

HB

126 -

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HOUSE JUDICIARY COMMITTEE

SECTIONAL ANALYSIS

CS for HB 126

29-LS0473\E

CODE OF MILITARY JUSTICE; APPEALS

Section 1, page 1 – amends 22.07.020. Designates the jurisdiction of the court of appeals over actions and proceedings in a military court;

Section 2, page 2 – amends 26.05.140(a). Eliminates protection from criminal liability for Guard members charged with crimes resultant from their duties and clarifies that any exemption from liability will not apply to offenses under the Alaska Code of Military Justice.

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

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

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

Other sections in the new Code of Military Justice include:

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

- Sets jurisdiction of the military code over deserters and fraudulently discharged personnel and those members who commit their offense outside of the state or live outside of the state when charged with the offense, p.4;
- Details the duties and qualifications of those who serve as judge advocates, p.5;
- Defines who may apprehend members accused of a military offense and how that apprehension is to take place, p. 5-6;
- Defines how a member may be arrested, under what conditions they may be arrested, who may do so, and how they may be confined, p. 6-7;
- Defines how a member accused of a military offense may be delivered to a civilian authority, p.7;
- Describes the composition, duties, terms of service, jurisdictions, and convening authorities of courts-martial, p.8-11;
- Lays out requirements for who may serve on courts-martial, and specifies that a Guardsman cannot be tried by a service member lower ranking than themselves, p. 11.
- Provides the requirements for military judges, p. 12
- Describes the duties and qualifications of trial counsel, defense counsel, assistant counsel, court reporters, and interpreters of courts-martial, p. 11-12;
- Specifies the procedures for bringing charges against a member. p.13;
- Prevents the self-incrimination of the accused, p.13;
- Defines the investigatory process,p.14;
- Lays out how charges may be processed and the procedures for continuances, oaths of office for court officers,p.15-17;
- Defines the statutes of limitations for military offenses,p.19;
- Prohibits double jeopardy charges and describes how pleas of the accused are to be processed,p.19;
- Defines how subpoenas and contempt of court charges are to be processed,p.19-20;
- Provides for an insanity defense for the accused and the determination for mental competency of the accused, p. 20-23;
- Describes the procedures for voting and ruling in courts-martial,p.23-24;
- Requires the recording of courts-martial,p.24-25;
- Describes the allowable punishments and sentences and prohibits cruel and unusual punishments,p. 25-27;
- Describes the appeals process in the military code, including appeals by the state,p.27-28;
- Allows for a vacation of suspension under certain circumstances,p.28;
- Allows for the accused to petition for a new trial and the restoration of privileges,p.28-29;
- Describes the composition and duties of the Military Appeals Commission,p.29-32;
- Defines who may administer oaths for the purposes of military administration proceedings,p.32;
- Allows for the governor to delegate authority for the code of military justice,p.32;
- Creates a military justice account in the general fund,p.33;
- Describes the system of paying and collection of fines associated with the military code,p.33;
- Describes the pay scale of officers and witnesses of the courts-martial,p.33-34;

- Provides immunity for persons who acted pursuant to their duties under the military code,p.34;
- Defines terms associated with the new Article,p.34-36;

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

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

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

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

Section 9, page 37 – Repeal section;

Section 10, page 37 – Applicability clause;

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

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

Section 13, page 38 – Effective date for section 12

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



ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

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HOUSE BILL 126

(29-LS0473\W)

SPONSOR STATEMENT

Alaska's military command has asked for a greater ability to pursue and prosecute those service-members who violate military rules and protocols. House Bill 126 honors that request and lays out a blueprint for administrative procedures for use by National Guard leadership in the state.

Alaska would not be the first state to adopt a state code of military justice and House Bill 126 shares many similarities with the codes from Arizona, Pennsylvania, Oregon and Minnesota. HB 126 will establish authority for the convening of courts-martial for various crimes conducted by National Guard members in Alaska and allows service-members to be delivered to a civilian authority for trial and confinement.

In close and continuing consultation with the National Guard and the Department of Military and Veterans Affairs, the Judiciary Committee looks forward to the swift passage of HB 126 and guaranteeing the safety of Alaskans and the security of our law-enforcement procedures.

Seeing how badly Alaska's military justice system failed to protect victims and punish serial abusers, HB 126 is timely and necessary.

We urge your support of this legislation.

LEGAL SERVICES

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MEMORANDUM

February 23, 2015

SUBJECT: Alaska Code of Military Justice (Work Order No. 29-LS0473\A)

TO: Representative Gabriel LeDoux
Attn: Thomas Brown

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the draft bill you requested adopting a model state code of military justice (model code.)

The model code. A document entitled "Model State Code of Military Justice" was developed by the National Guard Bureau as the result of a provision of Pub. L. 107 - 314, div. A, title V, sec. 512(e), Dec. 2, 2002, that required the U.S. Department of Defense to prepare a model state military code and manual for courts-martial.¹ I have used a copy of the code available from the website of the American Bar Association's Standing Committee on Armed Forces Law.²

The approach to drafting. I reviewed the Arizona adaptation of the model code as you requested, as well as Pennsylvania's, as Mr. Brown requested. I also reviewed other state codes, including Minnesota and Oregon. In Oregon the offenses and much of the procedure are set out in orders of the adjutant general. Its appeals process is before a separate military appeals court.³ Oregon's approach was based on the premise that it

¹ Maj. Robert L. Martin, "Military Justice in the National Guard: A Survey of the Laws and Procedures of the States, Territories, and the District Of Columbia," *Army Lawyer* at 30, note 10. (December 2007). The article does not appear to have a direct link but is available online in a PDF format by typing the title and author in a search engine.

² See http://www.americanbar.org/groups/committees/armed_forces_law.html. The document may be obtained by clicking on "Model State Code of Military Justice" in the middle of the right column of the page. I could not locate an "official" copy on the website of the National Guard Bureau.

³ Oregon Revised Statutes 396.125 - 128 (authority to adopt code); Oregon Revised Statutes ch. 398 (Military Justice.) (ORARNGR 27-5 / ORANGR 51-20 1 / 01 Feb. 2010). The regulations may be located on the website of the Oregon National Guard

promoted consistency between federal and state law, important for members of the National Guard who may be called upon to transition between federal service where federal military law applies, and state service.⁴

Mr. Brown expressed an interest in this approach so I have drafted the bill in a manner similar to Oregon's approach. It contains a provision authorizing the adoption of a code of military justice by the adjutant general, with the approval of the governor.⁵ I included more provisions of the model code in statute than are found in Oregon's statute because they appear to me to be matters on which the legislature may wish to set policy, including convening authority for courts-marital, maximum sentences, limitations on confinement, and the like. Please review the remaining statutory provisions and let me know if you would prefer otherwise. In keeping with your request to adopt the model code, I retained model code language in the remaining statutory provisions, as discussed in more detail below.⁶ However, as I discussed with Mr. Brown, the model code is inconsistent with the

Trial defense services. <http://www.oregon.gov/OMD/JAG/pages/index.aspx> (lower right column.)

⁴ "Senate Bill 32 is a housekeeping measure requested by the Oregon Military Department. The Legislature authorized the Oregon National Guard (ORNG) to promulgate the Oregon Code of Military Justice (OCMJ) by agency administrative regulation. The OCMJ Regulation is based on the Model Code of Military Justice recommended by the National Guard Bureau to create a seamless military justice system which enables Servicemembers to transition from State to Federal jurisdiction when called to Active Duty. To the extent allowed under Oregon law, the Oregon Code of Military Justice mirrors the punitive standards and organizational systems of the Uniform Code of Military Justice (UCMJ). The OCMJ now enables Servicemembers to transition from Guard status to Active Duty status without varying standards or expectations. It also modifies statutes of limitation to match federal standard and eliminates redundant or contradictory statutory language. Senate Bill 32 completes the process of transitioning the OCMJ to an administrative regulation which is capable of quickly adapting to the federal military standards promulgated by Congress under the UCMJ." Oregon State Bar, Public Affairs Department, "2013 Oregon Legislation Highlights" at 23 - 24 (2013) (available at www.osbar.org).

⁵ Because there does not appear to be an "official" model state code, I made direct reference to the federal uniform code as the guide to the state instead. You may wish to check with the National Guard to find out if there is an official publication so I can determine whether it is suitable for citation in the Alaska Statutes and, if so, substitute it for the federal reference.

⁶ I did take the liberty of borrowing Oregon statutes allowing prehearing release for minor offenses. See AS 26.05.425, an option that is not listed in the code. Please let me know if you would prefer that it be removed.

state's drafting manual and raises significant constitutional questions. In addition, as Mr. Brown and I later discussed, the model code does not spell out specific sentences for most offenses - a person must consult federal or state procedural manuals to determine them. The movement of the offenses to regulation poses similar challenges.

Effect on existing statutes. This draft changes the convening authority for courts-martial, removes state law limitations on the sentences for military crimes, and makes other changes for consistency.⁷ As I discussed with Mr. Brown, the draft includes the model code's military court-martial procedures, but does not include the model code provision that allows the prosecution of state criminal offenses in military courts if they have a "nexus" with military service. Thus, offenses not purely military in nature are to be tried in state court. AS 26.05.300, an existing declaration of this policy, is retained, but renumbered as AS 26.05.400, as the opening section of the military justice code.⁸

Constitutional issues raised by the model code. Much of the model code will be in regulation. However, whether in statute or regulation, it raises a number of constitutional questions.

