be brought to trial before a general court-martial within five days after the
10 service of charges on the person, or before a special court-martial within three days
11 after the service of charges on the person.

12 **Sec. 26.05.478. Unlawfully influencing the action of a court.** (a) An
13 authority convening a general, special, or summary court-martial, a commanding
14 officer, or an officer serving on the staff of a convening authority or commanding
15 officer may not censure, reprimand, or admonish the court, a member of the court, the
16 military judge, or counsel appearing before the court, with respect to the findings of or
17 sentence imposed by the court, or with respect to another exercise of the respective
18 functions of the court, a member of the court, the military judge, or counsel appearing
19 before the court in the conduct of the proceedings.

20 (b) A member of the militia may not attempt to coerce or, by unauthorized
21 means, influence the action of a court-martial or a member of a court, in reaching the
22 findings or sentence in a case, or the action of a convening, approving, or reviewing
23 authority with respect to a judicial act. This subsection does not apply to

24 (1) general instructional or informational courses in military justice if
25 the courses are designed solely for the purpose of instructing members of a command
26 in the substantive and procedural aspects of courts-martial; or

27 (2) statements and instructions given in open court by the military
28 judge, summary court-martial officer, or counsel.

29 (c) A member of the militia may not, in the preparation of an effectiveness,
30 fitness, or efficiency report, or any other report or document used, in whole or in part,
31 for the purpose of determining whether a member of the militia of the state is qualified

1 to be advanced in grade, in determining the assignment or transfer of a member of the
2 militia of the state, or in determining whether a member of the militia of the state
3 should be retained on active status,

4 (1) consider or evaluate the performance of duty of the member as a
5 member of a court-martial or witness; or

6 (2) give a less favorable rating or evaluation of any counsel for the
7 accused because of zealous representation before a court-martial.

8 (d) In this section, "unauthorized" means contrary to a statute or regulation of
9 the United States or the state.

10 **Sec. 26.05.480. Continuances.** The military judge of a general, special, or
11 summary court-martial may, for reasonable cause, grant a continuance to a party for
12 the time, and as often, as may appear to be just.

13 **Sec. 26.05.483. Oaths or affirmations.** (a) Before performing their respective
14 duties, military judges, general and special court-martial members, trial counsel,
15 defense counsel, reporters, and interpreters shall take an oath or affirmation in the
16 presence of the accused that they will perform their duties faithfully.

17 (b) The form of the oath or affirmation, the time and place of taking, the
18 manner of recording, and a determination of whether the oath or affirmation shall be
19 taken for all cases in which the duties are to be performed or for a particular case, shall
20 be prescribed by rules of procedure. The rules may provide that, if a person takes an
21 oath or affirmation with respect to a duty, the person need not take the oath or
22 affirmation again on detailment to the duty.

23 (c) A witness before a court-martial shall be examined under oath or
24 affirmation.

25 **Sec. 26.05.485. Statute of limitations.** (a) A person charged with a military
26 offense may not be tried or punished for the military offense unless the person
27 received sworn charges and specifications issued by an officer exercising court-martial
28 jurisdiction over the command not later than three years after the commission of the
29 military offense or the imposition of a nonjudicial punishment for the military offense
30 under the code of military justice.

31 (b) A period when the accused is absent without authority or fleeing from

justice shall be excluded in computing the period of limitation in this section.

(c) A period when the accused is absent from territory in which the proper authority has the ability to apprehend the accused, in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation in this section.

(d) When the United States is at war, the running of a period of limitation for a military offense under this section is suspended until two years after the termination of hostilities as proclaimed by the President of the United States or by a joint resolution of the United States Congress if the military offense

(1) involves fraud or attempted fraud against the United States, a state, or an agency of either, including a conspiracy to commit fraud;

(2) is committed in connection with the acquisition, care, handling, custody, control, or disposition of real or personal property of the United States or a state; or

(3) is committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of a contract, subcontract, or purchase order that is connected with or related to the prosecution of the war, or with the disposition of inventory by a war contractor or government agency.

(e) If charges or specifications are dismissed as defective or insufficient for any cause, and the period prescribed by the applicable statute of limitations has expired or will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the new charges and specifications

(1) are received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications;

(2) allege the same acts or omissions that were alleged in the dismissed charges or specifications or acts or omissions that were included in the dismissed charges or specifications.

Sec. 26.05.488. Former jeopardy. (a) A person may not, without the person's

consent, be tried a second time for the same military offense.

(b) A proceeding in which an accused has been found guilty by a court-martial on any charge or specification is not a trial under the code of military justice until a finding of guilty has become final after review of the case has been completed.

(c) A proceeding that, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses, without any fault of the accused, is a trial.

Sec. 26.05.490. Pleas of the accused. (a) If, after arraignment, an accused makes an irregular pleading or, after a plea of guilty, initiates an action inconsistent with the plea, or if the accused appears to have entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) With respect to a charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn before announcement of the sentence, in which event, the proceedings shall continue as though the accused had pleaded not guilty.

Sec. 26.05.493. Subpoena; process of military courts. (a) A military judge, the president of a court-martial, or a summary court-martial officer may issue subpoenas and subpoenas duces tecum for the attendance of witnesses and production of books and records, if the courts are sitting within the state and the witnesses, books, and records sought are located in the state. A subpoena may be served by a person designated by the military judge, the president of the court-martial, or summary court-martial officer.

(b) If a person who is not a member of the militia of the state fails to comply with a subpoena issued under this section, the military judge, president of the court-martial, or summary court-martial officer may apply to a state court for an order to compel obedience by proceedings for contempt as if the subpoena had been issued by

1 a court. The military judge, president of the court-martial, or summary court-martial
2 officer may request the attorney general to bring the action.

3 (c) A person who is not a member of the militia, who has been subpoenaed to
4 appear as a witness or to produce books and records before a court-martial or before a
5 military or civil officer designated to take a deposition to be read in evidence before a
6 court-martial, who has been paid or tendered the fees and mileage of a witness at the
7 rates allowed to witnesses attending a criminal court of the state, and who wilfully
8 neglects or refuses to appear or refuses to qualify as a witness or to testify or to
9 produce evidence that the person may have been legally subpoenaed to produce is
10 guilty of a violation and may be charged and punished as provided in AS 12.55.

11 **Sec. 26.05.495. Contempt.** (a) A military judge or summary court-martial
12 officer may punish for contempt a person who uses a menacing word, sign, or gesture
13 in its presence, or who disturbs its proceedings by any riot or disorder.

14 (b) A military judge or summary court-martial officer may punish a member
15 of the militia for contempt by confinement not to exceed 30 days or a fine of \$100, or
16 both.

17 (c) A military judge or summary court-martial officer may punish a person
18 who is not a member of the militia for direct contempt in an amount not to exceed
19 \$100.

20 **Sec. 26.05.498. Defense of insanity.** (a) The accused may assert the
21 affirmative defense of insanity as provided in AS 12.47.010. If the accused gives
22 notice of the defense, the accused shall file with the military judge the notice required
23 by AS 12.47.090.

24 (b) If the accused asserts the defense of insanity under (a) of this section, the
25 court shall order an examination to be conducted that meets the standards of
26 AS 12.47.070.

