

HOUSE BILL NO. 126

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 2/25/15

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

A BILL

FOR AN ACT ENTITLED

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

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

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

10 (h) The court of appeals has appellate jurisdiction in actions and proceedings
11 commenced in a military court for which a sentence of confinement is imposed, the
12 right to appeal to the Military Appeals Commission under AS 26.05.490 has been
13 exhausted, and a right to appeal is granted under AS 26.05.493.

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

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

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

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

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

18 (2) a separate account for the Department of Military and Veterans'
19 Affairs' contribution to fund the system based on the actuarial requirements of the
20 system as established by the commissioner of administration under **AS 26.05.222 -**
21 **26.05.229** [THIS CHAPTER];

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

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

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

28 **Sec. 26.05.380. Regulations adopting code of military justice.** (a) The
29 adjutant general shall by regulation adopt a code of military justice for members of the
30 militia of the state not in federal service. The regulations must be approved by the
31 governor.

(b) The code adopted under this section must

(1) provide for the organization and conduct of courts-martial consistent with this chapter;

(2) provide for nonjudicial punishment;

(3) identify the military offenses subject to adjudication by a court-martial or to nonjudicial punishment;

(4) within the maximum limits of this chapter and applicable state and federal law, identify the punishments authorized for the military offenses identified under (3) of this subsection;

(5) as the adjutant general and the governor consider practicable, apply the principles of law and the rules of evidence and procedure governing military criminal cases in the courts of the armed forces of the United States, but may not be contrary to or inconsistent with this chapter or the applicable Alaska Rules of Evidence;

(6) be organized and numbered in a manner consistent with 10 U.S.C. 801 - 946 (Uniform Code of Military Justice) to the extent those provisions are applicable;

(7) include rules of pretrial, trial, and post-trial procedure, including methods of proof, for cases before courts-martial and courts of inquiry;

(8) provide for the organization and conduct of courts of inquiry;

(9) provide a procedure for complaints of wrongs;

(10) provide redress for injuries to property by members in active state service;

(11) include adequate protection of classified information from public disclosure;

(12) include other provisions necessary to provide for the administration of military justice.

(c) The regulations adopted under this section are exempt from AS 44.62 (Administrative Procedure Act).

Sec. 26.05.400. Statement of policy on military justice. An offense, other than a military offense, committed by a member of the militia, organized or

1 unorganized, shall be tried in a civil court and prosecuted by a civil authority. This
 2 policy shall be executed and carried into effect at all times and applies to active state
 3 service of the militia.

4 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** (a) This
 5 chapter and the code of military justice apply to a member of the militia in active state
 6 service who is accused of or charged with an act or omission of a military offense.

7 (b) Courts-martial have exclusive jurisdiction over the code of military justice
 8 and military offenses as defined in AS 26.05.590. Civilian courts established under
 9 state or federal law have jurisdiction over offenses that are not military offenses and
 10 when an act or omission violates a criminal law and a provision of this chapter or of
 11 the code of military justice.

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

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

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

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

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

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

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

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

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

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

26 **Sec. 26.05.420. Apprehension.** (a) A member of the militia or a person
 27 authorized under 10 U.S.C. 801 - 946 or this chapter and the code of military justice to
 28 apprehend persons subject to this chapter and the code of military justice, a marshal of
 29 a court-martial, and a peace officer or civil officer having authority to apprehend
 30 offenders under the laws of the United States or of a state may apprehend a person
 31 subject to this chapter and the code of military justice upon probable cause that a

1 military offense has been committed and that the person apprehended committed the
2 military offense.

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

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

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

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

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

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

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

1 may be notified.

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

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

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

12 **Sec. 26.05.428. Place of confinement; reports and receiving of prisoners.**

13 (a) A person confined as a prisoner under this chapter and the code of military justice
14 shall be confined in a civilian or military confinement facility.

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

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

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

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

1 return the offender to the custody of the military authority for completion of the
2 sentence imposed by court-martial.