Art. I, sec. 8, cl. 16 of the United States Constitution empowers Congress to "provide for . . . disciplining" and the authority "of training the militia according to the discipline prescribed by Congress." Currently, Congress prescribes the types of courts-martial and generally requires them to follow federal forms and procedures:

⁷ For example, Article 22 of the model code (AS 26.05.445 in the draft) authorizes the governor, an adjutant general, or certain commanding officers to convene a general court-martial. Under AS 26.05.320, only the governor can convene a general court-martial.

⁸ It should be noted that AS 26.05.060, 26.05.190(a), 26.05.320(b), and AS 26.05.340, currently authorize the governor and the adjutant general to adopt regulations generally, and specifically with respect to military courts. In *State, Department of Military and Veteran's Affairs v. Bowen*, 953 P.2d 888 (Alaska 1998), a case concerning a non-court-martial matter, the Alaska Supreme Court observed that AS 26.05.340(d) presently authorizes regulation by the governor and the adjutant general, but "[no] such regulations have been adopted." *Id.* at 899 - 900. AS 26.05.320 authorizes the governor and the adjutant general to adopt regulations for the general court-martial. To my knowledge, no regulations have been adopted under AS 26.05.320.

AS 26.05.320 requires the regulations to take into account the state's limited facilities for confinement and the "peculiar characteristics of the state." *See also* AS 26.05.310, which directs consideration of federal forms and procedures in establishing military courts, similarly counsels consideration of the practical effects of financing, personnel, and administration. However, such regulations could, subject to the foregoing limitations, incorporate the model code or the federal uniform code of military justice into such regulations.

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts. Punishments shall be as provided by the laws of the respective States

32 U.S.C. 326.⁹ However, at present federal law does not impose the model code or its provisions as a mandate. A state must comply with the state and federal constitutions.¹⁰ Further, it does not seem likely that a state will be able to invoke certain "military exceptions" to settled constitutional protections for criminal defendants including the

⁹ A state statute that conflicts with federal law enacted under art. I, sec. 8, cl. 16 can be overturned as unconstitutional -- when it has prescribed a process or punishment, a conflicting state punishment will be overturned. *State ex rel. Games-Neely v. Sanders*, 575 S.E.2d 320, 324 - 25 (2002) (state statute providing mandatory jail time for "missing movement" invalidated under art. I, sec. 8, cl. 16 because 32 U.S.C. 327 - 330 in effect at the time the case was decided had specific sentencing limitations and did not authorize a mandatory jail term). Federal law preempts state action given "the supremacy of federal powers in military affairs." *Perpich v. Department of Defense*, 496 U.S. 334, 350 - 52 (1990) (a governor may not veto the federalization of a state's national guard; rights reserved to state under art. I, sec. 8, cls. 15 and 16 are subordinate).

¹⁰ In a discharge case filed by an officer in the organized state militia challenging his termination from the militia on the grounds that his right to due process had been violated, the Alaska Supreme Court rejected the state's arguments that state courts lacked jurisdiction over the case -- which the court held was in fact a supremacy clause argument, that the officer's claims were preempted by federal law. *Bowen, supra*, 953 P.2d at 893 - 94. (*DMVA v. Bowen*), 953 P.2d 888, 893 - 94 (Alaska 1998). The Court noted:

While the federal government might have acted to regulate comprehensively the administration of the AGR program in the Alaska Air National Guard, it has not done so. Examination of two federal laws shows this. First, 32 U.S.C. § 324(b) allows termination of a National Guard officer "as provided by the laws of the State." Congress has chosen to affirm, rather than abridge, the states' role in terminating officers of their National Guards. This is clear recognition that state law may provide additional termination requirements.

Id. at 894 - 95.

right to a trial by jury.¹¹ This seems especially so in light of the fact that many service members will be serving part time, not subject to military jurisdiction for most of their daily lives. A state undertaking to adopt the model code is acting under color of state law, and is likely to be required to comply with the state and federal constitutions, even if it adopts federal law and procedure verbatim.¹²

Court-martial procedure does provide many of the constitutional safeguards afforded criminal defendants in civilian courts.¹³ Further, a court-martial may be held for conduct

¹¹ The "military exception" is a federal doctrine. Under it, among other things, a defendant in a court-martial is not entitled to a jury trial under the Sixth Amendment. The doctrine is built on the military exception to the grand jury requirement expressly provided in the Fifth Amendment, but is generally explained as judicial deference to Congress in enacting laws governing the military, (the "make rules" clause of art. I, sec. 8, cl. 14) and the need of the military to maintain order and discipline. *Solorio v. U.S.*, 483 U.S. 435, 439 - 41, 447 - 49 (1987) (court-martial had jurisdiction to try sexual abuse charges committed off base because of defendant's status as a service member; overruled prior requirement that a crime must be service-connected to be tried in a court-martial). The exception has been criticized as inadequate to support the deprivation of constitutional rights even for members of the regular armed forces. Stephen I. Vladek, "Military Courts and Article III," 103 *Georgetown Law Journal*, 2015, Forthcoming. (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419342). See also Frederick Bernays Wiener, "Courts-Martial and the Bill of Rights: The Original Practice?," 1975 *Mil. L. Rev.* 171 (September, 1975).

Some states apparently follow the federal lead with respect to the military exception. *State v. Davis*, 2010 WL 4278277 at 5 - 6 (La. Ct. App. November 1, 2010) (unreported). However, the Alaska Supreme Court has rejected such deference with respect to constitutionally guaranteed due process, at least in a civil matter. *Bowen, id.* at 896 (finding that a determination whether a state agency had violated the rights of a state employee was not a matter "of military expertise or one which causes interference with a military mission").

¹² See *Gilliam v. Miller*, 973 F.2d 760, 763 - 64 (9th Cir. 1992) (Oregon adjutant general acting under color of a state statute when he terminated National Guard members for failing to meet federal training standards adopted by the Oregon legislature for Oregon guard members).

¹³ In commentary to the model code, the drafters suggest that because the court-martial is a statutory court, some state constitutional protections may not apply. Model Code, Annotations to Article 52. The United States Supreme Court has held that the Sixth Amendment guarantee of the right to counsel does not apply to summary courts-martial in light of the opportunity to object (which carries with it the risk that higher penalties may be imposed in a general or special court martial), and that the Fifth Amendment guarantee of due process does not require the advice of counsel to

that is not criminal, or a purely disciplinary purpose.¹⁴ And some conduct must be addressed during a military mission, or to protect the safety of others. However, for some cases, the provisions of the model code incorporated in this draft or in the code to be adopted into regulation, may implicate the rights of state militia members under the state and federal constitutions tried by a court-martial for offenses for which a jail term is a possibility.

Grand Jury; Fifth Amendment of the U.S. Constitution and art. 1.8 of the Constitution of the State of Alaska. Both the state and federal constitutions require a grand jury indictment for a serious crime, but contain exceptions for the armed forces.¹⁵

assist in articulating defense or mitigating circumstances; the Court noted that Congress's determination not to provide for a summary court-martial was entitled to deference under art. I, sec. 8. *Middendorf v. Henry*, 425 U.S. 25, 34, 43 and 46 - 47 (1976) (enlisted Marines who agreed to summary courts-martial for unauthorized absences that resulted in sentences of confinement to a summary court-martial could not object to the results). It is not clear whether an Alaska court will agree.

¹⁴ The purpose of nonjudicial punishment has been held to be noncriminal in nature:

As noted, "[n]onjudicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction." Thus, a primary purpose of NJP is to maintain military order, a purpose distinct from those underlying traditional criminal punishment.

Indeed, military "discipline is not achieved exclusively or even primarily through use or threat of the military criminal law process, the court-martial." "Commanders use a combination of tools to maintain discipline, including leadership by example, training, corrective measures, administrative actions authorized by applicable regulations, and NJP. . . ."

United States v. Reveles, 660 F.3d 1138, 1145 (9th Cir. 2011) (citations omitted).

¹⁵ The Fifth Amendment provides:

Amendment V. No person shall be held to answer for a capital, or otherwise infamous crime, *unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger*; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

Both provisions refer to the exception in connection with a time of war or public danger. Federal case law does not seem to apply "when in actual service in time of war or public danger" as a modifier of the land and naval forces provision; however, it does modify the militia provision.¹⁶ The state provision is clearly tied to periods of war and public danger, which suggests that a felony level charge may not withstand a challenge unless it occurs during a military operation that meets the condition. It is worth noting, though, that the model code has a relatively thorough investigatory process in which, unlike a grand jury proceeding, the defendant can be represented, present evidence, and examine witnesses. AS 26.05.495. Model Code, Article 32.

process of law; nor shall private property be taken for public use, without just compensation. [Emphasis added.]

Art. I, sec. 8 provides:

SECTION 8. Grand Jury. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases *arising in the armed forces in time of war or public danger*. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended. [Emphasis added.]