27 (c) If the defense of insanity is properly at issue, the military judge shall
28 instruct the members of the court as to the defense and charge them to find the accused

29 (1) guilty;

30 (2) not guilty; or

31 (3) not guilty by reason of insanity.

(d) The accused may be found not guilty by reason of insanity if

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of insanity has been established; or

(2) in the case of a court-martial composed of a military judge or a summary court-martial officer sitting without court members, the military judge or summary court-martial officer determines that the defense of insanity has been established.

(e) In the case of a court-martial composed of a military judge or a summary court-martial officer sitting without court members, if the defense of insanity is properly at issue, the military judge or summary court-martial officer shall find the accused

(1) guilty;

(2) not guilty; or

(3) not guilty by reason of insanity.

(f) If an accused is found not guilty by reason of insanity, trial counsel shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation to determine the need for treatment if trial counsel has good cause to believe that the defendant is suffering from a mental illness and, as a result, is gravely disabled or likely to cause serious harm to self or others. In this subsection, "mental illness" has the meaning given in AS 47.30.915.

Sec. 26.05.500. Lack of mental capacity or mental responsibility; commitment of accused for examination and treatment. (a) An accused who, as a result of a mental disease or defect that renders the accused incompetent to the extent that the accused is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case, may not be tried, convicted, or sentenced for the military offense so long as the incompetency exists.

(b) If trial counsel or defense counsel has reason to believe that the accused is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case, counsel may file a motion with the military judge assigned to the case for a determination of the competency of the accused. Upon the motion, or on the judge's own motion, the court shall order an examination to be

1 conducted and make a determination in accordance with the requirements of
2 AS 12.47.100. If the military judge determines that the accused must be committed for
3 the purpose of examination, and the accused is not otherwise subject to commitment
4 under AS 47.30.700 - 47.30.915, the military judge shall order the convening authority
5 to seek the assistance of the attorney general in seeking a commitment under
6 AS 12.47.100.

7 (c) If the military court determines that the accused is incompetent to stand
8 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
9 47.30.915, the military judge shall order the convening authority to seek the assistance
10 of the attorney general in seeking a commitment under AS 12.47.110.

11 (d) If, at the end of a period of commitment under (b) and (c) of this section, it
12 is determined that the accused's mental condition has not improved so as to permit the
13 trial to proceed, the charges shall be dismissed without prejudice, and continued
14 commitment proceedings shall be governed by the provisions relating to civil
15 commitment under AS 47.30.700 - 47.30.915. If the accused remains incompetent for
16 five years after the charges have been dismissed under this subsection, the accused
17 may not be charged again for a military offense arising out of the facts alleged in the
18 original charges.

19 (e) When the custodian of an accused person hospitalized under (c) of this
20 section determines that the person has recovered to the extent that the accused is able
21 to understand the nature of the proceedings against the accused and to conduct or
22 cooperate intelligently in the defense of the case, the custodian shall promptly transmit
23 a notification of the determination to the general court-martial convening authority for
24 the accused and trial and defense counsel.

25 (f) Upon receipt of the notice, the convening authority shall promptly take
26 custody of the accused unless the accused is no longer a member of the militia.

27 (g) If the accused remains a member of the militia, the military judge detailed
28 to the case shall conduct the hearing required under AS 12.47.120. If the judge finds
29 the accused competent, the court-martial shall be assembled.

30 (h) The custodian of the accused person may retain custody of the person for
31 not more than 30 days after transmitting the notifications required under (e) of this

section.

(i) If, during a period of commitment under this section, the accused is no longer a member of the militia, the convening authority shall promptly notify the custodian and the attorney general; the custodian and the attorney general may take what further action may be appropriate.

Sec. 26.05.503. Voting and rulings. (a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall immediately announce the result of the ballot to the members of the court.

(b) The military judge shall rule on all questions of law and all interlocutory questions arising during the proceedings. A ruling made by the military judge on a question of law or an interlocutory question, other than the factual issue of mental responsibility of the accused, is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if a member objects to a ruling, the court shall be cleared and closed, and the question shall be decided by a voice vote as provided in AS 26.05.505, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the military offense and charge them that

(1) the accused is presumed to be innocent until the guilt of the accused is established by legal and competent evidence beyond a reasonable doubt;

(2) if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused, and the accused must be acquitted;

(3) if there is a reasonable doubt as to the degree of guilt, a finding of guilt must be in a lower degree as to which there is no reasonable doubt; and

(4) the burden of proof to establish the guilt of the accused beyond a reasonable doubt is on the state.

(d) A military judge sitting without court members shall

(1) determine all questions of law and fact arising during the

proceedings and, if the accused is convicted, adjudge an appropriate sentence;

(2) make a general finding and shall, in addition, on request, find the facts specially.

(e) If a military judge sitting without court members files an opinion or memorandum of decision, the opinion or memorandum of decision is sufficient if the findings of fact appear in the opinion or memorandum of decision.

Sec. 26.05.505. Number of votes required. (a) A person may not be convicted of a military offense tried by a court-martial unless by the unanimous verdict of the members of the court present at the time the vote is taken.

(b) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote that indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on any other question is a determination in favor of the accused.

Sec. 26.05.508. Record of trial. (a) Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it, and the record must be authenticated by the signature of the military judge. If the military judge cannot authenticate the record because of the military judge's death, disability, or absence, the record shall be authenticated by the signature of the trial counsel or, if the trial counsel is unable to authenticate the record because of the trial counsel's death, disability, or absence, then by the signature of a member of the court. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions that would impose a duty on a member under this subsection.

(b) In each general and special court-martial case resulting in a conviction, a complete verbatim record of the proceedings and testimony shall be prepared. In all other court-martial cases, the record shall contain the matters as may be prescribed by rules of procedure.

(c) Each summary court-martial shall keep a separate record of the

proceedings in each case, and the record shall be authenticated in the manner as may be prescribed by rules of procedure.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as the record is authenticated.

Sec. 26.05.510. Cruel and unusual punishments prohibited. A court-martial may not impose on a member of the militia punishment by flogging, branding, marking, or tattooing on the body, or another cruel or unusual punishment. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

Sec. 26.05.513. Punishments; maximum limits. (a) A court-martial may not impose a punishment for a military offense that exceeds the limits set out in the code of military justice and may not impose a sentence of death. A sentence for a military offense may not exceed 10 years. A crime for which a sentence of confinement for a term of more than one year is authorized is a felony offense. Except for convictions by a summary court-martial and except as otherwise specifically provided in the code of military justice, all other military offenses are misdemeanors. A conviction by a summary court-martial is a violation.

(b) The maximum punishment for a violation of the code of military justice shall be the lesser of the sentences prescribed by the Manual for Courts-Martial of the United States in effect on January 1, 2004, and the code of military justice.

Sec. 26.05.515. Deferment of sentences. (a) If an accused is under sentence to confinement that has not yet been ordered executed, the convening authority or, if the accused is no longer under the convening authority's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently detailed may, in that person's sole discretion, defer service of the sentence to confinement. The deferment terminates when the sentence is ordered to be executed. The deferment may be rescinded at any time by the authority 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 detailed.

(b) If a court-martial sentences an accused to confinement, the convening authority may, without the consent of the accused, defer the service of the sentence until after the accused has been permanently released to the militia of the state by a

state, the United States, or a foreign country

(1) that had custody of the accused;

(2) that temporarily returned the accused to the militia of the state for trial by court-martial; and

(3) to which, after the court-martial, the militia of the state returned the accused under the authority of a mutual agreement or treaty.

