

SENATE BILL NO. 110

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 4/15/15

Referred: State 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 the procedures for persons subject to court-martial proceedings;
4 relating to appeals of convictions and sentences of courts-martial; establishing the
5 Military Appeals Commission; relating to the detention and incarceration of members
6 of the militia; relating to the jurisdiction of the court of appeals; relating to involuntary
7 commitment for evaluation or treatment of a mental disease or defect before court-
8 martial proceedings; and providing for an effective date."

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

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

11 (h) The court of appeals has appellate jurisdiction in actions and proceedings
12 commenced in a military court for

(1) which a sentence of confinement is imposed, the right to appeal to the Military Appeals Commission under AS 26.05.538 has been exhausted, and a right to appeal is granted under AS 26.05.540; or

(2) an appeal by the state under AS 26.05.525.

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

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

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

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

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

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

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

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

Article 2. Code of Military Justice.

1 **Sec. 26.05.380. Regulations adopting code of military justice.** (a) The
 2 adjutant general shall by regulation adopt a code of military justice consistent with this
 3 chapter for members of the militia of the state not in federal service. The regulations
 4 must be approved by the governor.

5 (b) The code adopted under this section must

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

8 (2) provide for nonjudicial punishment;

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

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

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

19 (6) be organized and numbered in a manner consistent with 10 U.S.C.
 20 801 - 946 (Uniform Code of Military Justice) to the extent those provisions are
 21 applicable;

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

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

25 (9) provide a procedure for complaints of wrongs;

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

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

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

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

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

8 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** (a) The
9 code of military justice applies to a member of the militia in active state service who is
10 accused of or charged with an act or omission of a military offense.

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

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

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

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

30 (b) Courts-martial and courts of inquiry may be convened and held in units of
31 the militia of the state while those units are serving outside the state with the same

jurisdiction and powers granted under the code of military justice as if the proceedings were held inside the state. Military offenses committed outside the state may be tried and punished either inside or outside the state.

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

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

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

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

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

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

Sec. 26.05.420. Apprehension. (a) A member of the militia or a person

1 authorized under 10 U.S.C. 801 - 946 or the code of military justice to apprehend
2 persons subject to the code of military justice, a marshal of a court-martial, and a
3 peace officer or civil officer having authority to apprehend offenders under the laws of
4 the United States or of a state may apprehend a person subject to the code of military
5 justice upon probable cause that a military offense has been committed and that the
6 person apprehended committed the military offense.

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

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

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

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

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

30 (c) A person may not be arrested or confined unless the officer issuing the
31 order for arrest or confinement has probable cause to believe that a military offense

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

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

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

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

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

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

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

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

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

31 (b) When a sentence imposed in a court-martial proceeding under the code of

1 military justice is interrupted by the delivery of the offender to a civil authority under
 2 this section, and the offender is subsequently convicted and sentenced by the civil
 3 authority, competent military authority shall request the civil authority to return the
 4 offender to the custody of the military authority for completion of the sentence
 5 imposed by court-martial.

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 26.05.440. Jurisdiction of a special court-martial.** Subject to

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

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

- 3 (1) a person who may convene a general court-martial;
- 4 (2) the commanding officer of a garrison, fort, post, camp, station, Air
5 National Guard base, or naval base or station;
- 6 (3) the commanding officer of a brigade, regiment, detached battalion,
7 or corresponding unit of the United States Army;
- 8 (4) the commanding officer of a wing, group, separate squadron, or
9 corresponding unit of the United States Air Force; or
- 10 (5) a commanding officer or officer in charge of any other command
11 when empowered to do so by the adjutant general.

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

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

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

- 19 (1) a person who may convene a general or special court-martial;
- 20 (2) the commanding officer of a detached company or other
21 detachment or the commanding officer of a corresponding unit of the United States
22 Army;
- 23 (3) the commanding officer of a detached squadron or other
24 detachment or the commanding officer of a corresponding unit of the United States
25 Air Force; or
- 26 (4) the commanding officer or officer in charge of any other command
27 when empowered to do so by the adjutant general.

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

31 (c) A superior competent authority may convene a summary court-martial if

1 the superior authority considers it desirable.