¹⁶ *Johnson v. Sayre*, 158 U.S. 114 - 15 (1895). However, this likely refers to the militia when in federal service:

This provision is intended "to prevent persons not subject to the military law from being held to answer for a capital or otherwise infamous crime without presentment or indictment by a grand jury," the words "when in actual service," etc., referring to the militia and not to "land or naval forces," because, as said by Mr. Justice Gray, "All persons in the military or naval service of the United States are subject to the military law, the members of the Regular Army and Navy at all times -- the militia so long as they are in such service." *Johnson v. Sayre*, 158 U. S., 109, 114. And a reason for referring the clause "when in actual service in time of war or public danger" to the militia and not to the Army or Navy is said to be found in the fact "that it is only at those times that the militia are under the jurisdiction and control of the General Government," while the Army and Navy of the United States are always in the service of the Government.

Alabama Great S. R. Co. v. United States, 49 Ct. Cl. 522, 534 - 35 (1914).

Double Jeopardy; art. 1, sec. 9. Nonjudicial punishment is not a bar to a court-martial for a more serious crime arising out of the same act, Model Code, Article 15. A court-martial will bar a subsequent civilian prosecution for the same offense but in the regular armed forces, a nonjudicial punishment is not deemed a criminal punishment for the purpose of the protection against double jeopardy under the Fifth Amendment.¹⁷ Whether the Alaska courts will take the same view under art. 1, sec. 15 may depend on the effect of the nonjudicial punishment.¹⁸

Right to jury trial: Sixth Amendment to the United States Constitution; art. I, sec.11, Constitution of the State of Alaska. A general or special court-martial is like a jury trial in that the finder of fact composed of a group of service members, subject to challenge by the parties, who hear the facts and determine guilt. Model Code, Articles 25 and 41. However, the members are selected by the convening authority, Model Code, Article 25(f). The verdict need not be unanimous. Under federal law, the right to a jury trial under the Sixth Amendment does not apply to courts-martial.¹⁹ Under art. I, sec. 11 of the Constitution of the State of Alaska, a defendant subject to criminal prosecution is entitled to the unanimous verdict of a jury.²⁰ While some offenses under the model code

¹⁷ *U.S. v. Reveles*, 660 F.3d 1138, 1145 (9th Cir. 2011) (nonjudicial punishment not "punitive").

¹⁸ *Cf. Aaron v. City of Ketchikan*, 927 P.2d 335 (Alaska App. 1996) (administrative action on drivers license does not preclude drunk driving charge). *But see Doe v. State*, 189 P.3d 999, 1019 (Alaska 2008) (in case using analysis similar to *Reveles* for an ex post facto challenge to Alaska's sex offender registration law, Court treated law as punitive under art. I, sec. 9 of the Constitution of the State of Alaska, even though United States Supreme Court had upheld the law under the federal ex post facto clause, art. I, sec. 9, cl. 3 of United States Constitution).

¹⁹ *Reid v. Covert*, 354 U.S. 1, 35 - 40 and notes 44 and 68 (1957) (case concerned limitations on ability of military courts to try civilians; noting that in contrast military justice was substantially different, that military courts did not provide the right to a jury trial at common law, and that the application of the bill of rights was uncertain). At least one state court has observed that a member of a state militia is not entitled to a jury trial under the state constitution because it was unavailable in a military court at common law. *Application of Palacio*, 238 Cal.App.2d 545, 551 (1965) (dicta) (petitioner released because not afforded opportunity to demand a special or general court-martial before confined after summary court-martial.) *See also Miller v. Rockefeller*, 327 F.Supp. 542, 547, n. 5 (S.D.N.Y. 1971).

²⁰ Art. I, sec. 11 provides:

SECTION 11. Rights of Accused. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not

may not be considered criminal prosecutions, the prosecution of a violation of state law or regulation that has incarceration as a potential result is likely governed by art. I, sec. 1.

Other legal issues.

Attorneys. The model code "deems" that military judges and defense counsel may appear pro hac vice if they are not admitted to the Alaska Bar. *See*, Articles 26 and 27 of the model code. (Trial counsel, the prosecutor, must be admitted to the Alaska Bar.) I have eliminated the Alaska admission requirement for the judge, instead requiring a bar membership. AS 26.05.453.²¹ Defense counsel may practice as authorized by the Alaska

more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

(Emphasis supplied.) In *Baker v. City of Fairbanks*, 471 P.2d 386 (Alaska 1970) the Alaska Supreme Court held that the right to a jury trial to any criminal prosecution of an offense that includes:

a direct penalty for which may be incarceration in a jail or penal institution. It also includes offenses which may result in the loss of a valuable license, such as a driver's license or a license to pursue a common calling, occupation, or business. It must also include offenses which, even if incarceration is not a possible punishment, still connote criminal conduct in the traditional sense of the term.

Excluded from the requirement of jury trial are such relatively innocuous offenses as wrongful parking of motor vehicles, minor traffic violations, and violations which relate to the regulation of property, sanitation, building codes, fire codes, and other legal measures which can be considered regulatory rather than criminal in their thrust, so long as incarceration is not one of the possible modes of punishment.

Id. at 402 - 03. The revocation of a valuable license is subject to trial by jury if the court, rather than an administrative agency is required to revoke a license on conviction of certain offenses. *State v. District Court*, 927 P.2d 1295, 1296 - 97 (Alaska Ct. App. 1996). A unanimous jury is constitutionally required. *Khan v. State*, 278 P. 3d 893, (Alaska 2012); *Andres v. United States*, 333 U.S. 740, 748-49 (1948).

²¹ The drafters of the model code envisioned the use of out-of-state judges. Model Code, Article 26 commentary.

Supreme Court.²² The bill authorizes Appeals Commission members to serve with an out-of-state license. To the extent that service is construed to be the practice of law, the member may require a waiver under Civil Rule 81 as well.

Lack of specific sentences and maximum sentences in statute. Under federal law, the President sets maximum sentences. 10 U.S.C. 856. The model code refers to this source as part of the calculation of maximum sentences for offenses for which a sentence is not otherwise specified -- it is to be the lesser of the federal maximums and those adopted under the rules of procedure to be adopted under AS 26.05.380.²³ The Model Code has a general set of limitations. Model Code, Article 56. This draft adopts these provisions, AS 26.05.478. Under Article 137 of the model code an enlisted person must have certain the provisions of the code explained on entry into service, after the completion of basic training, and on reenlistment. A person reviewing the code would not find the penalties for many offenses in the code itself, but in either the federal or state procedure manuals.²⁴ If the model code is adopted, the upper limit will be guided by the adjutant general and the upper limit set as in federal law, even though Congress has authorized the states to set penalties under 32 U.S.C. 326. Under current law, AS 26.05.320 - 26.03.324, the penalties are set out in statute. These statutes are repealed in the bill.²⁵

²² Under Alaska Rule of Court, Civil Rule 81, applicable to criminal proceedings under Criminal Rule 50, an attorney may practice "in the courts of the state" under certain circumstances, and under Bar Rule 43.1, an active duty attorney representing clients in the regular armed services may receive a waiver. If a court-martial is a "court of this state," Rule 81 may apply, but the courts-martial are not actually within the judicial branch, but are instead an arm of the executive branch. Counsel in a court-martial are, however, practicing law. This raises the question whether the court's general authority over the practice of law precludes legislation. (The Alaska Supreme Court's authority to regulate and govern the practice of law comes from the court's exercise of its inherent judicial power and jurisdiction in art. IV, sec. 1 of the Constitution of the State of Alaska. See, e.g., *Citizens for Tort Reform, v. McAlpine*, 810 P.2d 162, 170 - 71 (Alaska 1991); *In re Stephenson*, 511 P.2d 136, 142 (Alaska 1973); *Application of Steelman*, 448 P.2d 817, 819 (Alaska 1969); *In re MacKay*, 416 P.2d 823, 836 - 37 (Alaska 1964). In the *Stephenson* case, the Court held that requirements in the Bar Rules regarding the admission to practice law prevailed over the Alaska Statutes, due to the court's exclusive and inherent authority which derives from art. IV, sec. 1, Constitution of the State of Alaska.

²³ See enclosure.

²⁴ See Manual for Courts-Martial United States (2012), 884 pages. The Manual can be obtained in pdf form from this link: www.apd.army.mil/pdf/FILES/mcm.pdf (last viewed February 14, 2015).

²⁵ The maximum sentence of confinement is presently 60 days. AS 26.05.320 (general court-martial).

Extra territorial jurisdiction. AS 26.05.408 (Model Code, Article 5) provides that the code can be applied to out of state conduct. This may apply, for example, to conduct that occurs while the militia is deployed under a mutual aid compact. AS 26.23.136; AS 26.25. However, it is not clear that a state court-martial for a state military offense will have extraterritorial jurisdiction to serve process. Model Code, Article 46. Whether the broad reach of the provisions concerning the apprehension of defendants is authorized for a state military crime is also unclear. AS 26.05.420; (Article 7 of the model act).²⁶

Extradition. The bill draft at sec. 26.05.420(c), provides for apprehension of an offender of the military justice code "in accordance with applicable extradition procedures or by reciprocal agreement." However, under AS 12.70.210, the Uniform Criminal Extradition Act adopted by the state applies only to a person "charged with a crime or breaking the terms of probation and parole." It is unclear whether the model code is intended to provide for new military crimes since the code refers to them as "offenses" and since the code contemplates court-martial proceedings for those offenses. On the other hand, sec. 26.05.478 describes the maximum penalties for military offenses in terms of felonies, misdemeanors, and violations. Since the Uniform Criminal Extradition Act may not be modified to expressly add military offenses, the bill draft creates an ambiguity with respect to which extradition procedures may apply under the new military code, particularly with respect to violations tried by summary court-martial.