(c) In a 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 AS 26.05.525, 26.05.538, or 26.05.540 is pending, the adjutant general may defer further service of the sentence to confinement while that review is pending.

(d) In (b) of this section, "state" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

Sec. 26.05.518. Execution of confinement. A person must serve a sentence of confinement imposed by a court-martial, whether or not the sentence includes discharge or dismissal from the militia of the state, and whether or not the discharge or dismissal has been executed. The sentence may be carried into execution by confinement in a place authorized by the code of military justice. A person confined under the code of military justice is subject to the same discipline and treatment as other persons confined or committed to the place of confinement.

Sec. 26.05.520. Error of law; lesser included military offense. (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) A reviewing authority authorized under the code of military justice to approve or affirm a finding of guilt may approve or affirm, instead, so much of the finding as includes a lesser included military offense.

Sec. 26.05.523. Withdrawal of appeal. In a case subject to appellate review under the code of military justice, the accused may, at any time, file with the convening authority a written statement expressly withdrawing the right of the accused to the appeal. The withdrawal shall be signed by both the accused and the accused's defense counsel and filed in accordance with rules of procedure.

Sec. 26.05.525. Appeal by the state. (a) In a trial by court-martial in which a

punitive discharge may be imposed, the state may appeal to the Military Appeals Commission established under this chapter

(1) an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification;

(2) an order or ruling that excludes evidence that is substantial proof of a fact material in the proceeding;

(3) an order or ruling that directs the disclosure of classified information;

(4) an order or ruling that imposes sanctions for nondisclosure of classified information;

(5) the refusal of the military judge to issue a protective order sought by the prosecution to prevent the disclosure of classified information;

(6) the refusal of the military judge to enforce an order issued under (a)(5) of this section that was previously issued by an appropriate authority.

(b) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours after the order or ruling. The notice must include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one that excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(c) An appeal under this section shall be forwarded to the Military Appeals Commission under AS 26.05.538. In ruling on the appeal, the Military Appeals Commission may act only with respect to matters of law.

(d) A period of delay resulting from an appeal under this section shall be excluded in deciding an issue involving the denial of a speedy trial, unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(e) The state may not appeal a finding of not guilty with respect to a charge or specification by the members of the court-martial, or by a judge in a bench trial if the finding was not made on reconsideration.

Sec. 26.05.528. Vacation of suspension. (a) A probationer serving a period of

1 probation under a sentence suspended by a special court-martial that, as approved,
2 includes a bad-conduct discharge, or a suspended general court-martial sentence, is
3 entitled to a hearing before the suspension is vacated. The probationer shall be
4 represented at the hearing by military counsel if the probationer requests
5 representation.

6 (b) If the suspended sentence was imposed by a special court-martial, the
7 officer having special court-martial jurisdiction over the probationer shall hold a
8 hearing on the alleged violation of probation. The record of the hearing and the
9 recommendation of the officer having special court-martial jurisdiction shall be sent
10 for action to the officer exercising general court-martial jurisdiction over the
11 probationer. If the officer vacates the suspension, the unexecuted part of the sentence,
12 except a dismissal, shall be executed, subject to applicable restrictions in the code of
13 military justice.

14 (c) The suspension of another sentence may be vacated by an authority for the
15 command in which the accused is serving or detailed who is competent to convene a
16 court of the kind that imposed the sentence.

17 **Sec. 26.05.530. Petition for a new trial.** At any time within two years after
18 approval by the convening authority of a court-martial sentence, the accused may
19 petition the adjutant general for a new trial on the grounds of newly discovered
20 evidence or fraud on the court-martial.

21 **Sec. 26.05.533. Restoration.** (a) All rights, privileges, and property affected
22 by an executed part of a court-martial sentence that has been set aside or disapproved,
23 except an executed dismissal or discharge, shall be restored unless a new trial or
24 rehearing is ordered and the executed part is included in a sentence imposed on the
25 new trial or rehearing.

26 (b) If a previously executed sentence of dishonorable or bad-conduct
27 discharge is not imposed on a new trial, the governor may substitute an administrative
28 form of discharge unless the accused is to serve out the remainder of the accused's
29 enlistment.

30 (c) If a previously executed sentence of dismissal is not imposed on a new
31 trial, the governor may substitute an administrative form of discharge, and a

1 commissioned officer dismissed under the original sentence may be reappointed by the
2 governor alone to the commissioned grade and rank that, in the opinion of the
3 governor, the former officer would have attained had the officer not been dismissed.
4 The reappointment of the former officer shall be without regard to the existence of a
5 vacancy and shall affect the promotion status of other officers only to the extent the
6 governor may direct. The time between the dismissal and the reappointment shall be
7 considered as actual service for all purposes, including the right to pay and
8 allowances.

9 **Sec. 26.05.535. Leave required to be taken pending review of court-**
10 **martial convictions.** In accordance with rules adopted under AS 26.05.380, an
11 accused who has been sentenced by a court-martial may be required to take leave
12 pending completion of action under this section if the sentence includes an
13 unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The
14 accused may be required to begin the leave on the date on which the sentence is
15 approved under the code of military justice, or at any time after that date, and the leave
16 may be continued until the date on which action under this section is completed, or
17 may be terminated at an earlier time.

18 **Sec. 26.05.538. Military Appeals Commission.** (a) The Military Appeals
19 Commission is established in the Department of Military and Veterans' Affairs. The
20 commission is a quasi-judicial agency.

21 (b) The commission has jurisdiction to hear appeals from sentences and
22 punishments imposed by courts-martial under the code of military justice.

23 (c) The commission consists of three members appointed by the governor and
24 confirmed by a majority of the members of the legislature in joint session. A member
25 shall be a resident of this state and

26 (1) be licensed to practice law

27 (A) in this state and be a member in good standing with the
28 Alaska Bar Association;

29 (B) in another state and be a member in good standing of the
30 bar of that state; or

31 (C) as a member of the bar of a federal court;

(2) have engaged in the active practice of law for at least five years;

(3) be a former commissioned officer in the armed forces of the United States or the reserve components, or in the militia of a state; and

(4) have at least five years' experience as an officer in the judge advocate general's corps of the armed forces of the United States or the militia of the state.

(d) Except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall hold office for the unexpired term of the member whose vacancy is filled. A vacancy in the commission does not impair the authority of a quorum of members to exercise the powers and perform the duties of the commission.

(e) A member may be reappointed if the reappointment complies with this section.

(f) The members of the commission shall select a chair from among the members of the commission. The selection shall be subject to the approval of the adjutant general.

(g) The governor may remove a commissioner from office for cause including incompetence, neglect of duty, or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges and offered an opportunity to be publicly heard in person or by counsel in the commissioner's own defense upon not less than 10 days' notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and the governor's finding based on the charges, together with a complete record of the proceedings.

(h) The adjutant general shall adopt regulations to govern appellate procedure before the court. The regulations shall be substantially similar to the provisions for post-trial procedure and review of courts-martial under 10 U.S.C. 801 - 946. The regulations must be approved by the governor. Regulations adopted under this section are exempt from AS 44.62 (Administrative Procedure Act).