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

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

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

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

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

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

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

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

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

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

24 **Sec. 26.05.438. Jurisdiction of a general court-martial.** Subject to
25 AS 26.05.435, a general court-martial has jurisdiction to try a member of the militia in
26 active state service for a military offense and may impose a punishment not forbidden
27 by this chapter or the code of military justice.

28 **Sec. 26.05.440. Jurisdiction of a special court-martial.** Subject to
29 AS 26.05.435, a special court-martial has jurisdiction to try a member of the militia in
30 active state service for a military offense and may impose a punishment not forbidden
31 by this chapter or the code of military justice, other than dishonorable discharge,

dismissal, confinement for more than one year, forfeiture of pay exceeding two-thirds pay a month, or forfeiture of pay for more than one year.

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

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

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

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

Sec. 26.05.445. Who may convene a general court-martial. (a) A general court-martial may be convened by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 26.05.453. Military judge of a general or special court-martial.** (a) A
31 senior force judge advocate who is in the same force as the accused, or a designee,

1 shall detail a military judge to a general and special court-martial. The military judge
 2 shall preside over an open session of the court-martial to which the military judge has
 3 been detailed.

4 (b) A military judge must be

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

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

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

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

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

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

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

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

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

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

31 (1) a judge advocate, or, if serving as defense counsel, otherwise

1 certified by the senior force judge advocate; and

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

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

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

11 **Sec. 26.05.460. Subpoena; process of military courts.** (a) A military judge,
12 the president of a court-martial, or a summary court-martial officer may issue
13 subpoenas and subpoenas duces tecum for the attendance of witnesses and production
14 of books and records, if the courts are sitting within the state and the witnesses, books,
15 and records sought are located in the state. A subpoena may be served by a person
16 designated by the military judge, the president of the court-martial, or summary court-
17 martial officer.

18 (b) If a person who is not a member of the militia of the state fails to comply
19 with a subpoena issued under this section, the military judge, president of the court-
20 martial, or summary court-martial officer may apply to a state court for an order to
21 compel obedience by proceedings for contempt as if the subpoena had been issued by
22 a court. The military judge, president of the court-martial, or summary court-martial
23 officer may request the attorney general to bring the action.

24 (c) A person who is not a member of the militia in active state service, who
25 has been subpoenaed to appear as a witness or to produce books and records before a
26 court-martial or court of inquiry or before a military or civil officer designated to take
27 a deposition to be read in evidence before a court-martial, who has been paid or
28 tendered the fees and mileage of a witness at the rates allowed to witnesses attending a
29 criminal court of the state, and who wilfully neglects or refuses to appear or refuses to
30 qualify as a witness or to testify or to produce evidence that the person may have been
31 legally subpoenaed to produce is guilty of a violation and may be charged and

1 punished as provided in AS 12.55.

2 **Sec. 26.05.465. Contempts.** (a) A military judge or summary court-martial
3 officer may punish for contempt a person who uses a menacing word, sign, or gesture
4 in its presence, or who disturbs its proceedings by any riot or disorder.

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

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

11 **Sec. 26.05.468. Defense of insanity.** (a) The accused may assert the
12 affirmative defense of insanity as provided in AS 12.47.010. If the accused gives
13 notice of the defense, the accused shall file with the military judge the notice required
14 by AS 12.47.090.

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

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

20 (1) guilty;

21 (2) not guilty; or

22 (3) not guilty by reason of insanity.

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

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

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

30 (e) In the case of a court-martial composed of a military judge or a summary
31 court-martial officer sitting without court members, if the defense of insanity is

properly at issue, the military judge or summary court-martial officer shall find the accused

(1) guilty;

(2) not guilty; or

(3) not guilty by reason of insanity.

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

Sec. 26.05.470. Lack of mental capacity or mental responsibility; commitment of accused for examination and treatment. (a) An accused who, as a result of a mental disease or defect that renders the accused incompetent to the extent that the accused is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case, may not be tried, convicted, or sentenced for the military offense so long as the incompetency exists.