Controlled substances. As noted above, this bill draft does not set out criminal offenses -- they are in the model code. However, I wanted to alert you that Article 112a of the code establishes a military offense for wrongful use or possession of a controlled substance and defines controlled substance in a way that is inconsistent with state law that relies on a schedule established by the President of the United States for the purposes of the U.S. Armed Forces.

Rules of Evidence. The model code fails to identify the rules of evidence that are applicable to court-martial proceedings but seems to contemplate the use of the federal military code rather than state rules. However, sec. 26.05.380 authorizes the adjutant general to establish rules of procedure and other secs. describe witness examination and cross-examination procedures. The cases are appealable through state courts. Therefore, I have added a requirement at sec. 26.05.380(b) that the rules must be consistent with the Alaska Rules of Evidence. That caveat may not adequately address the state constitutional issues raised in sec. 3 of this opinion, particularly with respect to Alaska's unique criminal rules of procedure pertaining to discovery and rights of the accused. Both the state rules of evidence and criminal procedure reflect differences between Alaska's constitutional protections and those provided by the federal constitution.

²⁶ It is also unclear whether the interstate compact on detainers, which includes the federal government, applies to state military prisoners. AS 33.35.010 - 22.35.040; 18 U.S.C. Appendix.

Contempt. Articles 46 and 47 of the Model Code provide for issuance of subpoenas and contempt orders on civilians. The model code draws no distinction between contempt committed in the court's presence and those, including refusal to obey a subpoena, that are not. We have added a requirement that the contempt must be direct. But we have serious doubts about the authority of military courts to enforce a subpoena or contempt order against a civilian. We have added in AS 26.05.460, 26.05.463 and 26.05.465 concerning the authority to issue subpoenas, a provision authorizing the adjutant general to seek the assistance of the attorney general in enforcing them.²⁷ Oregon's statute provides specific contempt authority to military courts.²⁸ However, it does not seem appropriate to confer such powers on tribunals with so limited a jurisdiction.²⁹ The contempt for failure to obey a subpoena should arise only on a violation of a court order. We have amended the Model Code's articles 46 and 47 to address these issues.

Insanity defense. This draft includes statutory provisions to permit the military courts to address the insanity defense that is provided in the model code.³⁰ AS 12.47.030 and 12.47.040 currently provide for an additional defense to crimes not included in the model code for persons guilty but mentally ill. Do you want to add that defense to the military code?

If I may be of further assistance, please advise.

KJS:dla
15-101.dla

Enclosure

²⁷ In Alaska, a court asked to enforce a subpoena must determine whether the agency seeking to enforce it an agency has statutory authority to issue it. *Tesoro Petroleum Corp. v. State*, 42 P.3d 531, 541 (Alaska 2002). We have adopted some language from Oregon Revised Statutes 390.408, which seems more consistent with state law than Article 46 of the Model Code. Please let me know if you prefer the Code language.

²⁸ Oregon Revised Statutes 398.226; *see also* ORARNGR 27-5 / ORANGR 51-20-1 at 30 - 31.

²⁹ Alaska, remedies and proceedings for criminal contempt apply to court proceedings, and specific acts. AS 09.50.010 - 09.50.060.

³⁰ Oregon includes these provisions in regulation, but I thought it better to have a procedure explicitly authorized by the legislature, since other state departments and facilities are involved. ORARNGR 27-5 / ORANGR 51-20-1 at 45 - 47. The model code provides that state law should apply. Model Code, art. 76a.

Alaska Code of Military Justice

HB 126 AND THE ALASKA NATIONAL GUARD

AK National Guard Funding



General Fund
\$4,991.7 K

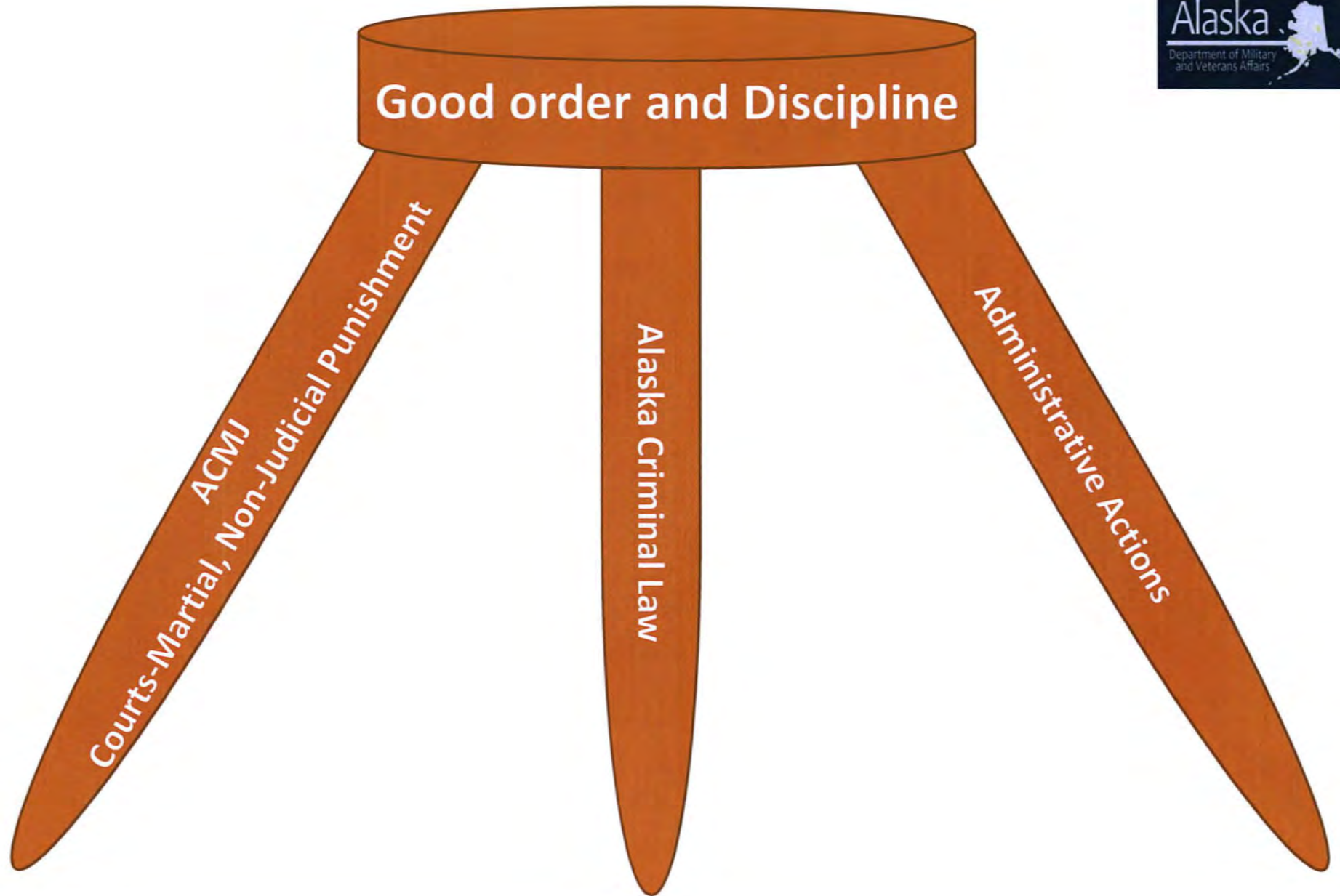
Federal Receipt Authority
\$6,083 K

Direct Federal Payments
\$262,352.6 K

\$53.78 Federal dollars received for every State dollar spent

Key Points on HB 126 & ACMJ

- **HB 126 serves as enabling statute for AKNG to develop and enforce ACMJ and Non-Judicial Punishment Regulation.**
- **HB 126 and enabling regulations will address constitutional requirements for Due Process.**
- **ACMJ is the correct mechanism to assist establishment of a healthy organizational culture and maintain good order and discipline.**
- **Courts-martial do NOT replace civilian criminal law enforcement; strictly address MILITARY OFFENSES.**
- **Number of courts-martial per year difficult to forecast; AK Guard predicts infrequent steady-state utilization (<1 per year in WA and OR).**



Existing Relevant Law

1. Territorial Era Military Code

- Title 26 of Alaska Statutes
- Does NOT lay out specific offenses under a Code of Military Justice
- Minimal procedural or due process guidance

2. Federal Uniform Code of Military Justice (UCMJ)

3. Alaska state criminal code

Examples of Service-member Statuses

1. Title 32

- Traditional “weekend Soldiers/Airmen”
- Active Guard Reserve (AGR) → Full-time Guard status; salaries paid by federal, but commanded by state