Sec. 26.05.540. Appellate review. (a) After exhausting all remedies available under the code of military justice, a party may appeal to the Alaska Supreme Court a conviction and sentence imposed by a general or special court-martial for a military

offense if the sentence

(1) includes confinement imposed under the code of military justice;
and

(2) meets the criteria for appeal under AS 12.55.120.

(b) A decision by the Alaska Supreme Court on an appeal filed under (a) of this section is final and binding on all parties, the Military Appeals Commission, and the court-martial.

(c) A party filing an appeal under this section shall comply with the rules of court applicable to appeals, including the deadlines for filing.

Sec. 26.05.543. Civilian appellate counsel. (a) If the attorney general requests representation, the senior force judge advocate shall detail a judge advocate as civilian appellate trial counsel to represent the state in an appeal filed under AS 26.05.540, in a proceeding filed under AS 26.05.538, or before any federal court. Counsel appointed under this subsection shall be a member in good standing of the state bar.

(b) The accused has the right to be represented by detailed military counsel before the reviewing court in an appeal filed under AS 26.05.540.

(c) Upon the request of an accused entitled to be represented under this section, the senior force judge advocate shall detail a judge advocate to represent the accused in the review or appeal of cases under (b) of this section. Counsel detailed under this subsection shall meet the criteria for counsel under AS 26.05.455(d).

(d) A person who has acted as investigating officer, trial counsel, military judge, witness, or court member in the case may not act as civilian appellate counsel for the accused under (c) of this section.

(e) An accused may be represented by civilian appellate counsel at no expense to the state.

Sec. 26.05.545. Authority to administer oaths and act as notary public. (a) The following persons may administer oaths for the purposes of military administration, including military justice:

- (1) a judge advocate;
- (2) a summary court-martial;
- (3) the adjutant general and assistant adjutant generals;

(4) a commanding officer of the militia;

(5) a person authorized by statute or by regulations of the armed forces of the United States or the state to administer oaths or act as a notary public.

(b) The following persons may administer oaths necessary in the performance of their duties:

(1) the president, military judge, and trial counsel for general and special courts-martial;

(2) an officer designated to take a deposition;

(3) a person detailed to conduct an investigation;

(4) a recruiting officer;

(5) a person authorized by statute or by regulations of the armed forces of the United States to administer oaths or act as a notary public.

(c) The person's signature without seal, together with the title of the person's office, is prima facie evidence of the person's authority to administer oaths and act as a notary public under this section.

Sec. 26.05.550. Delegation by the governor. The governor may delegate any authority vested in the governor under the code of military justice, and provide for the subdelegation of the authority, except the powers given to the governor by AS 26.05.170 and 26.05.445.

Sec. 26.05.553. Military justice account. (a) The military justice account is established in the general fund for the purpose of paying the expenses of the department in carrying out its duties relating to the code of military justice, including the fees and authorized travel expenses of witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, costs of collection, apprehension, detention and confinement, pay and allowances for court-martial duty, and all other necessary expenses of the prosecution and administration of military justice not otherwise payable by another source.

(b) The account consists of money appropriated to it by the legislature and interest received on money in the account.

(c) The department may use money appropriated to the account to pay for expenses related to the duties described in (a) of this section.

(d) Money appropriated to the account does not lapse.

(e) Nothing in this section creates a dedicated fund.

(f) In this section, "account" means the military justice account established under (a) of this section.

Sec. 26.05.555. Payment, collection, and deposit of fines. (a) A fine imposed by a military court or through the imposition of nonjudicial punishment may be paid to the state and delivered to the court or imposing officer, or to a person executing process.

(b) If the person on whom the fine was imposed fails to pay, the department may collect the fine by

(1) retaining pay or allowances due or to become due to the person fined from the militia of the state or the United States;

(2) garnishment or levy, together with costs, on the wages, goods, and property of a person delinquent in paying a fine in accordance with AS 09.38.

(c) A fine or penalty required to be paid under this section shall be deposited into the general fund and accounted for under AS 37.05.142.

Sec. 26.05.558. Pay and allowances for court-martial duty. For each day of duty as a member of a general court-martial, or as a witness under summons from the president or judge advocate of the court, officers and enlisted persons shall be paid as provided in AS 26.05.260(b).

Sec. 26.05.560. Uniformity of interpretation. The code of military justice shall be construed to carry out their general purpose and, so far as practicable, in a manner uniform with 10 U.S.C. 801 - 946.

Sec. 26.05.563. Immunity for action of military courts. A person acting under the code of military justice, whether as a member of the militia or as a civilian, shall be immune from any personal liability for any of the acts or omissions that the person did or failed to do as part of the person's duties under the code of military justice.

Sec. 26.05.660. Principals. A member of the militia who commits a military offense, or aids, abets, counsels, commands, or procures the commission of the military offense, or causes an act to be done that, if directly performed by the member,

would be punishable under this chapter, is a principal.

Sec. 26.05.663. Accessory after the fact. A member of the militia who, knowing that a military offense has been committed, receives, comforts, or assists the offender in order to hinder or prevent the offender's apprehension, trial, or punishment shall be punished as a court-martial may direct.

Sec. 26.05.665. Conviction of lesser included offense. An accused may be found guilty of an offense necessarily included in the military offense charged or of an attempt to commit either the military offense charged or an offense necessarily included in the military offense charged.

Sec. 26.05.668. Attempts. (a) An act done with specific intent to commit a military offense that amounts to more than mere preparation and tends, even though failing, to effect its commission, is an attempt to commit the military offense.

(b) A member of the militia who attempts to commit a military offense shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) A member of the militia may be convicted of an attempt to commit a military offense even if it appears, on the trial, that the military offense was consummated.

Sec. 26.05.670. Conspiracy. A member of the militia who conspires with another person to commit a military offense 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.

Sec. 26.05.673. Solicitation. (a) A member of the militia who solicits or advises another or others to desert in violation of AS 26.05.680 or to mutiny in violation of AS 26.05.703 shall, if the military offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the military offense, but, if the military offense solicited or advised is not attempted or committed, the member shall be punished as a court-martial may direct.

(b) A member of the militia who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of AS 26.05.715 or an act of sedition in violation of AS 26.05.703 shall, if the military offense solicited or

advised is committed, be punished with the punishment provided for the commission of the military offense, but, if the military offense solicited or advised is not committed, the member shall be punished as a court-martial may direct.

Sec. 26.05.675. Fraudulent enlistment, appointment, or separation. A person who procures the person's own enlistment or appointment in the militia of the state by knowingly false representation or deliberate concealment as to the person's qualifications for the enlistment or appointment and receives pay or allowances under the enlistment or appointment, or procures the person's own separation from the militia of the state by knowingly false representation or deliberate concealment as to the person's eligibility for that separation, shall be punished as a court-martial may direct.

Sec. 26.05.678. Unlawful enlistment, appointment, or separation. A member of the militia who effects an enlistment or appointment in or a separation from the militia of the state of a person who is known to the member 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.

Sec. 26.05.680. Desertion. (a) A person is guilty of desertion if the person is a member of the militia and

(1) without authority, goes or remains absent from the person's unit, organization, or place of duty with intent to remain away from the unit, organization, or place of duty permanently;

(2) quits the person's 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 force of the militia of the state,

(A) enlists or accepts an appointment in the same or another force of the militia of the state, or in one of the armed forces of the United States, without fully disclosing the fact that the person has not been regularly separated; or

(B) enters a foreign armed service except when authorized by the United States.