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

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

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

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

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

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

31 (g) Before a court-martial is assembled for the trial of a case, the convening

1 authority may excuse a member of the court from participating in the case. The
2 convening authority may delegate the authority under this subsection to a judge
3 advocate or to a principal assistant.

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

9 (b) A military judge must be

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

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

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

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

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

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

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

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

1 counsel in the case.

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

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

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

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

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

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

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

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

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

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

31 (c) If a special court-martial, other than a special court-martial composed of

only a military judge, is reduced below three members, the trial may not proceed unless the convening authority details new members in sufficient number to restore the court to three members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a written stipulation of the evidence is read to the court in the presence of the military judge, the accused, and counsel for both sides.

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

Sec. 26.05.463. Charges and specifications. (a) Charges and specifications must be signed by a member of the militia in active state service under oath before a commissioned officer authorized by AS 26.05.545 to administer oaths. The charges and specifications must state

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

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

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

Sec. 26.05.465. Compulsory self-incrimination prohibited. (a) A member of the militia in active state service may not compel a person to make a self-incriminating statement or to answer a question the answer to which may tend to incriminate the person.

(b) A member of the militia in active state service may not interrogate or

1 request a statement from a person suspected of a military offense without first
 2 informing the person of the nature of the accusation and advising the person that the
 3 person does not have to make any statement regarding the military offense of which
 4 the person is accused or suspected and that any statement made by the person may be
 5 used as evidence against the person in a trial by court-martial.

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

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

13 **Sec. 26.05.468. Investigation.** (a) A charge or specification may not be
 14 referred to a general court-martial for trial until a thorough and impartial
 15 investigation has been made of all the matters set out in the charge or specification.
 16 The investigation must include inquiry into the truth of the matters set out in the
 17 charges, consideration of the form of the charges, and a recommendation as to the
 18 disposition that should be made of the case in the interest of justice and discipline.

19 (b) The accused has the right to be represented by counsel at an
 20 investigation. If the accused requests the appointment of military counsel, the
 21 investigating officer shall refer the request to the senior force judge advocate, who
 22 shall promptly detail defense counsel to represent the accused at the investigation.
 23 Defense counsel detailed under this section shall be qualified as provided for counsel
 24 in general or special courts-martial under AS 26.05.455.

25 (c) The authority investigating the accused shall

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

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

30 (3) give the accused the opportunity to present evidence on the
 31 accused's own behalf, either in defense or mitigation; the investigating officer shall

1 examine available witnesses requested by the accused.

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

5 (e) If an investigation of a military offense is conducted before the accused is
6 charged with the military offense and the accused is present at the investigation and
7 provided with counsel and an opportunity to cross-examine witnesses and present
8 evidence under (c) of this section, no further investigation of that charge is necessary
9 under this section unless the accused demands further investigation after the accused
10 is informed of the charge. A demand for further investigation entitles the accused to
11 recall witnesses for further cross-examination and to offer new evidence in the
12 accused's own behalf.

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

17 (1) present at the investigation;

18 (2) informed of the nature of each uncharged military offense
19 investigated; and

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

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

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

30 **Sec. 26.05.473. Advice of judge advocate and reference for trial.** (a) Before
31 directing the trial of a charge by general court-martial, the convening authority shall

1 refer it to a judge advocate for consideration and advice. The convening authority may
 2 not refer a specification under a charge to a general court-martial for trial unless the
 3 convening authority has been advised in writing by a judge advocate that

- 4 (1) the specification alleges a military offense;
- 5 (2) the specification is warranted by the evidence set out in the report
 6 of investigation under AS 26.05.468, if there is a report; and
- 7 (3) a court-martial has jurisdiction over the accused and the military
 8 offense.

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

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

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

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

21 **Sec. 26.05.475. Service of charges.** A trial counsel shall serve or caused to be
 22 served on the accused a copy of the charges. A person may not, against the person's
 23 objection, be brought to trial before a general court-martial within five days after the
 24 service of charges on the person, or before a special court-martial within three days
 25 after the service of charges on the person.

