

HOUSE BILL NO. 121

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE TUCK

Introduced: 2/23/15

Referred: House Special Committee on Military and Veterans' Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a code of military justice; relating to military offenses and penalties**
2 **for military offenses; relating to the jurisdiction of the court of appeals; relating to**
3 **appeals of convictions and sentences of courts-martial; relating to the procedures for**
4 **persons subject to court-martial proceedings; relating to involuntary commitment for**
5 **evaluation or treatment of a mental disease or defect before court-martial proceedings;**
6 **and providing for an effective date."**

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

8 *** Section 1.** AS 22.07.020 is amended by adding a new subsection to read:

9 (h) The court of appeals has appellate jurisdiction in actions and proceedings
10 commenced in a military court for which a sentence of confinement is imposed and a
11 right to appeal is granted under AS 26.05.628.

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

13 (a) Members of the militia ordered into active service for the state by order of

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

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

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

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

15 (2) a separate account for the Department of Military and Veterans'
 16 Affairs' contribution to fund the system based on the actuarial requirements of the
 17 system as established by the commissioner of administration under **AS 26.05.222 -**
 18 **26.05.229** [THIS CHAPTER];

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

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

24 **Article 2. Code of Military Justice.**

25 **Sec. 26.05.400. Statement of policy on military justice.** An offense, other
 26 than a military offense, committed by a member of the militia, organized or
 27 unorganized, shall be tried in a civil court and prosecuted by a civil authority. This
 28 policy shall be executed and carried into effect at all times and applies to active state
 29 service of the militia.

30 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** (a) This
 31 chapter applies to a member of the militia in active state service who is accused of or

1 charged with an act or omission of a military offense.

2 (b) Courts-martial have exclusive jurisdiction over military offenses as defined
3 in AS 26.05.990. Civilian courts established under state or federal law have
4 jurisdiction over offenses that are not military offenses when an act or omission
5 violates both local criminal law and a provision of this chapter.

6 **Sec. 26.05.405. Jurisdiction to try certain personnel.** (a) A person
7 discharged from the militia of the state who is later charged with having fraudulently
8 obtained a discharge is subject to trial by court-martial on that charge and is, after
9 apprehension, subject to this chapter while in custody under the direction of the militia
10 of the state for the trial. Upon conviction of the charge, the person is subject to trial by
11 court-martial for all military offenses committed before the fraudulent discharge.

12 (b) A person who has deserted from the militia of the state may not be relieved
13 from amenability to jurisdiction under this chapter by virtue of a separation from a
14 later period of service.

15 **Sec. 26.05.408. Territorial applicability of this chapter.** (a) This chapter
16 applies to a member of the militia accused of or charged with a military offense that is
17 committed outside the state if the member is in active state service under this chapter
18 and is serving outside the state at the time the military offense is committed.

19 (b) Courts-martial and courts of inquiry may be convened and held in units of
20 the militia of the state while those units are serving outside the state with the same
21 jurisdiction and powers granted under this chapter as if the proceedings were held
22 inside the state. Military offenses committed outside the state may be tried and
23 punished either inside or outside the state.

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

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

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

4 (d) A person may not serve as a judge advocate under this chapter unless the
5 person is a commissioned officer of the organized militia of the state, is a member in
6 good standing of the bar of the highest court of a state, and is

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

11 (2) certified as a non-federally recognized judge advocate, under rules
12 adopted under AS 26.05.520, by the senior judge advocate of the commander of the
13 force in the component of the militia of the state of which the accused is a member, as
14 competent to perform the military justice duties required by this chapter; if a judge
15 advocate is not available, the certification may be made by the senior judge advocate
16 of the commander of another force in the militia of the state, as the convening
17 authority directs.

18 **Sec. 26.05.420. Apprehension.** (a) A member of the militia or a person
19 authorized under 10 U.S.C. 801 - 946 or this chapter to apprehend persons subject to
20 this chapter, a marshal of a court-martial, and a peace officer or civil officer having
21 authority to apprehend offenders under the laws of the United States or of a state may
22 apprehend a person subject to this chapter upon probable cause that a military offense
23 has been committed and that the person apprehended committed the military offense.

24 (b) Commissioned officers, warrant officers, petty officers, and
25 noncommissioned officers have authority to suppress disorder or mutual combat
26 among members of the militia in active state service and to apprehend a person who
27 participates in the disorder or mutual combat.

28 (c) If an offender is apprehended outside the state, the offender's return to the
29 area must be in accordance with applicable extradition procedures or by reciprocal
30 agreement.

31 (d) A person authorized by this section to apprehend, restrain, or confine

1 persons subject to this chapter may not require payment of a fee for apprehending,
2 restraining, or confining a person except as otherwise provided by law.

3 **Sec. 26.05.423. Imposition of restraint.** (a) An enlisted member of the militia
4 in active state service may be arrested or confined by an oral or written order issued by
5 a commissioned officer or another member of the militia of the state acting at the
6 commissioned officer's direction. A commanding officer may authorize warrant
7 officers, petty officers, or noncommissioned officers to order enlisted members of the
8 commanding officer's command or subject to the commanding officer's authority into
9 arrest or confinement.

10 (b) A commissioned officer, warrant officer, or civilian subject to this chapter
11 may be arrested or confined only by a commanding officer who has authority over the
12 commissioned officer, warrant officer, or civilian. The commanding officer shall
13 deliver the order orally or in writing, in person or by another commissioned officer. A
14 commanding officer may not delegate the authority granted in this subsection.

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

18 (d) This section does not limit the authority of persons authorized to apprehend
19 offenders to secure the custody of an alleged offender until proper authority may be
20 notified.

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

25 **Sec. 26.05.428. Place of confinement; reports and receiving of prisoners.**
26 (a) A person confined as a prisoner under this chapter shall be confined in a civilian or
27 military confinement facility.

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

1 military offense charged against the prisoner.

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

7 **Sec. 26.05.430. Confinement with enemy prisoners prohibited.** A member
8 of the militia of the state may not be placed in confinement in immediate association
9 with enemy prisoners or foreign nationals who are not members of the armed forces.

10 **Sec. 26.05.433. Punishment prohibited before trial.** A person held for trial
11 or awaiting a verdict may not be subjected to punishment or penalty other than arrest
12 or confinement on the charges pending against the person, and the conditions of arrest
13 or confinement may not be more rigorous than those required to ensure the person's
14 presence, except that the person is subject to discipline for infractions of the rules of
15 the facility in which the person is confined.

16 **Sec. 26.05.435. Delivery of offenders to a civil authority.** (a) A person
17 accused of a criminal offense against a civil authority may be delivered, upon request,
18 to a civil authority for trial or confinement.

19 (b) When a sentence imposed in a court-martial proceeding under this chapter
20 is interrupted by the delivery of the offender to a civil authority under this section and
21 the offender is subsequently convicted and sentenced by the civil authority, competent
22 military authority shall request the civil authority to return the offender to the custody
23 of the military authority for completion of the sentence imposed by court-martial.

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

26 **Sec. 26.05.440. Commanding officer's nonjudicial punishment.** (a) Under
27 the rules of procedure adopted under AS 26.05.520, a commanding officer or an
28 officer-in-charge may impose a disciplinary punishment for a minor military offense
29 without convening a court-martial. The governor, the adjutant general, or an officer of
30 a general or flag rank in command may delegate the power to impose nonjudicial
31 punishment under this section to a principal assistant who is a member of the militia of

1 the state.

2 (b) A commanding officer may impose the following disciplinary punishment
3 on an enlisted member of the officer's command:

4 (1) an admonition;

5 (2) a reprimand;

6 (3) the withholding of privileges for not more than six months; the six
7 months need not be consecutive;

8 (4) the forfeiture of not more than seven days' pay;

9 (5) a fine of not more than seven days' pay;

10 (6) a reduction to the next inferior pay grade, if the grade from which
11 the enlisted member is demoted is within the promotion authority of the officer
12 imposing the reduction or of an officer subordinate to the officer who imposes the
13 reduction;

14 (7) assignment of extra duties, including fatigue or other duties, for not
15 more than 14 days; the 14 days need not be consecutive; and

16 (8) restriction to base or ship, or from specific activities, with or
17 without suspension from active state service, for not more than 14 days; the 14 days
18 need not be consecutive.

19 (c) A commanding officer of the grade of major or lieutenant commander or
20 above may impose on an enlisted member of the officer's command

21 (1) a punishment authorized in (b)(1) - (3) of this section;

22 (2) the forfeiture of not more than one-half of one month's pay for each
23 month for two months;

24 (3) a fine of not more than one month's pay;

25 (4) a reduction to the lowest or any intermediate pay grade if the grade
26 from which the enlisted member is demoted is within the promotion authority of the
27 officer imposing the reduction or of an officer subordinate to the officer imposing the
28 reduction; but an enlisted member in a pay grade above E-4 may not be reduced more
29 than two pay grades;

30 (5) extra duties, including fatigue or other duties, for not more than 45
31 days; the 45 days need not be consecutive; and

1 (6) restriction to base or ship, or from specific activities, with or
2 without suspension from active state service, for not more than 60 days; the 60 days
3 need not be consecutive.

4 (d) The governor, the adjutant general, an officer exercising general court-
5 martial convening authority, or an officer of a general or flag rank in command may
6 impose

7 (1) on an officer of the officer's command

8 (A) a punishment authorized in (c)(1) - (3) and (6) of this
9 section; and

10 (B) arrest in quarters for not more than 30 days; the 30 days
11 need not be consecutive;

12 (2) on an enlisted member of the officer's command, a punishment
13 authorized in (c) of this section.

14 (e) Whenever multiple punishments are combined to run consecutively, the
15 total length of the combined punishment may not exceed the authorized duration of the
16 longest punishment in the combination; the punishments must be apportioned so that
17 no single punishment in the combination exceeds its authorized length under this
18 subsection.