(b) A commissioned officer of the militia commits the military offense of desertion if, after tender of the officer's resignation and before notice of its acceptance, the officer quits the officer's post or proper duties without leave and with intent to remain away permanently.

(c) A person found guilty of desertion or attempt to desert is punishable

(1) by confinement of not more than 10 years or a punishment as a court-martial may direct if the military offense is committed in time of war;

(2) by punishment as a court-martial may direct if the desertion or attempt to desert occurs at a time other than a time of war.

Sec. 26.05.683. Absence without leave. A member of the militia who, without authority, (1) fails to go to the member's appointed place of duty at the time prescribed, (2) goes from the member's place of duty, or (3) is absent or remains absent from the member's unit, organization, or place of duty at which the member is required to be at the time prescribed shall be punished as a court-martial may direct.

Sec. 26.05.685. Missing movement. A member of the militia who, through neglect or design, misses the movement of a ship, aircraft, or unit with which the member is required, in the course of duty, to move shall be punished as a court-martial may direct.

Sec. 26.05.688. Contempt toward officials. A commissioned officer of the militia who uses contemptuous words against the President or Vice-President of the United States, the United States Congress, the United States Secretary of Defense, the United States Secretary of Homeland Security, the secretary of a military department of the United States, or the governor or legislature of this state shall be punished as a court-martial may direct.

Sec. 26.05.690. Disrespect toward superior commissioned officer. A member of the militia who behaves with disrespect toward the member's superior commissioned officer shall be punished as a court-martial may direct.

Sec. 26.05.693. Assaulting or wilfully disobeying superior commissioned officer. A member of the militia who (1) strikes the member's superior commissioned officer or draws or lifts up any weapon or offers any violence against the superior officer while the superior officer is in the execution of the superior officer's office, or

(2) wilfully disobeys a lawful command of the member's superior commissioned officer shall be punished, if the military offense is committed in time of war, by confinement of not more than 10 years or another punishment as a court-martial may direct and, if the military offense is committed at any other time, by the punishment as a court-martial may direct.

Sec. 26.05.695. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer. A warrant officer or enlisted member of the militia who (1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while the officer is in the execution of the officer's office, (2) wilfully 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 the officer is in the execution of the officer's office shall be punished as a court-martial may direct.

Sec. 26.05.698. Failure to obey order or regulation. Any member of the militia who (1) violates or fails to obey a lawful general order or regulation, (2) having knowledge of any other lawful order issued by a member of the militia of the state that the member has a duty to obey, fails to obey the order, or (3) is derelict in the performance of the member's duties shall be punished as a court-martial may direct.

Sec. 26.05.700. Cruelty and maltreatment. A member of the militia who is guilty of cruelty toward, or oppression or maltreatment of, another person subject to the member's orders shall be punished as a court-martial may direct.

Sec. 26.05.703. Mutiny or sedition. (a) A member of the militia is guilty of mutiny if the member, with intent to usurp or override lawful military authority, refuses, in concert with another person, to obey orders or otherwise do the member's duty or creates violence or a disturbance.

(b) A member of the militia is guilty of sedition if the member, with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with another person, revolt, violence, or other disturbance against the authority.

(c) A member of the militia is guilty of a failure to suppress or report a mutiny or sedition if the member fails to do the member's utmost to prevent and suppress a mutiny or sedition being committed in the member's presence, or fails to take all

reasonable means to inform the member's superior commissioned officer or commanding officer of a mutiny or sedition that the member knows or has reason to believe is taking place.

(d) A member who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition under this section shall be punished as a court-martial may direct.

Sec. 26.05.705. Resistance, flight, breach of arrest, and escape. A member of the militia who (1) resists apprehension, (2) flees from apprehension, (3) breaks arrest, or (4) escapes from custody or confinement shall be punished as a court-martial may direct.

Sec. 26.05.708. Releasing prisoner without proper authority. A member of the militia who, without proper authority, releases a prisoner committed to the member's charge or, through neglect or design, suffers a prisoner to escape shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

Sec. 26.05.710. Unlawful detention. A member of the militia who, except as provided by law or regulation, apprehends, arrests, or confines another person shall be punished as a court-martial may direct.

Sec. 26.05.713. Noncompliance with procedural rules. A member of the militia who (1) is responsible for unnecessary delay in the disposition of the case of another person accused of a military offense, or (2) knowingly and intentionally fails to enforce or comply with a provision of this chapter regulating the proceedings before, during, or after trial of an accused shall be punished as a court-martial may direct.

Sec. 26.05.715. Misbehavior before the enemy. (a) A member of the militia is guilty of misbehavior before the enemy if the member is before or in the presence of the enemy, or is facing a threat as described in AS 26.05.070, and

- (1) runs away;
- (2) shamefully abandons, surrenders, or delivers up a command, unit, place, or military property that the member has a duty to defend;
- (3) through disobedience, neglect, or intentional misconduct,

endangers the safety of the command, unit, place, or military property;

(4) casts away the member's arms or ammunition;

(5) engages in cowardly conduct;

(6) quits a place of duty to plunder or pillage;

(7) causes false alarms in a command, unit, or place under control of the armed forces of the United States or the militia of the state;

(8) wilfully fails to do the utmost to encounter, engage, capture, or destroy enemy troops, combatants, vessels, aircraft, or other thing that the member has a duty to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to the troops, combatants, vessels, or aircraft of the armed forces of the United States or an ally of the United States, to this state, or to another state when engaged in battle.

(b) A member found guilty of misbehavior before the enemy under this section shall be punished as a court-martial may direct.

Sec. 26.05.718. Subordinate compelling surrender. A member of the militia who compels or attempts to compel the commander of the militia of this state or of any other state, of a place, a vessel, an aircraft, or another military property, or of a body of members of the armed forces to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Sec. 26.05.720. Improper use of countersign. A member of the militia who, in time of war, discloses the parole or countersign to a person not entitled to receive it or who gives to another person who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to the person's knowledge, the member was authorized and required to give shall be punished as a court-martial may direct.

Sec. 26.05.723. Forcing a safeguard. A member of the militia who forces a safeguard shall be punished as a court-martial may direct.

Sec. 26.05.725. Captured or abandoned property. (a) A member of the militia shall secure all public property taken for the service of the United States or the state and shall give notice and turn over to the proper authority without delay all

captured or abandoned property in the member's possession, custody, or control.

(b) A member of the militia who (1) fails to carry out the duties prescribed in (a) of this section, (2) buys, sells, trades, or in any way deals in or disposes of taken, captured, or abandoned property, as a result of which the member receives or expects to receive any profit, benefit, or advantage to the member or another person directly or indirectly connected with the member, or (3) engages in looting or pillaging shall be punished as a court-martial may direct.

Sec. 26.05.728. Aiding the enemy. A member of the militia who (1) aids or attempts to aid the enemy or a hostile individual or group as described in AS 26.05.070 with arms, ammunition, supplies, money, or other things, or (2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with, the enemy or hostile individual or group, either directly or indirectly, shall be punished as a court-martial may direct.