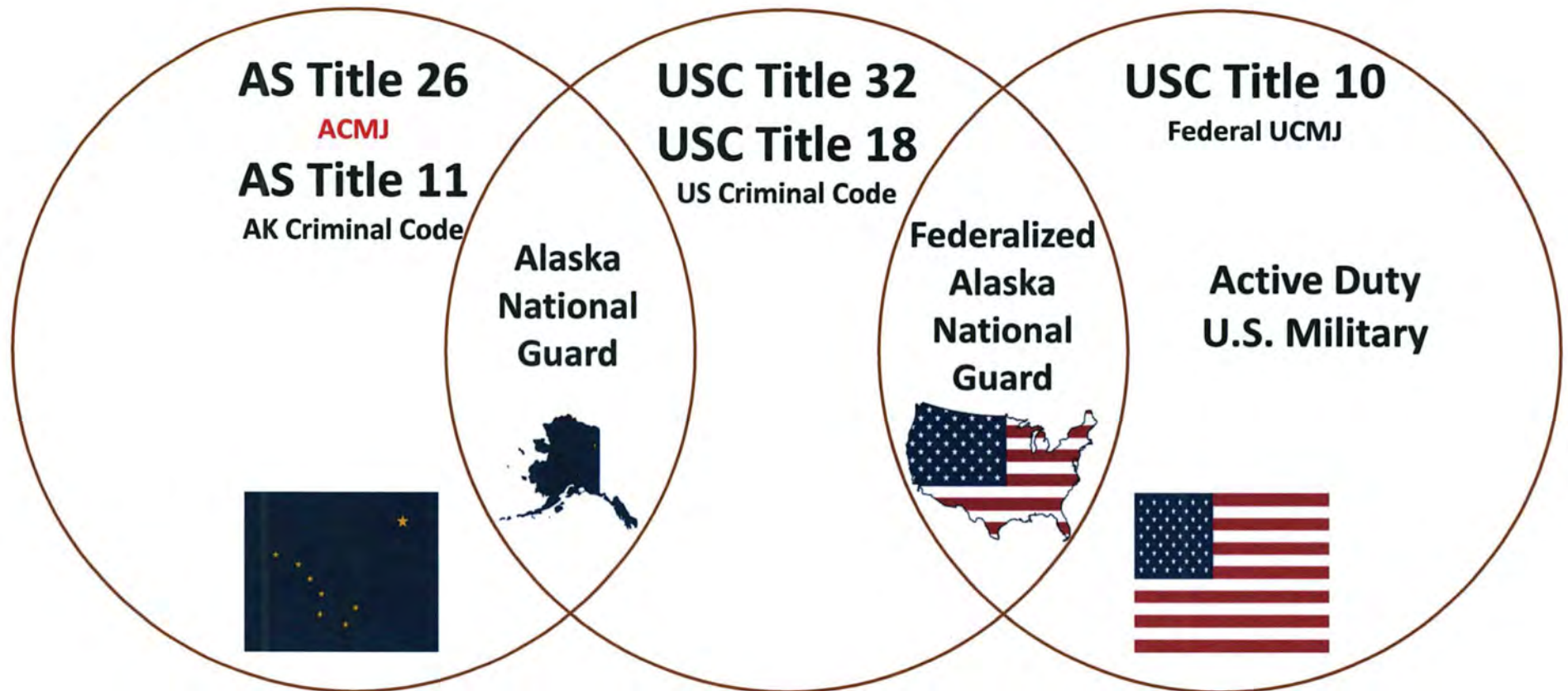
2. Title 10

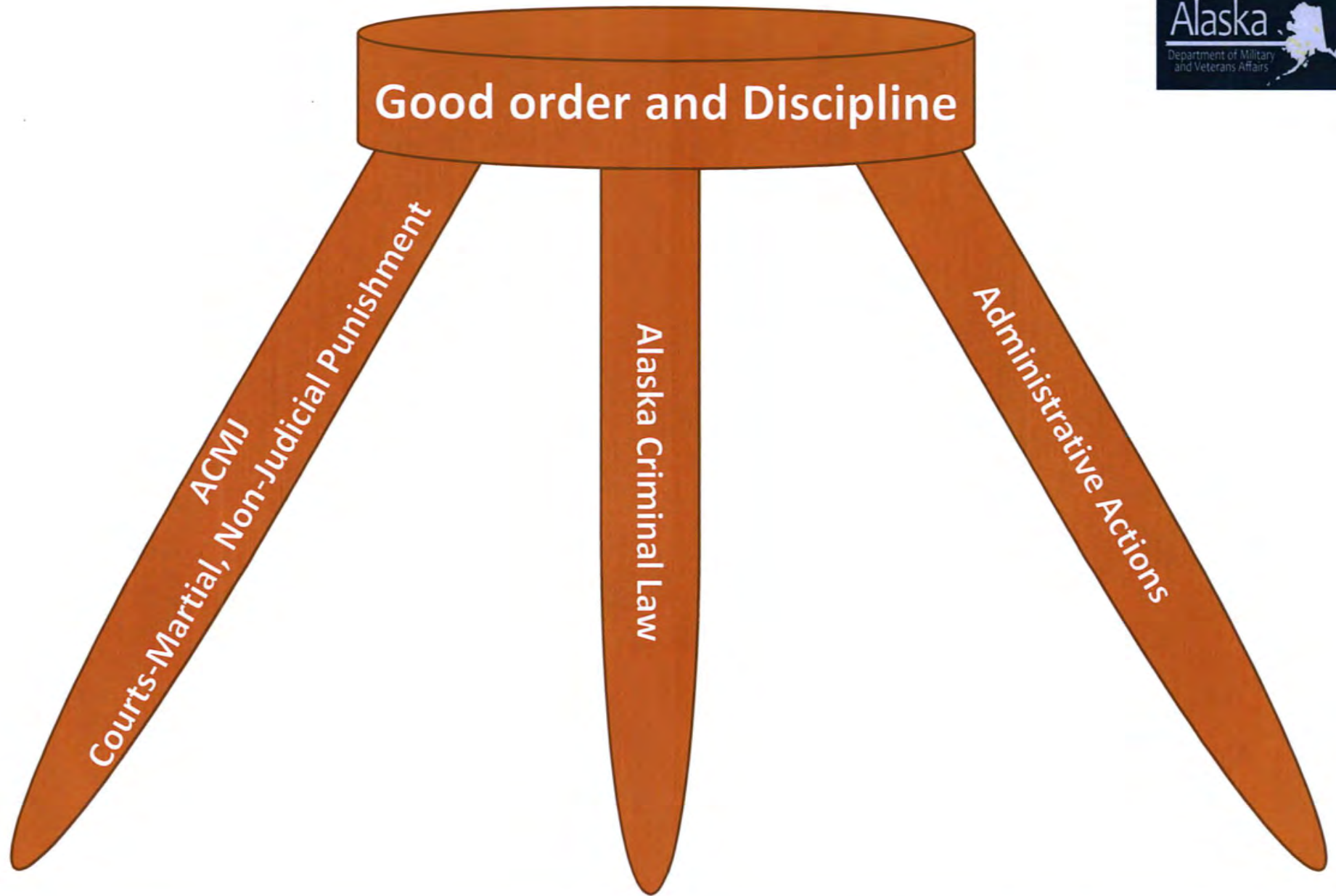
- Fully Federalized
- Iraq, Afghanistan, etc.
- Federal UCMJ

3. State Active Duty

- Digging out Cordova, e.g.
- Direct command of the governor

Applicable Law





Tools Required to Maintain Good Order & Discipline

1. Letters of Reprimand and other Administrative Actions
2. Administrative Separation
3. Alaska Criminal Law
4. Non-Judicial Punishment (suspension, fines, reduction in rank)
5. Courts-Martial under the ACMJ

Red = Established by HB 126 which enables ACMJ and NJP regulations

The Guard's Current Plan of Action

1. The Alaska Guard supports HB 126, and plans to work with its sponsors over the Interim.
2. AKNG will take account of findings and recommendations of special investigator.
3. AKNG will spend the interim developing the ACMJ and NJP regulation with input from the chain of command and collaboration with legislators.
4. AKNG will test drive/wargame scenarios under proposed code using a Commander's Action Group.

QUESTIONS?

For further questions or comments at a later date
please email forrest.dunbar2.mil@mail.mil

29-LS0473\I
Wallace
9/18/15

CS FOR HOUSE BILL NO. 126()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

11 (f) The supreme court may, in its discretion, review a final decision of the
 12 Military Appeals Commission under AS 26.05.540 for which a sentence of

1 confinement is imposed, the right to appeal to the Military Appeals Commission under
2 AS 26.05.525 or 26.05.538 has been exhausted, and a petition for review is filed under
3 AS 26.05.540.

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

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

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

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

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

21 (2) a separate account for the Department of Military and Veterans'
22 Affairs' contribution to fund the system based on the actuarial requirements of the
23 system as established by the commissioner of administration under **AS 26.05.222 -**
24 **26.05.229** [THIS CHAPTER];

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

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

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

31 **Sec. 26.05.380. Regulations; adopting military justice procedures and**

1 **nonjudicial punishment.** (a) The adjutant general shall adopt regulations consistent
2 with this chapter for members of the militia. The regulations must be approved by the
3 governor.