19 (f) Before offering nonjudicial punishment, a commanding officer shall
20 determine whether a restriction or arrest to quarters will be considered as a punishment
21 under this section. If the commanding officer determines that a punishment may
22 include a restriction or arrest in quarters, the commanding officer shall notify the
23 accused of the right to demand trial by court-martial. If the commanding officer
24 determines that a punishment will not include a restriction or arrest to quarters, the
25 commanding officer shall notify the accused that the accused is not entitled to a trial
26 by court-martial in lieu of nonjudicial punishment.

27 (g) The officer who imposes the punishment, or the officer's successor in
28 command, may, at any time, suspend, set aside, mitigate, or remit any part or amount
29 of the punishment and restore all affected rights, privileges, and property. The officer
30 may also

31 (1) mitigate reduction in grade to forfeiture of pay;

1 (2) mitigate arrest in quarters to restriction; or

2 (3) mitigate extra duties to restriction.

3 (h) A punishment mitigated under (g) of this section may not be for a longer
4 period than the original punishment.

5 (i) The amount of a reduction in grade or forfeiture of pay mitigated under (g)
6 of this section may not be not be greater than the amount that might originally have
7 been imposed under this section by the officer who imposed it.

8 (j) A person punished under this section who believes that the punishment is
9 unjust or disproportionate to the military offense may appeal the punishment to the
10 next superior authority within 15 days after the punishment is imposed. The appeal
11 shall be promptly forwarded and decided, but the person punished may, in the
12 meantime, be required to undergo the punishment adjudged. The superior authority
13 may exercise the same powers with respect to the punishment imposed as may be
14 exercised under (g) of this section by the officer who imposed the punishment. Before
15 acting on an appeal from a punishment, the authority that is to act on the appeal may
16 refer the case to a judge advocate for consideration and advice.

17 (k) The imposition and enforcement of disciplinary punishment under this
18 section for an act or omission is not a bar to trial by court-martial for a serious crime
19 or military offense arising out of the same act or omission and not properly punishable
20 under this section, but, if the person accused of the crime or military offense is
21 convicted, the court-martial shall consider the disciplinary punishment in imposing
22 sentence.

23 (l) If a punishment of forfeiture of pay is imposed under this section, the
24 forfeiture may apply to pay accruing before, on, or after the date the punishment is
25 imposed.

26 (m) The form of records to be kept of proceedings under this section shall be
27 prescribed in rules of procedure adopted under AS 26.05.520. The rules may require
28 that certain categories of the proceedings be in writing.

29 **Sec. 26.05.450. Courts-martial classified.** The military courts for the militia
30 of the state are

31 (1) a general court-martial, consisting of

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

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

6 (2) a special court-martial, consisting of

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

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

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

12 **Sec. 26.05.453. Jurisdiction of courts-martial in general.** Each force of the
13 militia of the state in active military service has court-martial jurisdiction over all
14 members of the militia in active state service. The exercise of jurisdiction by one force
15 over personnel of another force must be in accordance with the rules of procedure
16 adopted under AS 26.05.520.

17 **Sec. 26.05.455. Jurisdiction of a general court-martial.** Subject to
18 AS 26.05.453, a general court-martial has jurisdiction to try a member of the militia in
19 active state service for a military offense and may adjudge a punishment not forbidden
20 by this chapter.

21 **Sec. 26.05.458. Jurisdiction of a special court-martial.** Subject to
22 AS 26.05.453, a special court-martial has jurisdiction to try a member of the militia in
23 active state service for a military offense and may adjudge a punishment not forbidden
24 by this chapter, except dishonorable discharge, dismissal, confinement for more than
25 one year, forfeiture of pay exceeding two-thirds pay a month, or forfeiture of pay for
26 more than one year.

27 **Sec. 26.05.460. Jurisdiction of a summary court-martial.** (a) Subject to
28 AS 26.05.453, a summary court-martial has jurisdiction to try a member of the militia
29 in active state service except officers, cadets, candidates, and midshipmen, for a
30 military offense.

31 (b) A person over whom a summary court-martial has jurisdiction may not be

1 brought to trial before a summary court-martial if the person objects.

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

5 (d) A summary court-martial may, under the limitations as the governor may
6 prescribe, adjudge a punishment not forbidden by this chapter, except dismissal,
7 dishonorable or bad-conduct discharge, confinement for more than one month,
8 restriction to specified limits for more than two months, or forfeiture of more than
9 two-thirds of one month's pay.

10 **Sec. 26.05.470. Who may convene a general court-martial.** (a) A general
11 court-martial may be convened by

- 12 (1) the governor;
- 13 (2) the adjutant general;
- 14 (3) the commanding officer of a force of the militia of the state;
- 15 (4) the commanding officer of a division or a separate brigade;
- 16 (5) the commanding officer of a separate wing.

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

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

22 **Sec. 26.05.473. Who may convene a special court-martial.** (a) A special
23 court-martial may be convened by

- 24 (1) a person who may convene a general court-martial;
- 25 (2) the commanding officer of a garrison, fort, post, camp, station, Air
26 National Guard base, or naval base or station;
- 27 (3) the commanding officer of a brigade, regiment, detached battalion,
28 or corresponding unit of the United States Army;
- 29 (4) the commanding officer of a wing, group, separate squadron, or
30 corresponding unit of the United States Air Force; or
- 31 (5) a commanding officer or officer in charge of any other command

1 when empowered to do so by the adjutant general.

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

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

7 **Sec. 26.05.475. Who may convene a summary court-martial.** (a) A
8 summary court-martial may be convened by

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

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

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

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

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

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

21 **Sec. 26.05.478. Who may serve on courts-martial.** (a) A commissioned
22 officer of the militia of the state is eligible to serve on a general, special, or summary
23 court-martial for the trial of a member of the militia in active state service.

24 (b) A warrant officer of the militia of the state is eligible to serve on a general
25 or special court-martial for the trial of any person, other than a commissioned officer.

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

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

8 (e) The accused may not be tried by a court-martial that includes a member
9 who is junior in rank or grade to the accused, unless the inclusion cannot be avoided.

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

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

20 **Sec. 26.05.480. Military judge of a general or special court-martial.** (a) A
21 senior force judge advocate who is in the same force as the accused, or a designee,
22 shall detail a military judge to a general and special court-martial. The military judge
23 shall preside over an open session of the court-martial to which the military judge has
24 been detailed.

25 (b) A military judge must be

26 (1) an active or retired commissioned officer of the militia of the state;

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

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

31 (c) The convening authority or a staff member of the convening authority may

1 not prepare or review a report concerning the effectiveness, fitness, or efficiency of the
2 military judge detailed to the case that relates to performance of duty as a military
3 judge.

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

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

9 **Sec. 26.05.483. Detail of trial counsel and defense counsel.** (a) For each
10 general and special court-martial, the convening authority shall detail trial counsel,
11 defense counsel, and assistants, as appropriate.

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

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

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

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

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

25 **Sec. 26.05.485. Detail or employment of reporters and interpreters.** (a) The
26 convening authority of a general or special court-martial or court of inquiry shall detail
27 or employ qualified court reporters, who shall record the proceedings of and testimony
28 taken before that court and may detail or employ interpreters to interpret for the court.

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

1 **Sec. 26.05.488. Absent and additional members.** (a) A member of a general
2 or special court-martial may not be absent or excused after the court has been
3 assembled for the trial of the accused unless the member is excused

4 (1) as a result of a challenge; or

5 (2) for good cause by the military judge or by order of the convening
6 authority.

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

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

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

28 **Sec. 26.05.490. Charges and specifications.** (a) Charges and specifications
29 must be signed by a member of the militia in active state service under oath before a
30 commissioned officer authorized by AS 26.05.803 to administer oaths. The charges
31 and specifications must state

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

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

5 (b) The person proffering the charges and specifications shall present them to
6 the proper authority. The proper authority receiving the charges and specifications
7 shall immediately determine the disposition of the charges in the interest of justice and
8 discipline, and the person accused shall be informed of the charges as soon as
9 practicable.

10 **Sec. 26.05.493. Compulsory self-incrimination prohibited.** (a) A member of
11 the militia in active state service may not compel a person to make a self-incriminating
12 statement or to answer a question the answer to which may tend to incriminate the
13 person.

14 (b) A member of the militia in active state service may not interrogate or
15 request a statement from a person suspected of a military offense without first
16 informing the person of the nature of the accusation and advising the person that the
17 person does not have to make any statement regarding the military offense of which
18 the person is accused or suspected and that any statement made by the person may be
19 used as evidence against the person in a trial by court-martial.

20 (c) A member of the militia in active state service may not compel a person to
21 make a statement or produce evidence before a military court if the statement or
22 evidence is not material to the issue before the court and may tend to degrade the
23 person.

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

27 **Sec. 26.05.495. Investigation.** (a) A charge or specification may not be
28 referred to a general court-martial for trial until a thorough and impartial
29 investigation has been made of all the matters set out in the charge or specification.
30 The investigation must include inquiry into the truth of the matters set out in the
31 charges, consideration of the form of the charges, and a recommendation as to the

1 disposition that should be made of the case in the interest of justice and discipline.

2 (b) The accused has the right to be represented by counsel as provided under
3 AS 26.05.525 at an investigation.

4 (c) The authority investigating the accused shall

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

7 (2) give the accused the opportunity to cross-examine witnesses
8 against the accused, if the witnesses are available;

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

12 (d) If, after the investigation, the charges are referred to the court-martial, the
13 charges shall be accompanied by a statement of the substance of the testimony
14 taken, and a copy shall be given to the accused.

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

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

27 (1) present at the investigation;

28 (2) informed of the nature of each uncharged military offense
29 investigated; and

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

1 **Sec. 26.05.498. Forwarding of charges.** (a) When a person is held for trial by
2 general court-martial, the commanding officer shall, within eight days after the
3 accused is ordered into arrest or confinement, if practicable, forward the charges,
4 together with the investigation and associated records, to the person exercising general
5 court-martial jurisdiction.

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

9 **Sec. 26.05.500. Advice of judge advocate and reference for trial.** (a) Before
10 directing the trial of a charge by general court-martial, the convening authority shall
11 refer it to a judge advocate for consideration and advice. The convening authority may
12 not refer a specification under a charge to a general court-martial for trial unless the
13 convening authority has been advised in writing by a judge advocate that

14 (1) the specification alleges a military offense;

15 (2) the specification is warranted by the evidence set out in the report of
16 investigation under AS 26.05.495, if there is a report; and

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

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

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

24 (2) recommending to the convening authority what action to take
25 regarding the specification; if the specification is referred for trial, the
26 recommendation of the judge advocate must accompany the specification.