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

(c) If the military court determines that the accused is incompetent to stand trial and the accused is not otherwise subject to commitment under AS 47.30.700 - 47.30.915, the military judge shall order the convening authority to seek the assistance

1 of the attorney general in seeking a commitment under AS 12.47.110.

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

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

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

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

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

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

30 **Sec. 26.05.473. Number of votes required.** (a) A person may not be convicted
31 of a military offense tried by a court-martial unless by the concurrence of two-thirds of

1 the members of the court present at the time the vote is taken.

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

9 **Sec. 26.05.475. Cruel and unusual punishments prohibited.** A court-martial
10 may not impose on a member of the militia in active state service punishment by
11 flogging, branding, marking, or tattooing on the body, or another cruel or unusual
12 punishment. The use of irons, single or double, except for the purpose of safe custody,
13 is prohibited.

14 **Sec. 26.05.478. Punishments; maximum limits.** (a) A court-martial may not
15 impose a punishment for a military offense that exceeds the limits set out in this
16 chapter and may not impose a sentence of death. A sentence for a military offense may
17 not exceed 10 years. A crime for which a sentence of confinement for a term of more
18 than one year is authorized is a felony offense. Except for convictions by a summary
19 court-martial and except as otherwise specifically provided in this chapter, all other
20 military offenses are misdemeanors. A conviction by a summary court-martial is a
21 violation.

22 (b) The maximum punishment for a violation of this chapter and the code of
23 military justice shall be the lesser of the sentences prescribed by the manual for courts-
24 martial of the United States in effect on January 1, 2004, and the code of military
25 justice, but in no instance shall any punishment exceed that authorized by this chapter.

26 **Sec. 26.05.480. Execution of confinement.** (a) A person must serve a sentence
27 of confinement imposed by a court-martial, whether or not the sentence includes
28 discharge or dismissal from the militia of the state, and whether or not the discharge or
29 dismissal has been executed. The sentence may be carried into execution by
30 confinement in a place authorized by this chapter or the code of military justice. A
31 person confined under this chapter is subject to the same discipline and treatment as

1 other persons confined or committed to the place of confinement.

2 (b) The adjutant general may defer service of a sentence of confinement that
3 has been ordered executed if review of the case is pending under AS 26.05.490 or
4 26.05.493.

5 **Sec. 26.05.490. Military Appeals Commission.** (a) The Military Appeals
6 Commission is established in the Department of Military and Veterans' Affairs. The
7 commission is a quasi-judicial agency.

8 (b) The commission has jurisdiction to hear appeals from sentences and
9 punishments imposed by courts-martial under the code of military justice adopted by
10 the adjutant general under AS 26.05.380.

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

14 (1) be licensed to practice law

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

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

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

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

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

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

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

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

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

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

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

17 **Sec. 26.05.493. Appellate review.** (a) A person may, after exhausting all
18 remedies available under this chapter and the code of military justice, appeal to the
19 court of appeals the conviction and sentence imposed by a general or special court-
20 martial for a military offense for which a sentence of confinement is imposed under
21 this chapter or the code of military justice and as permitted by AS 12.55.120.

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

24 **Sec. 26.05.495. Appellate counsel.** (a) The senior force judge advocate shall
25 detail a judge advocate as appellate trial counsel to represent the state in an appeal
26 filed under AS 26.05.493, and before any federal court when requested to do so by the
27 attorney general. Counsel appointed under this subsection must be a member in good
28 standing of the bar of the highest court of the state to which the appeal is taken.

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

31 (c) If the accused brings an appeal, the accused has the right to be represented

1 by military counsel before a reviewing authority.

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

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

7 **Sec. 26.05.500. Delegation by the governor.** The governor may delegate any
8 authority vested in the governor under this chapter, and provide for the subdelegation
9 of the authority, except the power given to the governor by AS 26.05.445.