Sec. 26.05.730. Misconduct as prisoner. A member of the militia who, while in the hands of the enemy or a hostile individual or group as described in AS 26.05.070 in time of war, (1) for the purpose of securing favorable treatment by the person's captors, acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of other persons of whatever nationality held by the enemy or hostile individual or group as civilian or military prisoners, or (2) while in a position of authority over a person, maltreats the person without justifiable cause shall be punished as a court-martial may direct.

Sec. 26.05.733. False official statements. A member of the militia who, with intent to deceive, signs a false record, return, regulation, order, or other official document made in the line of duty, knowing it to be false, or makes a false official statement in the line of duty, knowing it to be false, shall be punished as a court-martial may direct.

Sec. 26.05.735. Military property; loss, damage, destruction, or wrongful disposition. A member of the militia who, without proper authority, (1) sells or otherwise disposes of, (2) wilfully or through neglect damages, destroys, or loses, or (3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or

wrongfully disposed of, military property of the United States or of any state, shall be punished as a court-martial may direct.

Sec. 26.05.738. Property other than military property; waste, spoilage, or destruction. A member of the militia who, while on active duty, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongly destroys or damages any property other than military property of the United States or of any state shall be punished as a court-martial may direct.

Sec. 26.05.740. Improper hazarding of vessel. A member of the militia who wilfully, wrongfully, or with gross negligence hazards or suffers to be hazarded a vessel of the armed forces of the United States or the militia of the state shall suffer the punishment as a court-martial may direct.

Sec. 26.05.741. Drunken or reckless operation of a vehicle, aircraft, or vessel. (a) A member of the militia who (1) operates or physically controls a vehicle, aircraft, or vessel in a careless or reckless manner or while impaired by a substance described in AS 26.05.745(b), or (2) operates or is in actual physical control of a vehicle, aircraft, or vessel while under the influence of alcohol or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under (b) of this section shall be punished as a court-martial may direct.

(b) For purposes of (a) of this section,

(1) in the case of the operation or control of a vehicle, aircraft, or vessel in the United States, the applicable limit on the alcohol concentration in a person's blood or breath is the lesser of

(A) the blood alcohol content limit under the law of the state in which the conduct occurred, except as provided under (3) of this subsection for conduct on a military installation that is in more than one state; and

(B) the blood alcohol content limit under AS 28.35.030; in this paragraph, "blood alcohol content limit" is 0.10 grams of alcohol for each 100 milliliters of blood with respect to alcohol concentration in a person's blood and is 0.10 grams of alcohol for each 210 liters of breath with respect to alcohol concentration in a person's breath, as shown by chemical analysis;

(2) in the case of the operation or control of a vehicle, aircraft, or

vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in (4) of this subsection or a lower limit that the Secretary of Defense may prescribe by regulation;

(3) in the case of a military installation that is in more than one state, if those states have different blood alcohol content limits under their respective state laws, the Secretary of Defense may select one of the blood alcohol content limits to apply uniformly on that installation.

(c) Unless otherwise specifically defined or unless the context otherwise requires, in this section,

(1) "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited;

(2) "state" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa;

(3) "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Sec. 26.05.743. Drunk on duty. A member of the militia, other than a sentinel or lookout, who is found under the influence of alcohol while on duty shall be punished as a court-martial may direct.

Sec. 26.05.745. Wrongful use or possession of controlled substances. (a) A member of the militia who uses, possesses, manufactures, distributes, or imports a controlled substance into the customs territory of the United States, exports from the United States in violation of the laws of the United States or the state, or who introduces a controlled substance into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States or the military forces of a state shall be punished as a court-martial may direct.

(b) In this section, "controlled substance" means

(1) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana;

(2) a compound or derivative of a substance specified in (1) of this subsection;

(3) a substance not specified in (1) or (2) of this subsection that is listed on a schedule of controlled substances prescribed by the President of the United States for the purposes of the armed forces of the United States under 10 U.S.C. 801 - 946 (Uniform Code of Military Justice);

(4) a substance not specified in (1) or (2) of this subsection or on a list prescribed by the President under (3) of this subsection that is listed in 21 U.S.C. 812, schedules I through V.

Sec. 26.05.748. Misbehavior of sentinel. A sentinel or lookout who is found under the influence of alcohol or sleeping on the sentinel's or lookout's post or leaves the post before being regularly relieved shall be punished, if the military offense is committed in time of war or emergency as described in AS 26.05.070, by confinement of not more than 10 years or other punishment as a court-martial may direct, but if the military offense is committed at any other time, by the punishment as a court-martial may direct.

Sec. 26.05.753. Malingering. A member of the militia who, for the purpose of avoiding work, duty, or service, (1) feigns illness, physical disablement, mental lapse, or derangement, or (2) intentionally inflicts self-injury shall be punished as a court-martial may direct.

Sec. 26.05.755. Riot or breach of peace. A member of the militia who causes or participates in a riot or breach of the peace shall be punished as a court-martial may direct.

Sec. 26.05.758. Provoking speeches or gestures. A member of the militia who uses provoking or reproachful words or gestures toward another member of the militia shall be punished as a court-martial may direct.

Sec. 26.05.760. Sexual assault. (a) A member of the militia who commits any of the following acts is guilty of sexual assault and shall be punished as a court-martial may direct:

(1) a sexual act on another person by

(A) threatening or placing another person in fear;

(B) causing bodily harm to another person;

(C) making a fraudulent representation that the sexual act

1 serves a professional purpose;

2 (D) inducing a belief by any artifice, pretense, or concealment
3 that the person is another person;

4 (2) a sexual act on another person when the person knows or
5 reasonably should know that the other person is asleep, unconscious, or otherwise
6 unaware that the sexual act is occurring;

7 (3) a sexual act on another person when the other person is incapable
8 of consenting to the sexual act because of

9 (A) impairment by a drug, intoxicant, or other similar
10 substance, and that condition is known or reasonably should be known by the
11 person;

12 (B) a mental disease or defect or physical disability, and that
13 condition is known or reasonably should be known by the person.

14 (b) A member of the militia who commits or causes sexual contact on or by
15 another person, and in doing so violates (a) of this section, is guilty of abusive sexual
16 contact and shall be punished as a court-martial may direct.

17 (c) In a prosecution under this section, in proving that a person made a threat,
18 it is not necessary to prove that the person actually intended to carry out the threat or
19 had the ability to carry out the threat.

20 (d) An accused may raise any applicable defenses available under this chapter
21 or the Rules for Courts-Martial (Manual for Courts-Martial, United States, as
22 amended). Marriage is not a defense for any conduct at issue in a prosecution under
23 this section.

24 (e) In a prosecution under this section where consent is at issue,

25 (1) an expression of lack of consent through words or conduct means
26 there is no consent; lack of verbal or physical resistance or submission resulting from
27 the use of force, threat of force, or placing another person in fear may not constitute
28 consent; a current or previous dating, social, or sexual relationship by itself or the
29 manner of dress of the person involved with the accused in the conduct at issue may
30 not constitute consent;

31 (2) a sleeping, unconscious, or incompetent person cannot consent; a

1 person cannot consent to force causing or likely to cause death or grievous bodily
2 harm or to being rendered unconscious; a person cannot consent while under threat or
3 fear or under the circumstances described in (a)(1)(C) or (d) of this section;

4 (3) lack of consent may be inferred based on the circumstances of the
5 offense; the surrounding circumstances shall be considered in determining whether a
6 person gave consent, or whether a person did not resist or ceased to resist only because
7 of another person's actions.

