



# **HOUSE JUDICIARY COMMITTEE**

## **SECTIONAL ANALYSIS**

### **CS for HB 126**

### **29-LS0473\H**

#### **CODE OF MILITARY JUSTICE; APPEALS**

Section 1, page 1 – amends 22.07.020. Designates the Alaska Court of Appeals as the appellate court for service-members who have exhausted their administrative appeals.

Section 2, page 2 – amends 26.05.140(a). Limits criminal liability for Guard members for any act done in their official capacity in the line of duty, but does not apply to charges already brought before a military court;

Section 3, page 2 – amends 26.05.228(b). Conforming amendment;

Section 4, pages 2-36 – amends 26.05. Creates a new Article, the Code of Military Justice. Of the new sections in this Article, it instructs the adjutant general to adopt regulations for a Code of Military Justice under the terms of the chapter which will, p.3:

- Organize courts-martial;
- Provide for nonjudicial punishment (NJP);
- Identify which offenses are subject to court-martial or NJP;
- Identify allowable punishments for such offenses;
- Identify rules of trial, pretrial, post-trial and related procedures;
- Organize courts of inquiry;
- Provide adequate protection of classified information;

Other sections in the new Code of Military Justice include:

- A statement that all non-military offenses shall be tried in a civilian court, p.4;
- Grant of exclusive jurisdiction of courts-martial over the code of military justice and that the code applies to all military offenses, p. 4;

- Sets jurisdiction of the military code over deserters and fraudulently discharged personnel and those members who commit their offense outside of the state or live outside of the state when charged with the offense, p.4;
- Details the duties and qualifications of those who serve as judge advocates, p.5;
- Defines who may apprehend members accused of a military offense and how that apprehension is to take place, p. 5-6;
- Defines how a member may be arrested, under what conditions they may be arrested, who may do so, and how they may be confined, p. 6-7;
- Defines how a member accused of a military offense may be delivered to a civilian authority, p.7;
- Describes the composition, duties, terms of service, and jurisdictions of courts-martial, p.8-11;
- Describes the duties and qualifications of trial counsel, defense counsel, assistant counsel, court reporters, and interpreters of courts-martial, p. 11-12;
- Specifies the procedures for bringing charges against a member. p.13;
- Prevents the self-incrimination of the accused, p.13;
- Defines the investigatory process,p.14;
- Lays out how charges may be processed and the procedures for continuances, oaths of office for court officers,p.15-17;
- Defines the statutes of limitations for military offenses,p.19;
- Prohibits double jeopardy charges and describes how pleas of the accused are to be processed,p.19;
- Defines how subpoenas and contempt of court charges are to be processed,p.19-20;
- Provides for an insanity defense for the accused and the determination for mental competency of the accused, p. 20-23;
- Describes the procedures for voting and ruling in courts-martial,p.23-24;
- Requires the recording of courts-martial,p.24-25;
- Describes the allowable punishments and sentences and prohibits cruel and unusual punishments, p. 25-27;
- Describes the appeals process in the military code, including appeals by the state,p.27-28;
- Allows for a vacation of suspension under certain circumstances,p.28;
- Allows for the accused to petition for a new trial and the restoration of privileges,p.28-29;
- Describes the composition and duties of the Military Appeals Commission,p.29-32;
- Defines who may administer oaths for the purposes of military administration proceedings,p.32;
- Allows for the governor to delegate authority for the code of military justice,p.32;
- Creates a military justice account in the general fund,p.33;
- Describes the system of paying and collection of fines associated with the military code,p.33;
- Describes the pay scale of officers and witnesses of the courts-martial,p.33-34;
- Provides immunity for persons who acted pursuant to their duties under the military code,p.34;
- Defines terms associated with the new Article,p.34-36;

Section 5, page 36 – amends 33.30.011. Further defines ‘held under authority of state law’ to include persons held under the military code;

Section 6, page 36 – amends 33.30.051. Describes how persons convicted under the military code are to be restrained or confined;

Section 7, page 36 – amends 44.23.020. requires the Attorney General to assist courts-martial in cases of mental incompetency;

Section 8, page 36-37 – amends 44.35.020(a). Conforming amendment dealing with the duties of the Dept. of Military and Veterans’ Affairs;

Section 9, page 37 – Repeal section;

Section 10, page 37 – Applicability clause;

Section 11, page 37 – Establishes and describes the terms of office of the Military Appeals Commission;

Section 12, page 37-38 – Authorizes the adjutant general to enact and enforce the regulations under the Code of Military Justice, upon approval of the governor;

Section 13, page 38 – Effective date for section 12

Section 14, page 38 – Effective date for the rest of the bill.