10 **Sec. 26.05.503. Military justice account.** (a) The military justice account is
11 established in the general fund for the purpose of paying the expenses of the
12 department in carrying out its duties relating to this chapter, including the fees and
13 authorized travel expenses of witnesses, experts, victims, court reporters, and
14 interpreters, fees for the service of process, costs of collection, apprehension, detention
15 and confinement, pay and allowances for court-martial duty, and all other necessary
16 expenses of the prosecution and administration of military justice not otherwise
17 payable by another source.

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

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

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

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

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

26 **Sec. 26.05.505. Payment, collection, and deposit of fines.** (a) A fine imposed
27 by a military court or through the imposition of nonjudicial punishment may be paid to
28 the state and delivered to the court or imposing officer, or to a person executing
29 process.

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

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

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

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

7 **Sec. 26.05.508. Pay and allowances for court-martial duty.** For each day of
8 duty as a member of a general court-martial, or as a witness under summons from the
9 president or judge advocate of the court, officers and enlisted persons shall be paid as
10 provided in AS 26.05.260(b).

11 **Sec. 26.05.510. Uniformity of interpretation.** This chapter and the code of
12 military justice shall be construed to carry out their general purpose and, so far as
13 practicable, in a manner uniform with 10 U.S.C. 801 - 946.

14 **Sec. 26.05.513. Immunity for action of military courts.** A person acting
15 under this chapter or the code of military justice, whether as a member of the militia or
16 as a civilian, shall be immune from any personal liability for any of the acts or
17 omissions that the person did or failed to do as part of the person's duties under this
18 chapter or the code of military justice.

19 **Sec. 26.05.590. Definitions.** In this chapter, unless the context otherwise
20 requires,

21 (1) "accuser" means a person who signs and swears to charges, a
22 person who directs that charges nominally be signed and sworn to by another, and any
23 other 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

limits;

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

(5) "classified information" means

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

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

(6) "code of military justice" means the code adopted under AS 26.05.380;

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

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

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

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

(11) "department" means the Department of Military and Veterans' Affairs;

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

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

(14) "military judge" means an official of a general or special court-martial described under AS 26.05.453;

(15) "military offense" means an offense specified in AS 26.05.120 and in the code of military justice;

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

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

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

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

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

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

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

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

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

(b) In this section, "held under authority of state law" includes the confinement of persons under AS 26.05 and the code of military justice adopted under AS 26.05.380.

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

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

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

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

1 military offense under AS 26.05, including the code of military justice adopted under
 2 AS 26.05.380, for a competency examination under AS 12.47.100 or on a finding of
 3 incompetency under AS 12.47.110. In this subsection, "military offense" has the
 4 meaning given in AS 26.05.590.

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

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

7 (1) conduct the military affairs of the state as prescribed by AS 26.05,
 8 including the code of military justice adopted under AS 26.05.380 [THE
 9 MILITARY CODE];

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

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

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

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

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

24 APPLICABILITY. AS 26.05.380 - 26.05.590, enacted by sec. 4 of this Act, and sec. 9
 25 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
 26 Act.

27 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 MILITARY APPEALS COMMISSION; STAGGERED TERMS. Notwithstanding
 30 AS 26.05.490, enacted by sec. 4 of this Act, and AS 39.05.055, the governor shall appoint the
 31 members of the commission to staggered initial terms as follows:

- 1 (1) one member shall be appointed for two years;
- 2 (2) one member shall be appointed for four years; and
- 3 (3) one member shall be appointed for six years.

4 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION: REGULATIONS. The adjutant general may adopt the code of military
7 justice and other regulations to implement AS 26.05.380 - 26.05.590, enacted by sec. 4 of this
8 Act. The code of military justice and other regulations take effect when approved by the
9 governor, but not before the effective date of the law being implemented.

10 * **Sec. 13.** Section 12 of this Act takes effect immediately under AS 01.10.070(c).

11 * **Sec. 14.** Except as provided in sec. 13 of this Act, this Act takes effect July 1, 2016.