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

31 **Sec. 26.05.503. Service of charges.** A trial counsel shall serve or caused to be

1 served on the accused a copy of the charges. A person may not, against the person's
2 objection, be brought to trial before a general court-martial within five days after the
3 service of charges on the person, or before a special court-martial within three days
4 after the service of charges on the person.

5 **Sec. 26.05.520. Governor or adjutant general to prescribe rules of**
6 **procedure.** (a) The adjutant general shall, with the approval of the governor, adopt
7 rules of pretrial, trial, and post-trial procedure, including methods of proof, for cases
8 before courts-martial and courts of inquiry.

9 (b) The rules adopted under this section must, as the adjutant general and the
10 governor may consider practicable, apply the principles of law and the rules of
11 evidence and procedure governing military criminal cases in the courts of the armed
12 forces of the United States, but may not be contrary to or inconsistent with this chapter
13 or with the applicable Alaska Rules of Evidence.

14 (c) The rules adopted under this section must include adequate protection from
15 public disclosure of classified information.

16 (d) The rules adopted under this section are rules of procedure and are exempt
17 from AS 44.62.

18 **Sec. 26.05.523. Unlawfully influencing the action of a court.** (a) An
19 authority convening a general, special, or summary court-martial, a commanding
20 officer, or an officer serving on the staff of a convening authority or commanding
21 officer may not censure, reprimand, or admonish the court, a member of the court, the
22 military judge, or counsel appearing before the court, with respect to the findings of or
23 sentence imposed by the court, or with respect to another exercise of the respective
24 functions of the court, a member of the court, the military judge, or counsel appearing
25 before the court in the conduct of the proceedings.

26 (b) A member of the militia in active state service may not attempt to coerce
27 or, by unauthorized means, influence the action of a court-martial or court of inquiry
28 or a member of a court, in reaching the findings or sentence in a case, or the action of
29 a convening, approving, or reviewing authority with respect to a judicial act. This
30 subsection does not apply to

31 (1) general instructional or informational courses in military justice if

1 the courses are designed solely for the purpose of instructing members of a command
2 in the substantive and procedural aspects of courts-martial; or

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

5 (c) A member of the militia in active state service may not, in the preparation
6 of an effectiveness, fitness, or efficiency report, or any other report or document used,
7 in whole or in part, for the purpose of determining whether a member of the militia of
8 the state is qualified to be advanced in grade, in determining the assignment or transfer
9 of a member of the militia of the state, or in determining whether a member of the
10 militia of the state should be retained on active status,

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

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

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

17 **Sec. 26.05.525. Duties of trial counsel and defense counsel.** (a) The trial
18 counsel of a general or special court-martial shall be licensed to practice law in this
19 state and shall, under the direction of the court, prepare the record of the proceedings.

20 (b) The accused has the right to be represented before a general or special
21 court-martial or at an investigation under AS 26.05.495.

22 (c) The accused may be represented by

23 (1) civilian counsel at the expense of accused;

24 (2) military counsel detailed under AS 26.05.483; or

25 (3) military counsel of the accused's own choice if that counsel is
26 reasonably available as determined under (g) of this section.

27 (d) If the accused is represented by civilian counsel, military counsel detailed
28 or selected under (c)(2) or (3) of this section shall act as associate counsel unless
29 excused at the request of the accused.

30 (e) Except as provided in (f) of this section, if the accused is represented by
31 military counsel of the accused's own selection under (c)(3) of this section, military

1 counsel detailed under (c)(2) shall be excused.

2 (f) The accused is not entitled to be represented by more than one military
3 counsel. However, the person authorized under AS 26.05.483 to detail counsel, may,
4 in the person's sole discretion

5 (1) detail additional military counsel as assistant defense counsel;

6 (2) if the accused is represented by military counsel of the accused's
7 own selection under (c)(3) of this section, approve a request from the accused that
8 military counsel detailed under (c)(2) of this section act as associate defense counsel.

9 (g) The senior force judge advocate of the same force of which the accused is a
10 member shall determine whether the military counsel selected by an accused under
11 (c)(3) of this section is reasonably available.

12 (h) In a court-martial proceeding resulting in a conviction, the defense counsel
13 may

14 (1) forward for attachment to the record of proceedings a brief of the
15 matters as counsel determines should be considered on behalf of the accused on
16 review, including any objection to the contents of the record that counsel considers
17 appropriate;

18 (2) assist the accused in the submission of any matter under
19 AS 26.05.613;

20 (3) take another action authorized under this chapter.

21 **Sec. 26.05.528. Sessions.** (a) At any time after the service of charges that have
22 been referred for trial to a court-martial composed of a military judge and members,
23 the military judge may, subject to the limitations of AS 26.05.503, call the court into
24 session without the presence of the members for the purpose of

25 (1) hearing and determining motions raising defenses or objections that
26 are capable of determination without trial of the issues raised by a plea of not guilty;

27 (2) hearing and ruling on a matter that the military judge is authorized
28 to determine under this chapter, whether or not the matter is appropriate for later
29 consideration or decision by the members of the court;

30 (3) conducting the arraignment and receiving the pleas of the accused;

31 (4) performing any other procedural function that does not require the

1 presence of the members of the court under this chapter.

2 (b) A military judge shall conduct proceedings under this section in the
3 presence of the accused, the defense counsel, and the trial counsel, and the
4 proceedings shall be made a part of the record. The proceedings may be conducted
5 notwithstanding the number of court members and without regard to AS 26.05.488.

6 (c) When the members of a court-martial deliberate or vote, only the members
7 may be present.

8 (d) All other proceedings, including any other consultation of the members of
9 the court with counsel or the military judge, shall be made a part of the record and
10 shall be in the presence of the accused, the defense counsel, the trial counsel, and the
11 military judge.

12 **Sec. 26.05.530. Continuances.** The military judge of a general, special, or
13 summary court-martial may, for reasonable cause, grant a continuance to a party for
14 the time, and as often, as may appear to be just.

15 **Sec. 26.05.533. Challenges.** (a) The military judge and members of a general
16 or special court-martial may be challenged by the accused or the trial counsel for
17 cause stated to the court. The military judge or the court shall determine the relevancy
18 and validity of challenges for cause and may not receive a challenge to more than one
19 person at a time. Challenges by the trial counsel shall ordinarily be presented and
20 decided before those by the accused are offered.

21 (b) If exercise of a challenge for cause reduces the court below the minimum
22 number of members required by AS 26.05.450, all parties shall, notwithstanding
23 AS 26.05.488, either exercise or waive a challenge for cause then apparent against the
24 remaining members of the court before additional members are detailed to the court.
25 This subsection does not apply to preemptory challenges under (c) and (d) of this
26 section.

27 (c) Each accused and the trial counsel are entitled to one preemptory challenge
28 of members of the court. The military judge may not be challenged except for cause.

29 (d) If the exercise of a preemptory challenge reduces the court below the
30 minimum number of members required by AS 26.05.450, the parties shall,
31 notwithstanding AS 26.05.488, either exercise or waive remaining preemptory

1 challenges, not previously waived, against the remaining members of the court before
2 additional members are detailed to the court.

3 (e) If additional members are detailed to the court, and after challenges for
4 cause against the additional members are presented and decided, each accused and the
5 trial counsel are entitled to one peremptory challenge against members not previously
6 subject to peremptory challenge.

7 **Sec. 26.05.535. Oaths or affirmations.** (a) Before performing their respective
8 duties, military judges, general and special court-martial members, trial counsel,
9 defense counsel, reporters, and interpreters shall take an oath or affirmation in the
10 presence of the accused that they will perform their duties faithfully.

11 (b) The form of the oath or affirmation, the time and place of taking, the
12 manner of recording, and a determination of whether the oath or affirmation shall be
13 taken for all cases in which the duties are to be performed or for a particular case, shall
14 be prescribed in the rules of procedure adopted under AS 26.05.520. The rules may
15 provide that, if a person takes an oath or affirmation with respect to a duty, the person
16 need not take the oath or affirmation again on detailment to the duty.

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

19 **Sec. 26.05.538. Statute of limitations.** (a) A person charged with a military
20 offense may not be tried or punished for the military offense unless the person
21 received sworn charges and specifications issued by an officer exercising court-martial
22 jurisdiction over the command not later than three years after the commission of the
23 military offense or the imposition of a nonjudicial punishment for the military offense
24 under AS 26.05.440.

25 (b) A period when the accused is absent without authority or fleeing from
26 justice shall be excluded in computing the period of limitation in this section.

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

31 (d) When the United States is at war, the running of a period of limitation for a

1 military offense under this section is suspended until two years after the termination of
2 hostilities as proclaimed by the President of the United States or by a joint resolution
3 of the United States Congress if the military offense

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

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

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

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

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

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

25 **Sec. 26.05.540. Former jeopardy.** (a) A person may not, without the person's
26 consent, be tried a second time for the same military offense.

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

30 (c) A proceeding that, after the introduction of evidence but before a finding, is
31 dismissed or terminated by the convening authority or on motion of the prosecution

1 for failure of available evidence or witnesses, without any fault of the accused, is a
2 trial.

3 **Sec. 26.05.543. Pleas of the accused.** (a) If, after arraignment, an accused
4 makes an irregular pleading or, after a plea of guilty, initiates an action inconsistent
5 with the plea, or if the accused appears to have entered the plea of guilty
6 improvidently or through lack of understanding of its meaning and effect, or if the
7 accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and
8 the court shall proceed as though the accused had pleaded not guilty.