4 (b) The regulations adopted under this section must
5 (1) provide for nonjudicial punishment;
6 (2) as the adjutant general and the governor consider practicable, apply
7 the principles of law and the rules of evidence and procedure governing military
8 criminal cases in the courts of the armed forces of the United States, but may not be
9 contrary to or inconsistent with this chapter or the applicable Alaska Rules of
10 Evidence;

11 (3) include rules of pretrial, trial, and post-trial procedure, including
12 methods of proof, for cases before courts-martial and courts of inquiry.

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

15 **Sec. 26.05.400. Statement of policy on military justice.** Courts-martial have
16 primary jurisdiction over offenses under this chapter. A proper civilian court has
17 primary jurisdiction of an offense not defined by this chapter when an act or omission
18 violates both this chapter and local criminal law, foreign or domestic. In that case, a
19 court-martial may be initiated only after a civilian authority has declined to prosecute
20 or dismissed the charge, provided jeopardy has not attached. Jurisdiction over
21 attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be
22 determined by the underlying offense. These jurisdictional requirements do not apply
23 to nonjudicial punishment or administrative action taken by military authorities.

24 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** The code of
25 military justice applies to a member of the militia at all times, except when a member
26 of the militia is in active federal service under 10 U.S.C. (Armed Forces).

27 **Sec. 26.05.405. Jurisdiction to try certain personnel.** (a) A person
28 discharged from the militia of the state who is later charged with having fraudulently
29 obtained a discharge is subject to trial by court-martial on that charge and is, after
30 apprehension, subject to the code of military justice while in custody under the
31 direction of the militia of the state for the trial. Upon conviction of the charge, the

1 person is subject to trial by court-martial for an offense under this chapter that is
2 committed before the fraudulent discharge.

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

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

10 (b) Courts-martial may be convened and held in units of the militia of the state
11 while those units are serving outside the state with the same jurisdiction and powers
12 granted under the code of military justice as if the proceedings were held inside the
13 state. Offenses under this chapter committed by members of the militia outside the
14 state may be tried and punished either inside or outside the state.

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

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

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

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

31 (1) certified or designated as a judge advocate in the Judge Advocate

1 General's Corps of the United States Army, Air Force, Navy, or the Marine Corps or
2 designated as a law specialist as an officer of the United States Coast Guard, or a
3 reserve component of one of them; or

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

11 **Sec. 26.05.420. Apprehension.** (a) A member of the militia or a person
12 authorized under 10 U.S.C. 801 - 946 or the code of military justice to apprehend
13 persons subject to the code of military justice, a marshal of a court-martial, and a
14 peace officer or civil officer having authority to apprehend offenders under the laws of
15 the United States or of a state may apprehend a person subject to the code of military
16 justice upon probable cause that an offense under this chapter has been committed and
17 that the person apprehended committed the offense.

18 (b) Commissioned officers, warrant officers, petty officers, and
19 noncommissioned officers have authority to suppress disorder or mutual combat
20 among members of the militia and to apprehend a person who participates in the
21 disorder or mutual combat.

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

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

28 **Sec. 26.05.423. Imposition of restraint.** (a) An enlisted member of the militia
29 may be arrested or confined by an oral or written order issued by a commissioned
30 officer or another member of the militia of the state acting at the commissioned
31 officer's direction. A commanding officer may authorize warrant officers, petty

1 officers, or noncommissioned officers to order enlisted members of the commanding
2 officer's command or subject to the commanding officer's authority into arrest or
3 confinement.

4 (b) A commissioned officer, warrant officer, or civilian subject to the code of
5 military justice may be arrested or confined only by a commanding officer who has
6 authority over the commissioned officer, warrant officer, or civilian. The commanding
7 officer shall deliver the order orally or in writing, in person or by another
8 commissioned officer. A commanding officer may not delegate the authority granted
9 in this subsection.

10 (c) A person may not be arrested or confined unless the officer issuing the
11 order for arrest or confinement has probable cause to believe that an offense under this
12 chapter has been committed and that the person has committed the offense.

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

16 **Sec. 26.05.425. Restraint of persons charged with offenses.** (a) A person
17 charged with an offense under this chapter may be arrested or confined as
18 circumstances may require. A person arrested or confined before trial is entitled to
19 prompt notice of the offense of which the person is accused.

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

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

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

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

1 if the officer furnishes the person with a statement signed by the officer identifying the
2 offense charged against the prisoner.

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

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

11 (b) When a sentence imposed in a court-martial proceeding under the code of
12 military justice is interrupted by the delivery of the offender to a civil authority under
13 this section, and the offender is later convicted and sentenced by the civil authority,
14 competent military authority shall request the civil authority to return the offender to
15 the custody of the military authority for completion of the sentence imposed by court-
16 martial.

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

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

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

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

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

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

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

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

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

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

6 **Sec. 26.05.438. Jurisdiction of a general court-martial.** Subject to
7 AS 26.05.435, a general court-martial has jurisdiction to try a member of the militia
8 for an offense under this chapter and may impose a punishment not forbidden by the
9 code of military justice.

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

16 **Sec. 26.05.443. Jurisdiction of a summary court-martial.** (a) Subject to
17 AS 26.05.435, a summary court-martial has jurisdiction to try a member of the militia
18 except officers, cadets, candidates, and midshipmen for an offense under this chapter.

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

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

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

29 **Sec. 26.05.444. Grand jury requirement.** (a) A general court-martial in
30 which confinement of more than one year is sought may not be convened until a grand
31 jury of the state has returned a true bill indicating that there is probable cause to

1 believe that the accused member of the militia committed the offense or offenses at
2 issue.

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

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

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

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

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

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

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

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

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corresponding unit of the United States Air Force; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) A military judge must be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (d) If the military judge of a court-martial composed of only a military judge

1 is unable to proceed with a trial because of a challenge or for other good cause, the
2 senior force judge advocate shall detail a new military judge. The trial shall proceed as
3 if no evidence had previously been introduced, unless a verbatim record of the
4 evidence previously introduced or a written stipulation of the evidence is read in court
5 in the presence of the new military judge, the accused, and counsel for both sides.

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

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

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

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

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

22 (b) A member of the militia may not interrogate or request a statement from a
23 person suspected of an offense under this chapter without first informing the person of
24 the nature of the accusation and advising the person that the person does not have to
25 make any statement regarding the offense of which the person is accused or suspected
26 and that any statement made by the person may be used as evidence against the person
27 in a trial by court-martial.

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

31 (d) A statement obtained from a person in violation of this section or through

1 the use of coercion, unlawful influence, or unlawful inducement may not be admitted
2 into evidence against the person in a trial by court-martial.

3 **Sec. 26.05.468. Investigation; preliminary hearing.** (a) A charge or
4 specification may not be referred to a general court-martial for trial until an
5 investigating officer makes a thorough and impartial investigation of all the matters set
6 out in the charge or specification. The investigating officer shall inquire into the truth
7 of the matters set out in the charges, consider the form of the charges, and recommend
8 a disposition of the case in the interest of justice and discipline.

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

14 (c) In cases where there has been no grand jury proceeding on a charge or no
15 grand jury proceeding is required, the authority investigating the accused shall

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

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

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

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

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

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

9 (g) If evidence adduced in an investigation under this section indicates that the
10 accused committed an uncharged offense, the investigating officer may investigate the
11 subject matter of that offense without the accused's having first been charged with an
12 offense under this chapter if the accused is

- 13 (1) present at the investigation;
- 14 (2) informed of the nature of each uncharged offense investigated; and
- 15 (3) provided with counsel and an opportunity to cross-examine
16 witnesses and present evidence under (c) of this section.

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

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

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

29 **Sec. 26.05.473. Advice of judge advocate and reference for trial.** (a) Before
30 directing the trial of a charge by general court-martial, the convening authority shall
31 refer it to a judge advocate for consideration and advice. The convening authority may

1 not refer a specification under a charge to a general court-martial for trial unless the
2 convening authority has been advised in writing by a judge advocate that

3 (1) the specification alleges an offense under this chapter;

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

6 (3) a court-martial has jurisdiction over the accused and the offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) The form of the oath or affirmation, the time and place of taking, the
30 manner of recording, and a determination of whether the oath or affirmation shall be
31 taken for all cases in which the duties are to be performed or for a particular case, shall

1 be prescribed by rules of procedure. The rules may provide that, if a person takes an
2 oath or affirmation with respect to a duty, the person need not take the oath or
3 affirmation again on detailment to the duty.

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

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

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

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

18 (d) When the United States is at war or engaged in contingency operations, the
19 running of a period of limitation for an offense under this chapter is suspended until
20 two years after the termination of hostilities as proclaimed by the President of the
21 United States or by a joint resolution of the United States Congress if the offense

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

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

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

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

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

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

12 **Sec. 26.05.488. Former jeopardy.** (a) A person may not, without the person's
13 consent, be tried a second time for the same offense under this chapter.

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

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

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

27 (b) With respect to a charge or specification to which a plea of guilty has been
28 made by the accused and accepted by the military judge or by a court-martial without
29 a military judge, a finding of guilty of the charge or specification may be entered
30 immediately without vote. This finding shall constitute the finding of the court unless
31 the plea of guilty is withdrawn before announcement of the sentence, in which event,

1 the proceedings shall continue as though the accused had pleaded not guilty.