8 (f) Unless otherwise specifically defined or unless the context otherwise
9 requires, in this section,

10 (1) "bodily harm" means any offensive touching of another person,
11 however slight, including any nonconsensual sexual act or nonconsensual sexual
12 contact;

13 (2) "consent" means a freely given agreement to the conduct at issue
14 by a competent person;

15 (3) "force" means the use of a weapon, the use of physical strength or
16 violence sufficient to overcome, restrain, or injure a person, or inflicting physical harm
17 sufficient to coerce or compel submission by the victim;

18 (4) "grievous bodily harm" means serious bodily injury, including
19 fractured or dislocated bones, deep cuts, torn members of the body, serious damage to
20 internal organs, and other severe bodily injuries; grievous bodily harm does not
21 include minor injuries such as a black eye or a bloody nose;

22 (5) "sexual act" means

23 (A) contact between the penis and the vulva, anus, or mouth; in
24 this subparagraph, contact involving the penis occurs upon penetration,
25 however slight;

26 (B) the penetration, however slight, of the vulva, anus, or
27 mouth of another person by any part of the body or any object, with an intent
28 to abuse, humiliate, harass, or degrade a person or to arouse or gratify the
29 sexual desire of a person;

30 (6) "sexual contact" means

31 (A) touching, or causing another person to touch, either directly

or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of a person, with an intent to abuse, humiliate, or degrade a person;

(B) touching, or causing another person to touch, either directly or through the clothing, a body part of a person, with an intent to arouse or gratify the sexual desire of a person; touching may be accomplished by any part of the body;

(7) "threatening or placing another person in fear" means a communication or action that is of sufficient consequence to cause a reasonable fear that noncompliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action;

(8) "unlawful force" means an act of force committed without legal justification or excuse.

Sec. 26.05.762. Stalking. (a) A member of the militia is guilty of stalking and shall be punished as a court-martial may direct if the member

(1) wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to the person or a member of the person's immediate family;

(2) has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to the person or a member of the person's immediate family;

(3) induces in a specific person reasonable fear of death or bodily harm, including sexual assault, to the person or to a member of the person's immediate family.

(b) Unless otherwise specifically defined or unless the context otherwise requires, in this section,

(1) "course of conduct" means a repeated maintenance of visual or physical proximity to a specific person or a repeated conveyance of verbal threats, written threats, or threats implied by conduct, or a combination of those threats, directed at or toward a specific person;

(2) "immediate family" means a spouse, parent, child, or sibling of the person, or any other family member, relative, or intimate partner of the person who

regularly resides in the household of the person or who, within the six months preceding the commencement of the course of conduct, regularly resided in the household of the person;

(3) "repeated," with respect to conduct, means two or more occasions of that conduct.

Sec. 26.05.764. Other sexual misconduct; indecent viewing, visual recording, or broadcasting. (a) A member of the militia who knowingly commits any of the following acts without legal justification or lawful authorization is guilty of an offense under this section and shall be punished as a court-martial may direct:

(1) knowingly and wrongfully views the private area of another person, without the other person's consent and under circumstances in which the other person has a reasonable expectation of privacy;

(2) knowingly and wrongfully photographs, videotapes, films, or records, by any means, the private area of another person without the other person's consent and under circumstances in which the other person has a reasonable expectation of privacy;

(3) knowingly and wrongfully broadcasts or distributes a recording that the person knows or reasonably should know was made under the circumstances described in (2) of this subsection.

(b) A member of the militia who compels another person to engage in an act of prostitution with another person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(c) A member of the militia who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(d) Unless otherwise specifically defined or unless the context otherwise requires, in this section,

(1) "act of prostitution" means a sexual act or sexual contact as defined in AS 26.05.760 because of which anything of value is given to or received by another person;

(2) "broadcast" means electronically transmitting a visual image with

the intent that it be viewed by a person or persons;

(3) "distribute" means delivering to the actual or constructive possession of another, including transmission by electronic means;

(4) "indecent manner" means conduct that amounts to a form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety and that tends to excite sexual desire or deprave morals with respect to sexual relations;

(5) "private area" means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple;

(6) "reasonable expectation of privacy" means circumstances in which a reasonable person would believe that the person could disrobe in privacy without being concerned that an image of a private area of the person was being captured or circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

Sec. 26.05.766. Larceny and wrongful appropriation. (a) A member of the militia who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or another person any money, personal property, or article of value with intent permanently to deprive or defraud another person of the use and benefit of the property or to appropriate it for the person's own use or the use of a person other than the owner steals that property and is guilty of larceny and shall be punished as a court-martial may direct.

(b) A member of the militia who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or another person any money, personal property, or article of value with intent temporarily to deprive or defraud another person of the use and benefit of the property or to appropriate it for the person's own use or the use of a person other than the owner is guilty of wrongful appropriation and shall be punished as a court-martial may direct.

Sec. 26.05.768. Forgery. A member of the militia who, with intent to defraud, (1) falsely makes or alters a signature to or a part of any writing that would, if genuine, apparently impose a legal liability on another person or change the legal right or liability of the person to their prejudice, or (2) who utters, offers, issues, or transfers

1 that writing, which the person knows to be falsely made or altered, is guilty of forgery
2 and shall be punished as a court-martial may direct.

3 **Sec. 26.05.770. Making, drawing, or uttering check, draft, or order**
4 **without sufficient funds.** A member of the militia who makes, draws, utters, or
5 delivers a check, draft, or order for the payment of money on a bank or other
6 depository, knowing at the time that the maker or drawer has not or will not have
7 sufficient funds in, or credit with, the bank or other depository for the payment of that
8 check, draft, or order in full on its presentment, with intent to defraud for the
9 procurement of any article or thing of value or with intent to deceive, for the payment
10 of a past due obligation or for another purpose shall be punished as a court-martial
11 may direct. The making, drawing, uttering, or delivering by a maker or drawer of a
12 check, draft, or order, payment of which is refused by the drawee because of
13 insufficient funds of the maker or drawer in the drawee's possession or control, is
14 prima facie evidence of the person's intent to defraud or deceive and of the knowledge
15 of insufficient funds in, or credit with, that bank or other depository, unless the maker
16 or drawer pays the holder the amount due within five days after receiving notice,
17 orally or in writing, that the check, draft, or order was not paid on presentment. In this
18 section, "credit" means an arrangement or understanding, express or implied, with the
19 bank or other depository for the payment of that check, draft, or order.

20 **Sec. 26.05.772. Perjury.** A member of the militia who, in a judicial
21 proceeding or in a course of justice, under lawful oath or in another form allowed by
22 law to be substituted for an oath, willfully and corruptly gives false testimony material
23 to the issue or matter of inquiry, or who, in a declaration, certificate, verification, or
24 statement under penalty of perjury, subscribes a false statement material to the issue or
25 matter of inquiry is guilty of perjury and shall be punished as a court-martial may
26 direct.