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

15 **Sec. 26.05.545. Opportunity to obtain witnesses and other evidence.** Trial
16 counsel, defense counsel, and the court-martial shall have equal opportunity to obtain
17 witnesses and other evidence. Process issued in court-martial cases to compel
18 witnesses to appear and testify and to compel the production of other evidence shall be
19 issued in accordance with the rules of procedure adopted under AS 26.05.520, and
20 shall apply the principles of law and the rules of courts-martial generally recognized in
21 military criminal cases in the courts of the armed forces of the United States, but may
22 not be contrary to or inconsistent with this chapter. Process shall run to any part of the
23 United States, or the territories, commonwealths, and possessions, and may be
24 executed by civil officers as prescribed by the laws of the place where the witness or
25 evidence is located or of the United States.

26 **Sec. 26.05.548. Refusal to appear or testify.** A person who is not a member
27 of the militia in active state service, who has been subpoenaed to appear as a witness
28 or to produce books and records before a court-martial or court of inquiry, or before a
29 military or civil officer designated to take a deposition to be read in evidence before
30 the court, who has been paid or tendered the fees and mileage of a witness at the rates
31 allowed to witnesses attending a criminal court of the state, and who wilfully neglects

1 or refuses to appear, or refuses to qualify as a witness or to testify or to produce any
2 evidence that the person may have been legally subpoenaed to produce is guilty of a
3 violation and may be charged and punished as provided in AS 26.05.550.

4 **Sec. 26.05.550. Contempts.** (a) A military judge or summary court-martial
5 officer may punish for contempt a person who uses a menacing word, sign, or gesture
6 in its presence, or who disturbs its proceedings by any riot or disorder.

7 (b) A military judge or summary court-martial officer may punish a member of
8 the militia in active state service for contempt by confinement not to exceed 30 days or
9 a fine of \$100, or both.

10 (c) A military judge or summary court-martial officer may punish a person
11 who is not a member of the militia in active state service for direct contempt in an
12 amount not to exceed \$100.

13 **Sec. 26.05.553. Depositions.** (a) At any time after charges have been signed as
14 provided in AS 26.05.490, a party may take oral or written depositions unless the
15 military judge or summary court-martial officer hearing the case or, if the case is not
16 being heard, an authority competent to convene a court-martial for the trial of those
17 charges, forbids the depositions for good cause.

18 (b) The party at whose instance a deposition is to be taken shall give to every
19 other party reasonable written notice of the time and place for taking the deposition.

20 (c) A deposition may be taken before and authenticated by any military or civil
21 officer authorized by the laws of the state or by the laws of the place where the
22 deposition is taken to administer oaths.

23 (d) A duly authenticated deposition taken upon reasonable notice to the other
24 parties, if otherwise admissible under the rules of evidence, may be read in evidence
25 or, in the case of audiotape, videotape, digital image or file, or similar material, may
26 be played in evidence before a military court, if it appears that

27 (1) the witness resides in a state other than the state in which the court
28 is ordered to sit, or more than 100 miles from the place of trial or hearing;

29 (2) the witness by reason of death, age, sickness, bodily infirmity,
30 imprisonment, military necessity, nonamenability to process, or other reasonable
31 cause, is unable or refuses to appear and testify in person at the place of trial or

1 hearing; or

2 (3) the present whereabouts of the witness is unknown.

3 **Sec. 26.05.555. Admissibility of records of courts of inquiry.** (a) In a case
4 that does not involve the dismissal of a commissioned officer, the sworn testimony of
5 a person whose oral testimony cannot be obtained may, if it is set out in the duly
6 authenticated record of proceedings of a court of inquiry and is otherwise admissible
7 under the rules of evidence, be read in evidence by any party before a court-martial if
8 the accused was a party before the court of inquiry and the case before the court and
9 the court of inquiry involve the same issue, or if the accused consents to the
10 introduction of the evidence.

11 (b) If testimony from a court of inquiry meets the conditions set out in (a) of
12 this section, but the case before the court involves the dismissal of a commissioned
13 officer, only the defense may read the testimony in evidence.

14 (c) The testimony may also be read in evidence before a court of inquiry.

15 **Sec. 26.05.558. Defense of insanity.** (a) The accused may assert the
16 affirmative defense of insanity as provided in AS 12.47.010. If the accused gives
17 notice of the defense, the accused shall file with the military judge the notice required
18 by AS 12.47.090.

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

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

24 (1) guilty;

25 (2) not guilty; or

26 (3) not guilty by reason of insanity.

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

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

30 (2) in the case of a court-martial composed of a military judge or a
31 summary court-martial officer sitting without court members, the military judge or

1 summary court-martial officer determines that the defense of insanity has been
2 established.

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

7 (1) guilty;

8 (2) not guilty; or

9 (3) not guilty by reason of insanity.

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

16 **Sec. 26.05.560. Voting and rulings.** (a) Voting by members of a general or
17 special court-martial on the findings and on the sentence shall be by secret written
18 ballot. The junior member of the court shall count the votes. The count shall be
19 checked by the president, who shall immediately announce the result of the ballot to
20 the members of the court.

21 (b) The military judge shall rule on all questions of law and all interlocutory
22 questions arising during the proceedings. A ruling made by the military judge on a
23 question of law or an interlocutory question, other than the factual issue of mental
24 responsibility of the accused, is final and constitutes the ruling of the court. However,
25 the military judge may change the ruling at any time during the trial. Unless the ruling
26 is final, if a member objects to a ruling, the court shall be cleared and closed, and the
27 question shall be decided by a voice vote as provided in AS 26.05.563, beginning with
28 the junior in rank.

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

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

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

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

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

9 (d) A military judge sitting without court members shall

10 (1) determine all questions of law and fact arising during the
11 proceedings and, if the accused is convicted, adjudge an appropriate sentence;

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

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

17 **Sec. 26.05.563. Number of votes required.** (a) A person may not be convicted
18 of a military offense tried to a court-martial unless by the concurrence of two-thirds of
19 the members of the court present at the time the vote is taken.

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

27 **Sec. 26.05.565. Court to announce action.** A court-martial shall announce its
28 findings and sentence to the parties as soon as determined.

29 **Sec. 26.05.568. Record of trial.** (a) Each general and special court-martial
30 shall keep a separate record of the proceedings in each case brought before it, and the
31 record must be authenticated by the signature of the military judge. If the military

1 judge cannot authenticate the record because of the military judge's death, disability,
2 or absence, the record shall be authenticated by the signature of the trial counsel or, if
3 the trial counsel is unable to authenticate the record because of the trial counsel's
4 death, disability, or absence, then by the signature of a member of the court. In a
5 court-martial consisting of only a military judge, the record shall be authenticated by
6 the court reporter under the same conditions that would impose a duty on a member
7 under this subsection.

8 (b) In each general and special court-martial case resulting in a conviction, a
9 complete verbatim record of the proceedings and testimony shall be prepared. In all
10 other court-martial cases, the record shall contain the matters as may be prescribed by
11 the rules of procedure adopted under AS 26.05.520.

12 (c) Each summary court-martial shall keep a separate record of the proceedings
13 in each case, and the record shall be authenticated in the manner as may be prescribed
14 by the rules of procedure adopted under AS 26.05.520.

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

17 **Sec. 26.05.580. Cruel and unusual punishments prohibited.** A court-martial
18 may not impose on a member of the militia in active state service punishment by
19 flogging, branding, marking, or tattooing on the body, or another cruel or unusual
20 punishment. The use of irons, single or double, except for the purpose of safe custody,
21 is prohibited.

22 **Sec. 26.05.583. Punishments; maximum limits.** (a) A court-martial may not
23 impose a punishment for a military offense that exceeds the limits set out in this
24 chapter and may not impose a sentence of death. A sentence for a military offense may
25 not exceed 10 years. A crime for which a sentence of confinement for a term of more
26 than one year is authorized is a felony offense. Except for convictions by a summary
27 court-martial and except as otherwise specifically provided in this chapter, all other
28 military offenses are misdemeanors. A conviction by a summary court-martial is a
29 violation.

30 (b) The maximum punishment for a violation of this chapter shall be lesser of
31 the sentences prescribed by the manual for courts-martial of the United States in effect

1 on January 1, 2004, and the rules adopted under AS 26.05.520, but in no instance shall
2 any punishment exceed that authorized by this chapter.

3 **Sec. 26.05.585. Effective date of sentences.** (a) If a sentence of a court-martial
4 as lawfully adjudged and approved includes a forfeiture of pay or allowances in
5 addition to unsuspended confinement, the forfeiture may apply to pay or allowances
6 becoming due on or after the date the sentence is approved by the convening authority.
7 A forfeiture may not extend to pay or allowances accrued before that date.

8 (b) A sentence of a court-martial that includes a period of confinement begins
9 to run from the date the sentence is adjudged by the court-martial, but periods during
10 which the sentence to confinement is suspended or deferred shall be excluded in
11 computing the service of the term of confinement.

12 (c) All other sentences of courts-martial are effective on the date they are
13 ordered to be executed.

14 **Sec. 26.05.588. Deferment of sentences.** (a) If an accused is under sentence to
15 confinement that has not yet been ordered executed, the convening authority or, if the
16 accused is no longer under the convening authority's jurisdiction, the person exercising
17 general court-martial jurisdiction over the command to which the accused is currently
18 detailed may, in that person's sole discretion, defer service of the sentence to
19 confinement. The deferment terminates when the sentence is ordered to be executed.
20 The deferment may be rescinded at any time by the authority who granted it or, if the
21 accused is no longer under that person's jurisdiction, by the person exercising general
22 court-martial jurisdiction over the command to which the accused is currently detailed.

23 (b) If a court-martial sentences an accused to confinement, the convening
24 authority may, without the consent of the accused, defer the service of the sentence
25 until after the accused has been permanently released to the militia of the state by a
26 state, the United States, or a foreign country

27 (1) that had custody of the accused;

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

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

1 (c) In a case in which a court-martial sentences an accused to confinement and
2 the sentence to confinement has been ordered executed, but in which review of the
3 case under AS 26.05.628 is pending, the adjutant general may defer further service of
4 the sentence to confinement while that review is pending.

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

7 **Sec. 26.05.590. Execution of confinement.** (a) A person must serve a sentence
8 of confinement adjudged by a court-martial, whether or not the sentence includes
9 discharge or dismissal from the militia of the state, and whether or not the discharge or
10 dismissal has been executed. The sentence may be carried into execution by
11 confinement in a place authorized by this chapter. A person confined under this
12 chapter is subject to the same discipline and treatment as other persons confined or
13 committed to the place of confinement.