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

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

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

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

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

29 (c) A military judge or summary court-martial officer may punish a person
30 who is not a member of the militia for direct contempt in an amount not to exceed
31 \$100.

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

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

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

10 (1) guilty;

11 (2) not guilty; or

12 (3) not guilty by reason of insanity.

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

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

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

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

24 (1) guilty;

25 (2) not guilty; or

26 (3) not guilty by reason of insanity.

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

1 the meaning given in AS 47.30.915.

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

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

19 (c) If the military court determines that the accused is incompetent to stand
20 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
21 47.30.915, the military judge shall order the convening authority to seek the assistance
22 of the attorney general in seeking a commitment under AS 12.47.110.

23 (d) If, at the end of a period of commitment under (b) and (c) of this section, it
24 is determined that the accused's mental condition has not improved so as to permit the
25 trial to proceed, the charges shall be dismissed without prejudice, and continued
26 commitment proceedings shall be governed by the provisions relating to civil
27 commitment under AS 47.30.700 - 47.30.915. If the accused remains incompetent for
28 five years after the charges have been dismissed under this subsection, the accused
29 may not be charged again for an offense under this chapter arising out of the facts
30 alleged in the original charges.

31 (e) When the custodian of an accused person hospitalized under (c) of this

1 section determines that the person has recovered to the extent that the accused is able
2 to understand the nature of the proceedings against the accused and to conduct or
3 cooperate intelligently in the defense of the case, the custodian shall promptly transmit
4 a notification of the determination to the general court-martial convening authority for
5 the accused and trial and defense counsel.

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

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

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

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

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

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

31 (c) Before a vote is taken on the findings, the military judge shall, in the

1 presence of the accused and counsel, instruct the members of the court as to the
2 elements of the offense under this chapter and charge them that

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

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

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

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

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

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

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

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

19 **Sec. 26.05.505. Number of votes required.** (a) A person may not be convicted
20 of an offense under this chapter that is tried by a court-martial unless by the
21 unanimous verdict of the members of the court present at the time the vote is taken.

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

29 **Sec. 26.05.508. Record of trial.** (a) Each general and special court-martial
30 shall keep a separate record of the proceedings in each case brought before it, and the
31 record must be authenticated by the signature of the military judge. If the military

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

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

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

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

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

21 **Sec. 26.05.513. Punishments; maximum limits.** (a) A court-martial may not
22 impose a punishment that exceeds the limits set out in the code of military justice and
23 may not impose a sentence of death. A sentence of imprisonment imposed under this
24 chapter may not exceed 10 years. An offense under this chapter for which a sentence
25 of confinement for a term of more than one year is authorized is a felony offense.
26 Except for convictions by a summary court-martial and except as otherwise
27 specifically provided in the code of military justice, all other offenses under this
28 chapter are misdemeanors. A conviction by a summary court-martial is a violation.

29 (b) The maximum punishment for a violation of the code of military justice
30 shall be the lesser of the sentences prescribed by the most recent version of the Manual
31 for Courts-Martial of the United States in effect at the time of the alleged offense and

1 the code of military justice.

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

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

15 (1) that had custody of the accused;

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

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

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

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

26 **Sec. 26.05.518. Execution of confinement.** A person must serve a sentence of
27 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 the code of military justice. A person confined
31 under the code of military justice is subject to the same discipline and treatment as

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

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

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

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

13 **Sec. 26.05.525. Appeal by the state.** (a) In a trial by court-martial in which a
14 punitive discharge may be imposed, the state may appeal to the Military Appeals
15 Commission established under this chapter

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

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

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

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

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

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

28 (b) An appeal of an order or ruling may not be taken unless the trial counsel
29 provides the military judge with written notice of appeal from the order or ruling
30 within 72 hours after the order or ruling. The notice must include a certification by the
31 trial counsel that the appeal is not taken for the purpose of delay and, if the order or

1 ruling appealed is one that excludes evidence, that the evidence excluded is substantial
2 proof of a fact material in the proceeding.

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

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

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

13 **Sec. 26.05.528. Vacation of suspension.** (a) A probationer serving a period of
14 probation under a sentence suspended by a special court-martial that, as approved,
15 includes a bad-conduct discharge, or a suspended general court-martial sentence, is
16 entitled to a hearing before the suspension is vacated. The probationer shall be
17 represented at the hearing by military counsel if the probationer requests
18 representation.

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

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

30 **Sec. 26.05.530. Petition for a new trial.** At any time within two years after
31 approval by the convening authority of a court-martial sentence, the accused may

1 petition the adjutant general for a new trial on the grounds of newly discovered
2 evidence or fraud on the court-martial.

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

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

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

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

31 **Sec. 26.05.538. Military Appeals Commission.** (a) The Military Appeals

1 Commission is established in the Department of Military and Veterans' Affairs. The
2 commission is a quasi-judicial agency.

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

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

8 (1) be licensed to practice law

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

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

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

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

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

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

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

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

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

29 (g) The governor may remove a commissioner from office for cause including
30 incompetence, neglect of duty, or misconduct in office. A commissioner, to be
31 removed for cause, shall be given a copy of the charges and offered an opportunity to

1 be publicly heard in person or by counsel in the commissioner's own defense upon not
2 less than 10 days' notice. If a commissioner is removed for cause, the governor shall
3 file with the lieutenant governor a complete statement of all charges made against the
4 commissioner and the governor's finding based on the charges, together with a
5 complete record of the proceedings.

6 (h) The adjutant general shall adopt regulations to govern appellate procedure
7 before the Military Appeals Commission. The regulations shall be substantially similar
8 to the provisions for post-trial procedure and review of courts-martial under 10 U.S.C.
9 801 - 946. The regulations must be approved by the governor. Regulations adopted
10 under this section are exempt from AS 44.62 (Administrative Procedure Act).

11 **Sec. 26.05.540. Review by civilian court.** (a) After exhausting all remedies
12 available under the code of military justice, a party may file a petition for review in the
13 Alaska supreme court from a final decision of the Military Appeals Commission that
14 upholds a conviction and sentence imposed by a general or special court-martial for an
15 offense under this chapter if the sentence

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

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

19 (b) A decision by the Alaska supreme court on a matter reviewed under a
20 petition filed under (a) of this section is final and binding on all parties, the Military
21 Appeals Commission, and the court-martial.

22 (c) A party filing a petition for review under this section shall comply with the
23 rules of court applicable to appeals, including the deadlines for filing.

24 **Sec. 26.05.543. Appellate counsel.** (a) If the attorney general requests
25 representation, the senior force judge advocate shall detail a judge advocate as
26 appellate counsel to represent the state in a proceeding filed under AS 26.05.538, in a
27 petition filed under AS 26.05.540, or before any federal court. Counsel appointed
28 under this subsection shall be a member in good standing of the Alaska Bar
29 Association.

30 (b) The accused has the right to be represented by detailed military counsel
31 before the Military Appeals Commission under AS 26.05.538 and before the

1 reviewing court in a petition filed under AS 26.05.540.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) A fine or penalty required to be paid under this section shall be deposited

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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. 26.05.577. Principals. A member of the militia who commits an offense under this chapter, or aids, abets, counsels, commands, or procures the commission of the offense, or causes an act to be done that, if directly performed by the member, would be punishable under this chapter, is a principal.

Sec. 26.05.578. Accessory after the fact. A member of the militia who, knowing that an offense under this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent the offender's apprehension, trial, or punishment shall be punished as a court-martial may direct.

Sec. 26.05.579. Conviction of lesser included offense. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense under this chapter charged or an offense necessarily included in the offense charged.

Sec. 26.05.580. Attempts. (a) An act done with specific intent to commit an offense under this chapter that amounts to more than mere preparation and tends, even though failing, to effect its commission, is an attempt to commit the offense.

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

1 (c) A member of the militia may be convicted of an attempt to commit an
2 offense under this chapter even if it appears, on the trial, that the offense was
3 consummated.

4 **Sec. 26.05.581. Conspiracy.** A member of the militia who conspires with
5 another person to commit an offense under this chapter shall, if one or more of the
6 conspirators does an act to effect the object of the conspiracy, be punished as a court-
7 martial may direct.

8 **Sec. 26.05.582. Solicitation.** (a) A member of the militia who solicits or
9 advises another or others to desert in violation of AS 26.05.585 or to mutiny in
10 violation of AS 26.05.594 shall, if the offense solicited or advised is attempted or
11 committed, be punished with the punishment provided for the commission of the
12 offense, but, if the offense solicited or advised is not attempted or committed, the
13 member shall be punished as a court-martial may direct.

14 (b) A member of the militia who solicits or advises another or others to
15 commit an act of misbehavior before the enemy in violation of AS 26.05.599 or an act
16 of sedition in violation of AS 26.05.594 shall, if the offense solicited or advised is
17 committed, be punished with the punishment provided for the commission of the
18 offense, but, if the offense solicited or advised is not committed, the member shall be
19 punished as a court-martial may direct.

20 **Sec. 26.05.583. Fraudulent enlistment, appointment, or separation.** A
21 person who procures the person's own enlistment or appointment in the militia of the
22 state by knowingly false representation or deliberate concealment as to the person's
23 qualifications for the enlistment or appointment and receives pay or allowances under
24 the enlistment or appointment, or procures the person's own separation from the
25 militia of the state by knowingly false representation or deliberate concealment as to
26 the person's eligibility for that separation, shall be punished as a court-martial may
27 direct.