27 **Sec. 26.05.774. Fraud against the government.** (a) A member of the militia
28 is guilty of fraud against the government if the member

29 (1) knowing it to be false or fraudulent

30 (A) makes a claim against the United States, the state, or an
31 officer of the United States or the state; or

(B) presents to a person in the civil or military service of the United States, the state, or an officer of the United States or the state, for approval or payment, a claim against the United States, the state, or an officer of the United States or the state;

(2) for the purpose of obtaining the approval, allowance, or payment of a claim against the United States, the state, or an officer of the United States or the state,

(A) makes or uses a writing or other paper knowing it to contain a false or fraudulent statement;

(B) makes an oath, affirmation or certification to a fact, writing, or other paper knowing the oath, affirmation, or certification to be false; or

(C) forges or counterfeits a signature on a writing or other paper or uses the signature, knowing it to be forged or counterfeited;

(3) having charge, possession, custody, or control of money or other property of the United States or the state, that is furnished or intended for the armed forces of the United States or the militia of the state, knowingly delivers to a person having authority to receive it, any amount of the money or other property less than that for which the member receives a certificate or receipt; or

(4) being authorized to make or deliver any paper certifying the receipt of property of the United States or the state, that is furnished or intended for the armed forces of the United States or the militia of the state, makes or delivers to a person the writing without having full knowledge of the truth of the statements contained in the writing and with intent to defraud the United States or the state.

(b) A person found guilty of fraud against the government shall be punished as a court-martial may direct.

Sec. 26.05.776. Conduct unbecoming an officer. A commissioned officer, cadet, candidate, or midshipman of the militia who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.

Sec. 26.05.778. General article. (a) Although not specifically mentioned in this chapter, all disorders and acts that prejudice good order and discipline in the

1 militia of the state and all conduct of a nature to bring discredit on the militia of the
2 state shall be considered by a court-martial and punished at the discretion of a military
3 court.

4 (b) A member of the militia who commits an enumerated offense punishable
5 under 10 U.S.C. 934 (Uniform Code of Military Justice), except for those enumerated
6 offenses relating to assault, negligent homicide, and wrongful cohabitation, shall, upon
7 conviction, be punished as a court-martial may direct.

8 **Sec. 26.05.900. Definitions.** In this chapter, unless the context otherwise
9 requires,

10 (1) "accuser" means a person who signs and swears to charges, a
11 person who directs that charges nominally be signed and sworn to by another, and any
12 other person who has an interest other than an official interest in the prosecution of the
13 accused;

14 (2) "arrest" means the restraint of a person by an order, not imposed as
15 a punishment for an offense, directing the person to remain within certain specified
16 limits;

17 (3) "cadet," "candidate," or "midshipman" means a person who is
18 enrolled in or attending a state military academy, a regional training institute, or any
19 other formal education program for the purpose of becoming a commissioned officer
20 in the militia of the state;

21 (4) "classified information" means

22 (A) information or material that has been determined by an
23 official of the United States or any state under law, an executive order, or
24 regulation to require protection against unauthorized disclosure for reasons of
25 national or state security; and

26 (B) restricted data, as defined in 42 U.S.C. 2014(y) (Atomic
27 Energy Act of 1954);

28 (5) "code of military justice" means the provisions of this chapter;

29 (6) "commanding officer" or "commander" includes only
30 commissioned officers of the militia of the state and includes officers in charge only
31 when administering a nonjudicial punishment under the code of military justice;

- 1 (7) "confinement" means the physical restraint of a person;
- 2 (8) "convening authority" includes, in addition to the person who
- 3 convened the court, a commissioned officer commanding for the time being or a
- 4 successor in command to the convening authority;
- 5 (9) "day" means calendar day and is not synonymous with the term
- 6 "unit training assembly";
- 7 (10) "department" means the Department of Military and Veterans'
- 8 Affairs;
- 9 (11) "enlisted member" means a person in an enlisted grade;
- 10 (12) "military court" means a court-martial;
- 11 (13) "military judge" means an official of a general or special court-
- 12 martial described under AS 26.05.453;
- 13 (14) "military offense" means an offense specified in AS 26.05.120
- 14 and 26.05.660 - 26.05.778;
- 15 (15) "militia" or "militia of the state" means the Alaska National
- 16 Guard, the Alaska Naval Militia, and the Alaska State Defense Force;
- 17 (16) "national security" means the national defense and foreign
- 18 relations of the United States;
- 19 (17) "officer" means a commissioned or warrant officer;
- 20 (18) "officer in charge" means a member of the naval militia, United
- 21 States Navy, United States Marine Corps, or United States Coast Guard designated by
- 22 the appropriate authority;
- 23 (19) "record," when used in connection with the proceedings of a
- 24 court-martial, means
- 25 (A) an official written transcript, written summary, or other
- 26 writing relating to the proceedings; or
- 27 (B) an official audiotape, videotape, digital image or file, or
- 28 similar material from which sound, or sound and visual images, depicting the
- 29 proceedings may be reproduced;
- 30 (20) "senior force judge advocate" means the senior judge advocate of
- 31 the commander of the same force of the militia of the state as the accused and who is

that commander's chief legal advisor;

(21) "unit" means a regularly organized body of the militia of the state not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

* **Sec. 5.** AS 33.30.011 is amended by adding a new subsection to read:

(b) In this section, "held under authority of state law" includes the confinement of persons under AS 26.05.

* **Sec. 6.** AS 33.30.051 is amended by adding a new subsection to read:

(b) A person restrained under AS 26.05.425 or convicted of a military offense by court-martial under AS 26.05 and confined under AS 26.05.428 shall be committed to the custody of the commissioner for the period of restraint or confinement as directed by the adjutant general.

* **Sec. 7.** AS 44.23.020 is amended by adding a new subsection to read:

(i) If requested by a military judge or the convening authority of a court-martial, assist the court-martial in obtaining the commitment of a person accused of a military offense under AS 26.05 for a competency examination under AS 12.47.100 or on a finding of incompetency under AS 12.47.110. In this subsection, "military offense" has the meaning given in AS 26.05.900.

* **Sec. 8.** AS 44.35.020(a) is amended to read:

(a) The Department of Military and Veterans' Affairs shall

(1) conduct the military affairs of the state as prescribed by AS 26.05 [THE MILITARY CODE];

(2) cooperate with the federal government in matters of mutual concern pertaining to the welfare of Alaska [ALASKAN] veterans, including establishing, extending, or strengthening services for veterans in the state;

(3) annually, not later than February 1, make available a report to the legislature, through the governor, outlining the department's activities during the previous calendar year; the department shall notify the legislature that the report is available; and

(4) cooperate with the Department of Public Safety to develop and implement missing vulnerable adult prompt response and notification plans under

1 AS 44.41.060.

2 * **Sec. 9.** AS 26.05.300, 26.05.310, 26.05.320, 26.05.322, 26.05.324, 26.05.326, 26.05.330,
3 and 26.05.350 are repealed.

4 * **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. AS 26.05.400 - 26.05.900, enacted by sec. 4 of this Act, and sec. 9
7 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
8 Act.

9 * **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to
10 read:

11 **MILITARY APPEALS COMMISSION; STAGGERED TERMS.** Notwithstanding
12 AS 26.05.538, enacted by sec. 4 of this Act, and AS 39.05.055, the governor shall appoint the
13 members of the commission to staggered initial terms as follows:

14 (1) one member shall be appointed for two years;

15 (2) one member shall be appointed for four years; and

16 (3) one member shall be appointed for six years.

17 * **Sec. 12.** This Act takes effect July 1, 2016.