14 (b) A place of confinement may not require payment of any fee or charge for
15 receiving or confining a person under this chapter except as otherwise provided by
16 law.

17 **Sec. 26.05.593. Sentences: reduction in enlisted grade upon approval.** (a) A
18 court-martial sentence of an enlisted member in a pay grade above E-1, as approved
19 by the convening authority, that includes a dishonorable or bad-conduct discharge or
20 confinement reduces that member to pay grade E-1, effective on the date of the
21 approval.

22 (b) If the sentence of a member who is reduced in pay grade under (a) of this
23 section is set aside or disapproved or, as finally approved, does not include a
24 dishonorable or bad-conduct discharge or confinement, the rights and privileges of
25 which the person was deprived because of the reduction shall be restored, including
26 pay and allowances.

27 **Sec. 26.05.595. Sentences: forfeiture of pay and allowances during**
28 **confinement.** (a) A court-martial sentence that includes confinement for more than six
29 months or confinement for six months or less and a dishonorable or bad-conduct
30 discharge or dismissal shall result in the forfeiture of pay, or of pay and allowances,
31 due the member of the militia of the state during any period of confinement or parole.

1 (b) A forfeiture imposed under this section is effective on the date determined
2 under AS 26.05.585.

3 (c) A forfeiture imposed by

4 (1) a general court-martial shall be all pay and allowances due to the
5 member during the period of forfeiture;

6 (2) a special court-martial shall be two-thirds of all pay due to the
7 member during the period of forfeiture.

8 (d) If a member subject to a sentence of forfeiture has dependents, the
9 convening authority or other person acting under AS 26.05.613 may waive all or a
10 portion of the forfeitures of pay and allowances for a period not to exceed six months.
11 The pay or allowances waived under this subsection shall be paid to the dependents of
12 the member in the amount waived, as the convening authority or other person directs.

13 (e) If the sentence of a member who forfeits pay and allowances under (a) of
14 this section is set aside or disapproved or, as finally approved, does not include
15 confinement for more than six months or confinement for six months or less and a
16 dishonorable or bad-conduct discharge or dismissal, the member shall be paid the pay
17 and allowances that the member would, but for the forfeiture, have been paid for the
18 period during which the forfeiture was in effect.

19 **Sec. 26.05.610. Error of law; lesser included military offense.** (a) A finding
20 or sentence of a court-martial may not be held incorrect on the ground of an error of
21 law unless the error materially prejudices the substantial rights of the accused.

22 (b) A reviewing authority with the power to approve or affirm a finding of
23 guilt may approve or affirm, instead, so much of the finding as includes a lesser
24 included military offense.

25 **Sec. 26.05.613. Action by the convening authority.** (a) The findings and
26 sentence of a court-martial shall be reported promptly to the convening authority after
27 the announcement of the sentence.

28 (b) The accused may submit to the convening authority matters for
29 consideration by the convening authority with respect to the findings and the sentence.
30 The submission must be in writing. The accused shall make the submission

31 (1) in a case before a general or special court-martial, within 10 days

1 after the accused has been given an authenticated record of trial and, if applicable, the
2 recommendation of a judge advocate under (h) of this section;

3 (2) in a case before a summary court-martial, within seven days after
4 the sentence is announced; the accused shall be promptly provided a copy of the
5 record of trial for use in preparing a submission authorized under this subsection.

6 (c) If the accused shows that additional time is required for the accused to
7 submit the matters, the convening authority or other person taking action under this
8 section may, for good cause, extend the applicable period for not more than an
9 additional 20 days.

10 (d) The accused may waive the right to make a submission to the convening
11 authority under (b) of this section. The waiver must be made in writing and may not be
12 revoked. A waiver has the effect of terminating an extension granted under (c) of this
13 section.

14 (e) The authority of the convening authority to modify the findings and
15 sentence of a court-martial is a matter of command prerogative and may be exercised
16 at the sole discretion of the convening authority. If it is impractical for the convening
17 authority to act, the convening authority shall forward the case to a person exercising
18 general court-martial jurisdiction who may take action under this section.

19 (f) An action on the sentence of a court-martial shall be taken by the convening
20 authority. The action may be taken only after consideration of matters submitted by
21 the accused under (b) of this section or after the time for making the submission
22 expires, whichever is earlier. The convening authority in the convening authority's
23 sole discretion may approve, disapprove, commute, or suspend the sentence, in whole
24 or in part.

25 (g) The convening authority is not required to take action under this section;
26 however, the convening authority may, in the convening authority's sole discretion,

27 (1) dismiss a charge or specification by setting aside a finding of guilty
28 to a charge or specification; or

29 (2) change a finding of guilty to a charge or specification to a finding of
30 guilty to a military offense that is a lesser included offense of the military offense
31 stated in the charge or specification.

1 (h) Before acting on a general or special court-martial case in which there is a
2 finding of guilt, the convening authority shall obtain and consider the written
3 recommendation of a judge advocate. The convening authority shall provide the
4 record of trial to the judge advocate, and the judge advocate shall use the record in the
5 preparation of the recommendation. The recommendation of the judge advocate shall
6 include matters as may be prescribed by the rules adopted under AS 26.05.520 and
7 shall be served on the accused, who may submit any matter in response under (b) of
8 this section. Failure to object in the response to the recommendation or to any matter
9 attached to the recommendation is a waiver of the right to object to the
10 recommendation or matter.

11 (i) The convening authority may, in the convening authority's sole discretion,
12 order

13 (1) a proceeding in revision if there is an apparent error or omission in
14 the record or if the record shows an improper or inconsistent action by a court-martial
15 with respect to the findings or sentence that can be rectified without material prejudice
16 to the substantial rights of the accused; however, a proceeding in revision may not

17 (A) reconsider a finding of not guilty of any specification or a
18 ruling that amounts to a finding of not guilty;

19 (B) reconsider a finding of not guilty of any charge, unless there
20 has been a finding of guilty under a specification laid under that charge, that
21 sufficiently alleges a violation of a provision of AS 26.05.400 - 26.05.999; or

22 (C) increase the severity of the sentence unless the sentence
23 prescribed for the military offense is mandatory.

24 (2) a rehearing, if the convening authority disapproves the findings and
25 sentence and states the reasons for disapproval of the findings, or disapproves the
26 sentence; however, the convening authority may not order rehearing as to the findings
27 if there is a lack of sufficient evidence in the record to support the findings.

28 (j) If the convening authority disapproves the findings and sentence and does
29 not order a rehearing under (i) of this section, the convening authority shall dismiss the
30 charges.

31 (k) In this section, "convening authority" includes a person authorized to act

1 under (e) of this section.

2 **Sec. 26.05.615. Withdrawal of appeal.** In a case subject to appellate review
3 under this chapter, the accused may, at any time, file with the convening authority a
4 written statement expressly withdrawing the right of the accused to the appeal. The
5 withdrawal shall be signed by both the accused and the accused's defense counsel and
6 filed in accordance with the procedures adopted under AS 26.05.520.

7 **Sec. 26.05.618. Appeal by the state.** (a) In a trial by court-martial in which a
8 punitive discharge may be adjudged, the state may appeal

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

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

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

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

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

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

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

27 (c) An appeal under this section shall be forwarded to the court prescribed in
28 AS 26.05.628. In ruling on the appeal, the appellate authority may act only with
29 respect to matters of law.

30 (d) A period of delay resulting from an appeal under this section shall be
31 excluded in deciding an issue involving the denial of a speedy trial, unless an

1 appropriate authority determines that the appeal was filed solely for the purpose of
2 delay with the knowledge that it was totally frivolous and without merit.

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

6 **Sec. 26.05.620. Rehearings.** A rehearing under this chapter shall be heard by a
7 court-martial composed of members who were not members of the court-martial that
8 first heard the case. Upon a rehearing, the accused may not be tried for a military
9 offense of which the accused was found not guilty by the first court-martial, and may
10 not receive a sentence in excess of or more severe than the sentence in the first court-
11 martial, unless the sentence is based on a finding of guilt for a military offense not
12 considered on the merits in the original proceedings, or unless the sentence prescribed
13 for the military offense is mandatory. If the sentence approved after the first court-
14 martial was in accordance with a pretrial agreement and the accused, at the rehearing,
15 changes a plea with respect to the charges or specifications on which the pretrial
16 agreement was based, or otherwise does not comply with the pretrial agreement, the
17 approved sentence as to those charges or specifications may include any punishment
18 not in excess of the lawfully adjudged sentence of the first court-martial.

19 **Sec. 26.05.623. Review by the senior force judge advocate.** (a) The senior
20 force judge advocate or the judge advocate's designee shall review a general or special
21 court-martial case in which there has been a finding of guilty. The judge advocate or
22 designee may not review a case under this subsection if the judge advocate or designee
23 acted in the same case as an accuser, investigating officer, member of the court,
24 military judge, or counsel or otherwise acted on behalf of the prosecution or defense.
25 The senior force judge advocate's review shall be in writing and must include

26 (1) conclusions as to whether

27 (A) the court had jurisdiction over the accused and the military
28 offense;

29 (B) the charge and specification stated a military offense; and

30 (C) as a matter of law, the sentence was within the limits
31 prescribed under this chapter;

1 (2) a response to each allegation of error made in writing by the
2 accused;

3 (3) if the case is sent for action by the adjutant general under (b) of this
4 section, a recommendation as to the appropriate action to be taken and an opinion as to
5 whether corrective action is required as a matter of law.

6 (b) The record of trial and related documents in each case reviewed under (a)
7 of this section shall be sent for action to the adjutant general if

8 (1) the judge advocate who reviewed the case recommends corrective
9 action;

10 (2) a sentence approved under AS 26.05.613 extends to dismissal, a
11 bad-conduct or dishonorable discharge, or confinement for more than six months; or

12 (3) the action is otherwise required by the rules adopted under
13 AS 26.05.520.