26 **Sec. 26.05.478. Unlawfully influencing the action of a court.** (a) An
 27 authority convening a general, special, or summary court-martial, a commanding
 28 officer, or an officer serving on the staff of a convening authority or commanding
 29 officer may not censure, reprimand, or admonish the court, a member of the court, the
 30 military judge, or counsel appearing before the court, with respect to the findings of or
 31 sentence imposed by the court, or with respect to another exercise of the respective

1 functions of the court, a member of the court, the military judge, or counsel appearing
2 before the court in the conduct of the proceedings.

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

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

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

13 (c) A member of the militia in active state service may not, in the preparation
14 of an effectiveness, fitness, or efficiency report, or any other report or document used,
15 in whole or in part, for the purpose of determining whether a member of the militia of
16 the state is qualified to be advanced in grade, in determining the assignment or transfer
17 of a member of the militia of the state, or in determining whether a member of the
18 militia of the state should be retained on active status,

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

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

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

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

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

(b) The form of the oath or affirmation, the time and place of taking, the manner of recording, and a determination of whether the oath or affirmation shall be taken for all cases in which the duties are to be performed or for a particular case, shall be prescribed in the rules of procedure adopted under AS 26.05.380. The rules may provide that, if a person takes an oath or affirmation with respect to a duty, the person need not take the oath or affirmation again on detailment to the duty.

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

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

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

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

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

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

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

(3) is committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or

1 settlement, of a contract, subcontract, or purchase order that is connected with or
 2 related to the prosecution of the war, or with the disposition of inventory by a war
 3 contractor or government agency.

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

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

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

15 **Sec. 26.05.488. Former jeopardy.** (a) A person may not, without the person's
 16 consent, be tried a second time for the same military offense.

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

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

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

30 (b) With respect to a charge or specification to which a plea of guilty has been
 31 made by the accused and accepted by the military judge or by a court-martial without

1 a military judge, a finding of guilty of the charge or specification may be entered
 2 immediately without vote. This finding shall constitute the finding of the court unless
 3 the plea of guilty is withdrawn before announcement of the sentence, in which event,
 4 the proceedings shall continue as though the accused had pleaded not guilty.

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

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

18 (c) A person who is not a member of the militia in active state service, who
 19 has been subpoenaed to appear as a witness or to produce books and records before a
 20 court-martial or court of inquiry or before a military or civil officer designated to take
 21 a deposition to be read in evidence before a court-martial, who has been paid or
 22 tendered the fees and mileage of a witness at the rates allowed to witnesses attending a
 23 criminal court of the state, and who wilfully neglects or refuses to appear or refuses to
 24 qualify as a witness or to testify or to produce evidence that the person may have been
 25 legally subpoenaed to produce is guilty of a violation and may be charged and
 26 punished as provided in AS 12.55.

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

30 (b) A military judge or summary court-martial officer may punish a member
 31 of the militia in active state service for contempt by confinement not to exceed 30 days

1 or a fine of \$100, or both.

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

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

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

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

14 (1) guilty;

15 (2) not guilty; or

16 (3) not guilty by reason of insanity.

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

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

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

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

28 (1) guilty;

29 (2) not guilty; or

30 (3) not guilty by reason of insanity.

31 (f) If an accused is found not guilty by reason of insanity, trial counsel shall,

1 within 24 hours, file a petition under AS 47.30.700 for a screening investigation to
2 determine the need for treatment if trial counsel has good cause to believe that the
3 defendant is suffering from a mental illness and, as a result, is gravely disabled or
4 likely to cause serious harm to self or others. In this subsection, "mental illness" has
5 the meaning given in AS 47.30.915.

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

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

23 (c) If the military court determines that the accused is incompetent to stand
24 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
25 47.30.915, the military judge shall order the convening authority to seek the assistance
26 of the attorney general in seeking a commitment under AS 12.47.110.

27 (d) If, at the end of a period of commitment under (b) and (c) of this section, it
28 is determined that the accused's mental condition has not improved so as to permit the
29 trial to proceed, the charges shall be dismissed without prejudice, and continued
30 commitment proceedings shall be governed by the provisions relating to civil
31 commitment under AS 47.30.700 - 47.30.915. If the accused remains incompetent for

1 five years after the charges have been dismissed under this subsection, the accused
 2 may not be charged again for a military offense arising out of the facts alleged in the
 3 original charges.