14 (c) If the opinion of the senior force judge advocate or the judge advocate's
15 designee in the senior force judge advocate's review under (a) of this section is that
16 corrective action is required as a matter of law and if the adjutant general does not take
17 action that is at least as favorable to the accused as that recommended by the judge
18 advocate, the record of trial and action on the case shall be sent to the governor for
19 review and action.

20 (d) The senior force judge advocate or the judge advocate's designee may
21 review a case in which there has been a finding of not guilty of all charges and
22 specifications. The judge advocate or designee may not review a case under this
23 subsection if the judge advocate or designee acted in the same case as an accuser,
24 investigating officer, member of the court, military judge, or counsel or otherwise
25 acted on behalf of the prosecution or defense. The senior force judge advocate's
26 review shall be limited to questions of subject matter jurisdiction.

27 (e) The record of trial and related documents in each case reviewed under (d)
28 of this section shall be sent for action to the adjutant general. The adjutant general may

29 (1) if subject matter jurisdiction is found to be lacking, declare the
30 court-martial void, with or without prejudice to the state as the adjutant general finds
31 appropriate; or

1 (2) return the record of trial and related documents to the senior force
2 judge advocate for appeal by the state under AS 26.05.618.

3 **Sec. 26.05.625. Disposition of records after review by the convening**
4 **authority.** Except as otherwise required under this chapter, all records of trial and
5 related documents shall be transmitted and disposed of as prescribed by the rules
6 adopted under AS 26.05.520.

7 **Sec. 26.05.628. Appellate review.** (a) A person may, after exhausting all
8 remedies available under this chapter, appeal to the court of appeals the conviction and
9 sentence imposed by a general or special court-martial for a military offense for which
10 a sentence of confinement is imposed under this chapter and as permitted by
11 AS 12.55.120.

12 (b) A person filing an appeal under this section shall comply with the rules of
13 court applicable to the proceedings, including the deadlines for filing.

14 **Sec. 26.05.630. Appellate counsel.** (a) The senior force judge advocate shall
15 detail a judge advocate as appellate trial counsel to represent the state in an appeal
16 filed under AS 26.05.628, and before any federal court when requested to do so by the
17 attorney general. Counsel appointed under this subsection must be a member in good
18 standing of the bar of the highest court of the state to which the appeal is taken.

19 (b) If the state brings an appeal, the accused has the right to be represented by
20 detailed military counsel before a reviewing authority or appellate court.

21 (c) If the accused brings an appeal, the accused has the right to be represented
22 by military counsel before a reviewing authority.

23 (d) Upon the request of an accused entitled to be represented under this
24 section, the senior force judge advocate shall appoint a judge advocate to represent the
25 accused in the review or appeal of cases under (b) and (c) of this section.

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

28 **Sec. 26.05.633. Execution of sentence; suspension of sentence.** (a) If the
29 sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct
30 discharge and if the right of the accused to appellate review is not waived, and an
31 appeal is not withdrawn under AS 26.05.615, that part of the sentence extending to

1 dismissal or a dishonorable or bad-conduct discharge may not be executed until there
2 is a final judgment as to the legality of the proceedings. A judgment as to the legality
3 of the proceedings is final when a final decision is rendered by a reviewing court
4 under AS 26.05.628.

5 (b) If the sentence of the court-martial extends to dismissal or a dishonorable or
6 bad-conduct discharge and if the right of the accused to appellate review is waived, or
7 an appeal is withdrawn under AS 26.05.615, that part of the sentence extending to
8 dismissal or a dishonorable or bad-conduct discharge may not be executed until
9 review of the case by the senior force judge advocate and any action on that review
10 under AS 26.05.623 is completed. The convening authority or another person
11 authorized to act under AS 26.05.613 may order execution of the sentence of a court-
12 martial that is not dismissal or a dishonorable or bad-conduct discharge.

13 **Sec. 26.05.635. Vacation of suspension.** (a) A person who is serving a period
14 of probation under a sentence suspended by a special court-martial that, as approved,
15 includes a bad-conduct discharge, or a suspended general court-martial sentence, is
16 entitled to a hearing before the suspension is vacated. The probationer shall be
17 represented at the hearing by military counsel if the probationer requests
18 representation.

19 (b) If the suspended sentence was imposed by a special court-martial, the
20 officer having special court-martial jurisdiction over the probationer shall hold a
21 hearing on the alleged violation of probation. The record of the hearing and the
22 recommendation of the officer having special court-martial jurisdiction shall be sent
23 for action to the officer exercising general court-martial jurisdiction over the
24 probationer. If the officer vacates the suspension, the unexecuted part of the sentence,
25 except a dismissal, shall be executed, subject to applicable restrictions in this chapter.

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

29 **Sec. 26.05.638. Petition for a new trial.** At any time within two years after
30 approval by the convening authority of a court-martial sentence, the accused may
31 petition the adjutant general for a new trial on the grounds of newly discovered

1 evidence or fraud on the court-martial.

2 **Sec. 26.05.640. Remission and suspension.** (a) An authority for the command
3 in which the accused is serving or detailed who is competent to convene a court of the
4 kind that imposed the sentence may remit or suspend a part or amount of the
5 unexecuted part of a sentence, including all uncollected forfeitures other than a
6 sentence approved by the governor.

7 (b) The governor may, for good cause, substitute an administrative form of
8 discharge for a discharge or dismissal executed in accordance with the sentence of a
9 court-martial.

10 **Sec. 26.05.643. Restoration.** (a) In accordance with rules adopted under
11 AS 26.05.520, all rights, privileges, and property affected by an executed part of a
12 court-martial sentence that has been set aside or disapproved, except an executed
13 dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and
14 the executed part is included in a sentence imposed on the new trial or rehearing.

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

18 (c) If a previously executed sentence of dismissal is not imposed on a new trial,
19 the governor may substitute an administrative form of discharge, and a commissioned
20 officer dismissed under the original sentence may be reappointed by the governor
21 alone to the commissioned grade and rank that, in the opinion of the governor, the
22 former officer would have attained had the officer not been dismissed. The
23 reappointment of the former officer shall be without regard to the existence of a
24 vacancy and shall affect the promotion status of other officers only to the extent the
25 governor may direct. The time between the dismissal and the reappointment shall be
26 considered as actual service for all purposes, including the right to pay and
27 allowances.

28 **Sec. 26.05.645. Finality of proceedings, findings, and sentences.** The
29 appellate review of records of trial, the proceedings, findings, and sentences of courts-
30 martial as approved, reviewed, or affirmed, and the dismissals and discharges carried
31 into execution under sentences by courts-martial following approval, review, or

1 affirmation as required under this chapter are final and conclusive. To the extent
2 permitted by law, orders publishing the proceedings of courts-martial and the actions
3 taken under those proceedings are binding on all departments, courts, agencies, and
4 officers of the United States and the several states, subject only to an action upon a
5 petition for a new trial as provided in AS 26.05.638 and an action taken under
6 AS 26.05.640.

7 **Sec. 26.05.648. Leave required to be taken pending review of court-**
8 **martial convictions.** In accordance with rules adopted under AS 26.05.520, an
9 accused who has been sentenced by a court-martial may be required to take leave
10 pending completion of action under this section if the sentence, as approved under
11 AS 26.05.613, includes an unsuspended dismissal or an unsuspended dishonorable or
12 bad-conduct discharge. The accused may be required to begin the leave on the date on
13 which the sentence is approved under AS 26.05.613, or at any time after that date, and
14 the leave may be continued until the date on which action under this section is
15 completed, or may be terminated at any earlier time.

16 **Sec. 26.05.650. Lack of mental capacity or mental responsibility:**
17 **commitment of accused for examination and treatment.** (a) An accused who, as a
18 result of a mental disease or defect that renders the accused incompetent to the extent
19 that the accused is unable to understand the nature of the proceedings or to conduct or
20 cooperate intelligently in the defense of the case, may not be tried, convicted, or
21 sentenced for the military offense so long as the incompetency exists.

22 (b) If trial counsel or defense counsel has reason to believe that the accused is
23 unable to understand the nature of the proceedings or to conduct or cooperate
24 intelligently in the defense of the case, counsel may file a motion with the military
25 judge assigned to the case for a determination of the competency of the accused. Upon
26 the motion, or on the judge's own motion, the court shall order an examination to be
27 conducted and make a determination in accordance with the requirements of
28 AS 12.47.100. If the military judge determines that the accused must be committed for
29 the purpose of examination, and the accused is not otherwise subject to commitment
30 under AS 47.30.700 - 47.30.915, the military judge shall order the convening authority
31 to seek the assistance of the attorney general in seeking a commitment under

1 AS 12.47.100.

2 (c) If the military court determines that the accused is incompetent to stand
3 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
4 47.30.915, the military judge shall order the convening authority to seek the assistance
5 of the attorney general in seeking a commitment under AS 12.47.110.

6 (d) If, at the end of a period of commitment under (b) and (c) of this section, it
7 is determined that the accused's mental condition has not improved so as to permit the
8 trial to proceed, the charges shall be dismissed without prejudice, and continued
9 commitment proceedings shall be governed by the provisions relating to civil
10 commitment under AS 47.30.700 - 47.30.915. If the accused remains incompetent for
11 five years after the charges have been dismissed under this subsection, the accused
12 may not be charged again for a military offense arising out of the facts alleged in the
13 original charges, unless the original charge is the equivalent of a class A or
14 unclassified felony under AS 11.81.250.

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

21 (f) Upon receipt of the notice, the convening authority shall promptly take
22 custody of the accused unless the accused is no longer a member of the militia in
23 active state service.

24 (g) If the accused remains a member of the militia in active state service, the
25 military judge detailed to the case shall conduct the hearing required under
26 AS 12.47.120. If the judge finds the accused competent, the court-martial shall be
27 assembled.

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

31 (i) If, during a period of commitment under this section, the accused is no

1 longer a member of the militia in active state service, the convening authority shall
2 promptly notify the custodian and the attorney general; the custodian and the attorney
3 general may take what further action may be appropriate.

4 **Sec. 26.05.660. Principals.** A member of the militia in active state service who
5 commits a military offense, or aids, abets, counsels, commands, or procures the
6 commission of the military offense, or causes an act to be done that, if directly
7 performed by the member, would be punishable under this chapter, is a principal.

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

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

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

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

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

25 **Sec. 26.05.670. Conspiracy.** A member of the militia in active state service
26 who conspires with another person to commit a military offense shall, if one or more
27 of the conspirators does an act to effect the object of the conspiracy, be punished as a
28 court-martial may direct.

29 **Sec. 26.05.673. Solicitation.** (a) A member of the militia in active state service
30 who solicits or advises another or others to desert in violation of AS 26.05.680 or to
31 mutiny in violation of AS 26.05.703 shall, if the military offense solicited or advised

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

5 (b) A member of the militia in active state service who solicits or advises
 6 another or others to commit an act of misbehavior before the enemy in violation of
 7 AS 26.05.715 or an act of sedition in violation of AS 26.05.703 shall, if the military
 8 offense solicited or advised is committed, be punished with the punishment provided
 9 for the commission of the military offense, but, if the military offense solicited or
 10 advised is not committed, the member shall be punished as a court-martial may direct.

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

19 **Sec. 26.05.678. Unlawful enlistment, appointment, or separation.** A
 20 member of the militia in active state service who effects an enlistment or appointment
 21 in or a separation from the militia of the state of a person who is known to the member
 22 to be ineligible for that enlistment, appointment, or separation because it is prohibited
 23 by law, regulation, or order shall be punished as a court-martial may direct.

24 **Sec. 26.05.680. Desertion.** (a) A person is guilty of desertion if the person is a
 25 member of the militia of the state in active state service and

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

29 (2) quits the person's unit, organization, or place of duty with intent to
 30 avoid hazardous duty or to shirk important service; or

31 (3) without being regularly separated from one force of the militia of

1 the state,

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

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

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

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

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

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

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

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

27 **Sec. 26.05.688. Contempt toward officials.** A commissioned officer of the
28 militia in active state service who uses contemptuous words against the President or
29 Vice-President of the United States, the United States Congress, the United States
30 Secretary of Defense, the United States Secretary of Homeland Security, the secretary
31 of a military department of the United States, or the governor or legislature of this

1 state shall be punished as a court-martial may direct.

2 **Sec. 26.05.690. Disrespect toward superior commissioned officer.** A
3 member of the militia in active state service who behaves with disrespect toward the
4 member's superior commissioned officer shall be punished as a court-martial may
5 direct.

6 **Sec. 26.05.693. Assaulting or wilfully disobeying superior commissioned**
7 **officer.** A member of the militia in active state service who (1) strikes the member's
8 superior commissioned officer or draws or lifts up any weapon or offers any violence
9 against the superior officer while the superior officer is in the execution of the superior
10 officer's office, or (2) wilfully disobeys a lawful command of the member's superior
11 commissioned officer shall be punished, if the military offense is committed in time of
12 war, by confinement of not more than 10 years or another punishment as a court-
13 martial may direct and, if the military offense is committed at any other time, by the
14 punishment as a court-martial may direct.

15 **Sec. 26.05.695. Insubordinate conduct toward warrant officer,**
16 **noncommissioned officer, or petty officer.** A warrant officer or enlisted member of
17 the militia in active state service who (1) strikes or assaults a warrant officer,
18 noncommissioned officer, or petty officer, while the officer is in the execution of the
19 officer's office, (2) wilfully disobeys the lawful order of a warrant officer,
20 noncommissioned officer, or petty officer, or (3) treats with contempt or is
21 disrespectful in language or deportment toward a warrant officer, noncommissioned
22 officer, or petty officer while the officer is in the execution of the officer's office shall
23 be punished as a court-martial may direct.

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

30 **Sec. 26.05.700. Cruelty and maltreatment.** A member of the militia in active
31 state service who is guilty of cruelty toward, or oppression or maltreatment of, another

1 person subject to the member's orders shall be punished as a court-martial may direct.

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

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

10 (c) A member of the militia in active state service is guilty of a failure to
11 suppress or report a mutiny or sedition if the member fails to do the member's utmost
12 to prevent and suppress a mutiny or sedition being committed in the member's
13 presence, or fails to take all reasonable means to inform the member's superior
14 commissioned officer or commanding officer of a mutiny or sedition that the member
15 knows or has reason to believe is taking place.

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

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

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

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

31 **Sec. 26.05.713. Noncompliance with procedural rules.** A member of the

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

6 **Sec. 26.05.715. Misbehavior before the enemy.** (a) A member of the militia
 7 in active state service is guilty of misbehavior before the enemy if the member is
 8 before or in the presence of the enemy and

9 (1) runs away;

10 (2) shamefully abandons, surrenders, or delivers up a command, unit,
 11 place, or military property that the member has a duty to defend;

12 (3) through disobedience, neglect, or intentional misconduct, endangers
 13 the safety of the command, unit, place, or military property;

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

15 (5) engages in cowardly conduct;

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

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

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

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

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

27 **Sec. 26.05.718. Subordinate compelling surrender.** A member of the militia
 28 in active state service who compels or attempts to compel the commander of the
 29 militia of this state or of any other state, of a place, a vessel, an aircraft, or another
 30 military property, or of a body of members of the armed forces to give it up to an
 31 enemy or to abandon it, or who strikes the colors or flag to an enemy without proper

1 authority, shall be punished as a court-martial may direct.

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

8 **Sec. 26.05.723. Forcing a safeguard.** A member of the militia in active state
9 service who forces a safeguard shall be punished as a court-martial may direct.

10 **Sec. 26.05.725. Captured or abandoned property.** (a) A member of the
11 militia in active state service shall secure all public property taken for the service of
12 the United States or the state and shall give notice and turn over to the proper authority
13 without delay all captured or abandoned property in the member's possession, custody,
14 or control.

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

21 **Sec. 26.05.728. Aiding the enemy.** A member of the militia in active state
22 service who (1) aids or attempts to aid the enemy with arms, ammunition, supplies,
23 money, or other things, or (2) without proper authority, knowingly harbors or protects
24 or gives intelligence to, or communicates or corresponds with or holds any intercourse
25 with, the enemy, either directly or indirectly, shall be punished as a court-martial may
26 direct.

27 **Sec. 26.05.730. Misconduct as prisoner.** A member of the militia in active
28 state service who, while in the hands of the enemy in time of war, (1) for the purpose
29 of securing favorable treatment by the person's captors, acts without proper authority
30 in a manner contrary to law, custom, or regulation, to the detriment of other persons of
31 whatever nationality held by the enemy as civilian or military prisoners, or (2) while in

1 a position of authority over a person, maltreats the person without justifiable cause
2 shall be punished as a court-martial may direct.

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

8 **Sec. 26.05.735. Military property; loss, damage, destruction, or wrongful**
9 **disposition.** A member of the militia in active state service who, without proper
10 authority, (1) sells or otherwise disposes of, (2) wilfully or through neglect damages,
11 destroys, or loses, or (3) wilfully or through neglect suffers to be lost, damaged,
12 destroyed, sold, or wrongfully disposed of, military property of the United States or of
13 any state, shall be punished as a court-martial may direct.

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

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

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

26 **Sec. 26.05.745. Wrongful use or possession of controlled substances.** (a) A
27 member of the militia in active state service who uses, possesses, manufactures,
28 distributes, or imports a controlled substance into the customs territory of the United
29 States, exports from the United States in violation of the laws of the United States or
30 the state, or who introduces a controlled substance into an installation, vessel, vehicle,
31 or aircraft used by or under the control of the armed forces of the United States or the

1 military forces of a state shall be punished as a court-martial may direct.

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

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

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

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

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

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

20 **Sec. 26.05.750. Dueling.** A member of the militia in active state service who
21 fights or promotes, or is concerned in or connives at fighting, a duel or who, having
22 knowledge of a challenge sent or about to be sent, fails to report the fact promptly to
23 the proper authority shall be punished as a court-martial may direct.

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

28 **Sec. 26.05.755. Riot or breach of peace.** A member of the militia in active
29 state service who causes or participates in a riot or breach of the peace shall be
30 punished as a court-martial may direct.

31 **Sec. 26.05.758. Provoking speeches or gestures.** A member of the militia in

1 active state service who uses provoking or reproachful words or gestures toward
2 another member of the militia in active state service shall be punished as a court-
3 martial may direct.

4 **Sec. 26.05.760. Fraud against the government.** (a) A member of the militia
5 in active state service is guilty of fraud against the government if the member

6 (1) knowing it to be false or fraudulent

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

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

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

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

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

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

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

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

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

3 **Sec. 26.05.763. Conduct unbecoming an officer.** A commissioned officer,
4 cadet, candidate, or midshipman of the militia in active state service who is convicted
5 of conduct unbecoming an officer shall be punished as a court-martial may direct.

6 **Sec. 26.05.765. General article.** Although not specifically mentioned in this
7 chapter, all disorders and neglects to the prejudice of good order and discipline in the
8 militia of the state and all conduct of a nature to bring discredit on the militia of the
9 state shall be taken cognizance of by a court-martial and punished at the discretion of a
10 military court.

11 **Sec. 26.05.800. Courts of inquiry.** (a) A court of inquiry to investigate a
12 matter of concern to the militia of the state may be convened by a person authorized to
13 convene a general court-martial under this chapter, whether or not a person involved
14 in the matter has requested an inquiry.

15 (b) A court of inquiry consists of three or more commissioned officers. The
16 convening authority shall appoint counsel for the court.

17 (c) A member of the militia in active state service whose conduct is subject to
18 inquiry shall be designated as a party. A member of the militia in active state service
19 who has a direct interest in the subject of inquiry has the right to be designated as a
20 party upon request to the court. A member designated as a party has the right to notice,
21 to be present, to be represented by counsel, to cross-examine witnesses, and to
22 introduce evidence.

23 (d) A party may challenge a member of a court of inquiry, but only for cause
24 stated to the court.

25 (e) The members, counsel, reporter, and interpreters of a court of inquiry shall
26 take an oath to faithfully perform their duties.

27 (f) Witnesses may be summoned to appear and testify and may be examined
28 before courts of inquiry as provided for courts-martial.