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

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

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

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

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

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

29 (b) The military judge shall rule on all questions of law and all interlocutory
 30 questions arising during the proceedings. A ruling made by the military judge on a
 31 question of law or an interlocutory question, other than the factual issue of mental

responsibility of the accused, is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if a member objects to a ruling, the court shall be cleared and closed, and the question shall be decided by a voice vote as provided in AS 26.05.505, beginning with the junior in rank.

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

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

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

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

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

(d) A military judge sitting without court members shall

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

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

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

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

(b) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote that indicates that the reconsideration is not opposed by the

1 number of votes required for that finding or sentence. A tie vote on a challenge
2 disqualifies the member challenged. A tie vote on any other question is a
3 determination in favor of the accused.

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

14 (b) In each general and special court-martial case resulting in a conviction, a
15 complete verbatim record of the proceedings and testimony shall be prepared. In all
16 other court-martial cases, the record shall contain the matters as may be prescribed by
17 the rules of procedure adopted under AS 26.05.380.

18 (c) Each summary court-martial shall keep a separate record of the
19 proceedings in each case, and the record shall be authenticated in the manner as may
20 be prescribed by the rules of procedure adopted under AS 26.05.380.

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

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

28 **Sec. 26.05.513. Punishments; maximum limits.** (a) A court-martial may not
29 impose a punishment for a military offense that exceeds the limits set out in the code
30 of military justice and may not impose a sentence of death. A sentence for a military
31 offense may not exceed 10 years. A crime for which a sentence of confinement for a

term of more than one year is authorized is a felony offense. Except for convictions by a summary court-martial and except as otherwise specifically provided in the code of military justice, all other military offenses are misdemeanors. A conviction by a summary court-martial is a violation.

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

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

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

(1) that had custody of the accused;

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

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

(c) In a case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under AS 26.05.525, 26.05.538, or 26.05.540 pending, the adjutant general may defer further service of the sentence to confinement while that review is pending.

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

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

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

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

14 **Sec. 26.05.523. Withdrawal of appeal.** In a case subject to appellate review
 15 under the code of military justice, the accused may, at any time, file with the
 16 convening authority a written statement expressly withdrawing the right of the accused
 17 to the appeal. The withdrawal shall be signed by both the accused and the accused's
 18 defense counsel and filed in accordance with the procedures adopted under
 19 AS 26.05.380.

20 **Sec. 26.05.525. Appeal by the state.** (a) In a trial by court-martial in which a
 21 punitive discharge may be adjudged, the state may appeal

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

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

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

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

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

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

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

9 (c) An appeal under this section shall be forwarded to the court of appeals
10 under AS 26.05.540. In ruling on the appeal, the appellate authority may act only with
11 respect to matters of law.

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

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

19 **Sec. 26.05.528. Vacation of suspension.** (a) A person who is serving a period
20 of probation under a sentence suspended by a special court-martial that, as approved,
21 includes a bad-conduct discharge, or a suspended general court-martial sentence, is
22 entitled to a hearing before the suspension is vacated. The probationer shall be
23 represented at the hearing by military counsel if the probationer requests
24 representation.

25 (b) If the suspended sentence was imposed by a special court-martial, the
26 officer having special court-martial jurisdiction over the probationer shall hold a
27 hearing on the alleged violation of probation. The record of the hearing and the
28 recommendation of the officer having special court-martial jurisdiction shall be sent
29 for action to the officer exercising general court-martial jurisdiction over the
30 probationer. If the officer vacates the suspension, the unexecuted part of the sentence,
31 except a dismissal, shall be executed, subject to applicable restrictions in the code of

1 military justice.

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

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

9 **Sec. 26.05.533. Restoration.** (a) In accordance with rules adopted under
10 AS 26.05.380, all rights, privileges, and property affected by an executed part of a
11 court-martial sentence that has been set aside or disapproved, except an executed
12 dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and
13 the executed part is included in a sentence imposed on the new trial or rehearing.