29 (g) Courts of inquiry shall make findings of fact but may not express opinions
30 or make recommendations unless required to do so by the convening authority.

31 (h) A court of inquiry shall keep a record of its proceedings, which shall be

1 authenticated by the signatures of the president and counsel for the court and
2 forwarded to the convening authority. If the president or counsel for the court is not
3 able to authenticate the record, another member shall sign the authentication for the
4 president or counsel.

5 **Sec. 26.05.803. Authority to administer oaths and act as notary public.** (a)

6 The following persons may administer oaths for the purposes of military
7 administration, including military justice:

8 (1) a judge advocate;

9 (2) a summary court-martial;

10 (3) the adjutant general and assistant adjutant generals;

11 (4) a commanding officer of the militia;

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

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

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

18 (2) the president and the counsel for the court of a court of inquiry;

19 (3) an officer designated to take a deposition;

20 (4) a person detailed to conduct an investigation;

21 (5) a recruiting officer;

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

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

27 **Sec. 26.05.805. Provisions to be explained.** (a) The provisions of

28 AS 26.05.403, 26.05.405, 26.05.420, 26.05.423 - 26.05.440, 26.05.478, 26.05.483,
29 26.05.493, 26.05.523, 26.05.525, 26.05.580, 26.05.660 - 26.05.765, and 26.05.803 -
30 26.05.810 shall be carefully explained to each enlisted member at the time of, or
31 within 30 days after, the member's initial entrance into active state service.

1 (b) The provisions specified in (a) of this section shall be explained again after
2 the member has completed basic or recruit training and at the time when the member
3 reenlists.

4 (c) The text of AS 26.05.400 - 26.05.999 and the rules prescribed under
5 AS 26.05.520 shall be made available to a member of the militia of the state, upon
6 request by the member, for the member's personal examination.

7 **Sec. 26.05.808. Complaints of wrongs.** A member of the militia of the state
8 who believes that the member has been wronged by a commanding officer, and who,
9 upon application to that commanding officer, is refused redress, may complain to a
10 superior commissioned officer, who shall forward the complaint to the officer
11 exercising general court-martial jurisdiction over the officer against whom the
12 complaint is made. The officer exercising general court-martial jurisdiction shall
13 investigate the complaint and take proper measures for redressing the wrong
14 complained of, and shall, as soon as practicable, provide the adjutant general a true
15 statement of the complaint, along with the proceedings conducted with respect to the
16 complaint.

17 **Sec. 26.05.810. Redress of injuries to property.** (a) A person who believes
18 that a member of the militia of the state has wilfully damaged or wrongfully taken the
19 person's property may make a complaint to a commanding officer. The commanding
20 officer may, under rules adopted under AS 26.05.520, convene a board to investigate
21 the complaint. The board shall consist of from one to three commissioned officers. For
22 the purpose of investigating the complaint, the board has the power to summon
23 witnesses and examine them under oath, to receive depositions or other documentary
24 evidence, and to assess the damages sustained against the responsible parties. The
25 assessment of damages made by the board is subject to the approval of the
26 commanding officer and, in the amount approved by that officer, shall be charged
27 against the pay of the offenders. The order of the commanding officer directing the
28 payment of charges is conclusive on any disbursing officer for payment to the injured
29 parties of the damages assessed and approved under this section.

30 (b) If the offenders cannot be ascertained, but the organization or detachment
31 to which they belong is known, charges totaling the amount of damages assessed and

1 approved may be made in the proportion as may be considered just on the individual
2 members of the organization or detachment who are shown to have been present at the
3 scene at the time the damages complained of were inflicted, as determined by the
4 approved findings of the board.

5 **Sec. 26.05.813. Delegation by the governor.** The governor may delegate any
6 authority vested in the governor under this chapter, and provide for the subdelegation
7 of the authority, except the power given the governor by AS 26.05.470.

8 **Sec. 26.05.815. Military justice account.** (a) The military justice account is
9 established in the general fund for the purpose of paying the expenses of the
10 department in carrying out its duties relating to this chapter, including the fees and
11 authorized travel expenses of witnesses, experts, victims, court reporters, and
12 interpreters, fees for the service of process, costs of collection, apprehension, detention
13 and confinement, pay and allowances for court-martial duty, and all other necessary
14 expenses of the prosecution and administration of military justice not otherwise
15 payable by another source.

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

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

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

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

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

24 **Sec. 26.05.818. Payment, collection, and deposit of fines.** (a) A fine imposed
25 by a military court or through the imposition of nonjudicial punishment may be paid to
26 the state and delivered to the court or imposing officer, or to a person executing
27 process.

28 (b) If the person upon whom the fine fails to pay, the department may collect
29 the fine by

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

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

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

5 **Sec. 26.05.819. Pay and allowances for court-martial duty.** For each day of
6 duty as a member of a general court-martial, or as a witness under summons from the
7 president or judge advocate of the court, officers and enlisted persons shall be paid as
8 provided in AS 26.05.260(b).

9 **Sec. 26.05.820. Uniformity of interpretation.** This chapter shall be construed
10 to carry out their general purpose and, so far as practicable, in a manner uniform with
11 10 U.S.C. 801 - 946.

12 **Sec. 26.05.823. Immunity for action of military courts.** A person acting
13 under this chapter, whether as a member of the militia or as a civilian, shall be
14 immune from any personal liability for any of the acts or omissions that the person did
15 or failed to do as part of the person's duties under this chapter.

16 **Sec. 26.05.825. Service of punishment.** A punishment authorized under this
17 chapter that is measured in terms of days shall, when served in a status other than
18 annual field training, be construed to mean succeeding active state service days.

19 **Sec. 26.05.990. Definitions.** In this chapter, unless the context otherwise
20 requires,

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

25 (2) "active state service" means all duties performed in the militia of
26 the state under an order issued under AS 26.05.070 or otherwise issued by the
27 authority of law, including travel to and from active duty, all encampments, armory
28 drill periods, and parade periods by the militia; "active state service" excludes all
29 duties performed while in active federal service;

30 (3) "arrest" means the restraint of a person by an order, not imposed as
31 a punishment for an offense, directing the person to remain within certain specified

1 limits;

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

6 (5) "classified information" means

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

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

13 (6) "commanding officer" or "commander" includes only
14 commissioned officers of the militia of the state and includes officers in charge only
15 when administering nonjudicial punishment under AS 26.05.440;

16 (7) "confinement" means the physical restraint of a person;

17 (8) "convening authority" includes, in addition to the person who
18 convened the court, a commissioned officer commanding for the time being or a
19 successor in command to the convening authority;

20 (9) "day" means calendar day and is not synonymous with the term
21 "unit training assembly";

22 (10) "department" means the Department of Military and Veterans'
23 Affairs;

24 (11) "enlisted member" means a person in an enlisted grade;

25 (12) "military court" means a court-martial or court of inquiry;

26 (13) "military judge" means an official of a general or special court-
27 martial described under AS 26.05.480;

28 (14) "military offense" means an offense specified in AS 26.05.120 and
29 26.05.660 - 26.05.765;

30 (15) "militia" or "militia of the state" means the Alaska National Guard,
31 the Alaska Naval Militia, and the Alaska State Defense Force;

1 (16) "national security" means the national defense and foreign
2 relations of the United States;

3 (17) "officer" means a commissioned or warrant officer;

4 (18) "officer in charge" means a member of the naval militia, United
5 States Navy, United States Marine Corps, or United States Coast Guard designated by
6 the appropriate authority;

7 (19) "record," when used in connection with the proceedings of a court-
8 martial, means

9 (A) an official written transcript, written summary, or other
10 writing relating to the proceedings; or

11 (B) an official audiotape, videotape, digital image or file, or
12 similar material from which sound, or sound and visual images, depicting the
13 proceedings may be reproduced;

14 (20) "senior force commander" means the commander of the same
15 force of the militia of the state as the accused;

16 (21) "senior force judge advocate" means the senior judge advocate of
17 the commander of the same force of the militia of the state as the accused and who is
18 that commander's chief legal advisor;

19 (22) "superior commissioned officer" means a commissioned officer
20 superior in rank or command;

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

24 **Sec. 26.05.999. Short title.** This chapter may be cited as the Alaska Code of
25 Military Justice.

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

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

29 * **Sec. 6.** AS 44.23.020 is amended by adding a new subsection to read:

30 (i) If requested by a military judge or the convening authority of a court-
31 martial, assist the court-martial in obtaining the commitment of a person accused of a

1 military offense under AS 26.05 for a competency examination under AS 12.47.100 or
 2 on a finding of incompetency under AS 12.47.110. In this subsection, "military
 3 offense" has the meaning given in AS 26.05.990.

4 * **Sec. 7.** AS 44.28 is amended by adding a new section to read:

5 **Sec. 44.28.025. Incarceration of members of the militia of the state.** If
 6 requested by the adjutant general and with the approval of the governor, the
 7 Department of Corrections shall accept custody from the militia of the state of persons
 8 confined under AS 26.05. In this section, "militia of the state" has the meaning given
 9 in AS 26.05.990.

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

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

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

14 (2) cooperate with the federal government in matters of mutual concern
 15 pertaining to the welfare of Alaskan veterans, including establishing, extending, or
 16 strengthening services for veterans in the state;

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

21 (4) cooperate with the Department of Public Safety to develop and
 22 implement missing vulnerable adult prompt response and notification plans under
 23 AS 44.41.060.

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

26 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 APPLICABILITY. AS 26.05.400 - 26.05.999, enacted by sec. 4 of this Act, and sec. 9
 29 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
 30 Act.

31 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION. The adjutant general may, with the approval of the governor, adopt
3 rules of pretrial, trial, and post-trial procedure required under AS 26.05.520, enacted by sec. 4
4 of this Act, for cases before courts-martial and courts of inquiry, and other regulations that
5 may be necessary to implement this Act. The rules may not take effect before the effective
6 date of secs. 1 - 10 of this Act.

7 * **Sec. 12.** Section 11 of this Act takes effect immediately under AS 01.10.070(c).

8 * **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect July 1, 2016.