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

18 (c) If a previously executed sentence of dismissal is not imposed on a new
19 trial, the governor may substitute an administrative form of discharge, and a
20 commissioned officer dismissed under the original sentence may be reappointed by the
21 governor alone to the commissioned grade and rank that, in the opinion of the
22 governor, the former officer would have attained had the officer not been dismissed.
23 The 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. 26.05.535. Leave required to be taken pending review of court-**
29 **martial convictions.** In accordance with rules adopted under AS 26.05.380, an
30 accused who has been sentenced by a court-martial may be required to take leave
31 pending completion of action under this section if the sentence includes an

1 unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The
 2 accused may be required to begin the leave on the date on which the sentence is
 3 approved under the code of military justice, or at any time after that date, and the leave
 4 may be continued until the date on which action under this section is completed, or
 5 may be terminated at any earlier time.

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

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

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 a 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. 26.05.540. Appellate review.** (a) A person may, after exhausting all
18 remedies available under the code of military justice, appeal to the court of appeals the
19 conviction and sentence imposed by a general or special court-martial for a military
20 offense for which a sentence of confinement is imposed under the code of military
21 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. 26.05.543. 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 26.05.525, 26.05.538, or 26.05.540, and before any federal court when
27 requested to do so by the attorney general. Counsel appointed under this subsection
28 must be a member in good standing of the bar of the highest court of the state to which
29 the appeal is taken.

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

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

3 (d) Upon the request of an accused entitled to be represented under this
4 section, the senior force judge advocate shall detail a judge advocate to represent the
5 accused in the review or appeal of cases under (b) and (c) of this section. Counsel
6 detailed under this subsection shall be qualified as provided for counsel in general and
7 special courts-martial under AS 26.05.455(d).

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

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

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

- 16 (1) a judge advocate;
- 17 (2) a summary court-martial;
- 18 (3) the adjutant general and assistant adjutant generals;
- 19 (4) a commanding officer of the militia;
- 20 (5) a person authorized by statute or by regulations of the armed forces
21 of the United States or the state to administer oaths or act as a notary public.

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

- 24 (1) the president, military judge, and trial counsel for general and
25 special courts-martial;
- 26 (2) the president and the counsel for the court of a court of inquiry;
- 27 (3) an officer designated to take a deposition;
- 28 (4) a person detailed to conduct an investigation;
- 29 (5) a recruiting officer;
- 30 (6) a person authorized by statute or by regulations of the armed forces
31 of the United States to administer oaths or act as a notary public.

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

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

8 **Sec. 26.05.553. 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 the code of military justice, including
11 the fees and authorized travel expenses of witnesses, experts, victims, court reporters,
12 and interpreters, fees for the service of process, costs of collection, apprehension,
13 detention and confinement, pay and allowances for court-martial duty, and all other
14 necessary expenses of the prosecution and administration of military justice not
15 otherwise 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. 26.05.555. 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 on whom the fine was imposed fails to pay, the department
29 may collect 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;

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

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

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

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

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

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

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

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

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

(4) "cadet," "candidate," or "midshipman" means a person who is

1 enrolled in or attending a state military academy, a regional training institute, or any
 2 other formal education program for the purpose of becoming a commissioned officer
 3 in the militia of the state;

4 (5) "classified information" means

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

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

11 (6) "code of military justice" means the provisions of this chapter and
 12 the code adopted under AS 26.05.380;

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

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

17 (9) "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 (10) "day" means calendar day and is not synonymous with the term
 21 "unit training assembly";

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

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

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

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

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

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

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

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

4 (19) "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 (20) "record," when used in connection with the proceedings of a
8 court-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 (21) "senior force judge advocate" means the senior judge advocate of
15 the commander of the same force of the militia of the state as the accused and who is
16 that commander's chief legal advisor;

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

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

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

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

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

29 * **Sec. 7.** 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, 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 Alaska [ALASKAN] veterans, including
 12 establishing, 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 uncoded 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 uncoded 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 26.05.538, 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 shall adopt regulations to
7 implement AS 26.05.380 - 26.05.590, enacted by sec. 4 of this Act. The regulations take
8 effect when approved by the governor, but not before the effective date of the law being
9 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.