28 **Sec. 26.05.584. Unlawful enlistment, appointment, or separation.** A
29 member of the militia who effects an enlistment or appointment in or a separation
30 from the militia of the state of a person who is known to the member to be ineligible
31 for that enlistment, appointment, or separation because it is prohibited by law,

1 regulation, or order shall be punished as a court-martial may direct.

2 **Sec. 26.05.585. Desertion.** (a) A person is guilty of desertion if the person is a
3 member of the militia and

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

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

9 (3) without being regularly separated from one force of the militia of
10 the state,

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

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

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

21 (c) A person found guilty of desertion or attempt to desert is punishable, if the
22 offense is committed in time of war, or emergency as described in AS 26.05.070,

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

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

27 **Sec. 26.05.586. Absence without leave.** A member of the militia who, without
28 authority, (1) fails to go to the member's appointed place of duty at the time
29 prescribed, (2) goes from the member's place of duty, or (3) is absent or remains
30 absent from the member's unit, organization, or place of duty at which the member is
31 required to be at the time prescribed shall be punished as a court-martial may direct.

1 **Sec. 26.05.587. Missing movement.** A member of the militia who, through
2 neglect or design, misses the movement of a ship, aircraft, or unit with which the
3 member is required, in the course of duty, to move shall be punished as a court-martial
4 may direct.

5 **Sec. 26.05.588. Contempt toward officials.** A commissioned officer of the
6 militia who uses contemptuous words against the President or Vice-President of the
7 United States, the United States Congress, the United States Secretary of Defense, the
8 United States Secretary of Homeland Security, the secretary of a military department
9 of the United States, or the governor or legislature of this state shall be punished as a
10 court-martial may direct.

11 **Sec. 26.05.589. Disrespect toward superior commissioned officer.** A
12 member of the militia who behaves with disrespect toward the member's superior
13 commissioned officer shall be punished as a court-martial may direct.

14 **Sec. 26.05.590. Assaulting or wilfully disobeying superior commissioned**
15 **officer.** A member of the militia who (1) strikes the member's superior commissioned
16 officer or draws or lifts up any weapon or offers any violence against the superior
17 officer while the superior officer is in the execution of the superior officer's office, or
18 (2) wilfully disobeys a lawful command of the member's superior commissioned
19 officer shall be punished as a court-martial may direct.

20 **Sec. 26.05.591. Insubordinate conduct toward warrant officer,**
21 **noncommissioned officer, or petty officer.** A warrant officer or enlisted member of
22 the militia who (1) strikes or assaults a warrant officer, noncommissioned officer, or
23 petty officer, while the officer is in the execution of the officer's office, (2) wilfully
24 disobeys the lawful order of a warrant officer, noncommissioned officer, or petty
25 officer, or (3) treats with contempt or is disrespectful in language or deportment
26 toward a warrant officer, noncommissioned officer, or petty officer while the officer is
27 in the execution of the officer's office shall be punished as a court-martial may direct.

28 **Sec. 26.05.592. Failure to obey order or regulation.** Any member of the
29 militia who (1) violates or fails to obey a lawful general order or regulation, (2) having
30 knowledge of any other lawful order issued by a member of the militia of the state that
31 the member has a duty to obey, fails to obey the order, or (3) is derelict in the

1 performance of the member's duties shall be punished as a court-martial may direct.

2 **Sec. 26.05.593. Cruelty and maltreatment.** A member of the militia who is
3 guilty of cruelty toward, or oppression or maltreatment of, another person subject to
4 the member's orders shall be punished as a court-martial may direct.

5 **Sec. 26.05.594. Mutiny or sedition.** (a) A member of the militia is guilty of
6 mutiny if the member, with intent to usurp or override lawful military authority,
7 refuses, in concert with another person, to obey orders or otherwise do the member's
8 duty or creates violence or a disturbance.

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

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

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

21 **Sec. 26.05.595. Resistance, flight, breach of arrest, and escape.** A member
22 of the militia who (1) resists apprehension, (2) flees from apprehension, (3) breaks
23 arrest, or (4) escapes from custody or confinement shall be punished as a court-martial
24 may direct.

25 **Sec. 26.05.596. Releasing prisoner without proper authority.** A member of
26 the militia who, without proper authority, releases a prisoner committed to the
27 member's charge or, through neglect or design, suffers a prisoner to escape shall be
28 punished as a court-martial may direct, whether or not the prisoner was committed in
29 strict compliance with law.

30 **Sec. 26.05.597. Unlawful detention.** A member of the militia who, except as
31 provided by law or regulation, apprehends, arrests, or confines another person shall be

1 punished as a court-martial may direct.

2 **Sec. 26.05.598. Noncompliance with procedural rules.** A member of the
3 militia who (1) is responsible for unnecessary delay in the disposition of the case of
4 another person accused of an offense under this chapter, or (2) knowingly and
5 intentionally fails to enforce or comply with a provision of this chapter regulating the
6 proceedings before, during, or after trial of an accused shall be punished as a court-
7 martial may direct.

8 **Sec. 26.05.599. Misbehavior before the enemy.** (a) A member of the militia
9 is guilty of misbehavior before the enemy if the member is before or in the presence of
10 the enemy, or is facing a threat as described in AS 26.05.070, and

11 (1) runs away;

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

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

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

17 (5) engages in cowardly conduct;

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

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

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

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

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

29 **Sec. 26.05.600. Subordinate compelling surrender.** A member of the militia
30 who compels or attempts to compel the commander of the militia of this state or of
31 any other state, of a place, a vessel, an aircraft, or another military property, or of a

1 body of members of the armed forces to give it up to an enemy or to abandon it in the
2 face of a threat described in AS 26.05.070, or who strikes the colors or flag to an
3 enemy without proper authority, shall be punished as a court-martial may direct.

4 **Sec. 26.05.601. Improper use of countersign.** A member of the militia who,
5 in time of war, or emergency as described in AS 26.05.070, discloses the parole or
6 countersign to a person not entitled to receive it or who gives to another person who is
7 entitled to receive and use the parole or countersign a different parole or countersign
8 from that which, to the person's knowledge, the member was authorized and required
9 to give shall be punished as a court-martial may direct.

10 **Sec. 26.05.602. Forcing a safeguard.** A member of the militia who forces a
11 safeguard shall be punished as a court-martial may direct.

12 **Sec. 26.05.603. Captured or abandoned property.** (a) A member of the
13 militia shall secure all public property taken for the service of the United States or the
14 state and shall give notice and turn over to the proper authority without delay all
15 captured or abandoned property in the member's possession, custody, or control.

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

22 **Sec. 26.05.604. Aiding the enemy.** A member of the militia who (1) aids or
23 attempts to aid the enemy or a hostile individual or group as described in
24 AS 26.05.070 with arms, ammunition, supplies, money, or other things, or (2) without
25 proper authority, knowingly harbors or protects or gives intelligence to, or
26 communicates or corresponds with or holds any intercourse with, the enemy or hostile
27 individual or group, either directly or indirectly, shall be punished as a court-martial
28 may direct.

29 **Sec. 26.05.605. Misconduct as prisoner.** A member of the militia who, while
30 in the hands of the enemy or a hostile individual or group as described in
31 AS 26.05.070, (1) for the purpose of securing favorable treatment by the person's

1 captors, acts without proper authority in a manner contrary to law, custom, or
2 regulation, to the detriment of other persons of whatever nationality held by the enemy
3 or hostile individual or group as civilian or military prisoners; or (2) while in a
4 position of authority over a person, maltreats the person without justifiable cause shall
5 be punished as a court-martial may direct.

6 **Sec. 26.05.607. False official statements.** A member of the militia who, with
7 intent to deceive, signs a false record, return, regulation, order, or other official
8 document made in the line of duty, knowing it to be false, or makes a false official
9 statement in the line of duty, knowing it to be false, shall be punished as a court-
10 martial may direct.

11 **Sec. 26.05.608. Military property; loss, damage, destruction, or wrongful**
12 **disposition.** A member of the militia who, without proper authority, (1) sells or
13 otherwise disposes of, (2) wilfully or through neglect damages, destroys, or loses, or
14 (3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or
15 wrongfully disposed of, military property of the United States or of any state, shall be
16 punished as a court-martial may direct.

17 **Sec. 26.05.609. Property other than military property; waste, spoilage, or**
18 **destruction.** A member of the militia who, while on active duty, wilfully or recklessly
19 wastes, spoils, or otherwise wilfully and wrongly destroys or damages any property
20 other than military property of the United States or of any state shall be punished as a
21 court-martial may direct.

22 **Sec. 26.05.610. Improper hazarding of vessel.** A member of the militia who
23 wilfully, wrongfully, or with gross negligence hazards or suffers to be hazarded a
24 vessel of the armed forces of the United States or the militia of the state shall suffer
25 the punishment as a court-martial may direct.

26 **Sec. 26.05.611. Drunken or reckless operation of a vehicle, aircraft, or**
27 **vessel.** (a) A member of the militia who (1) operates or physically controls a vehicle,
28 aircraft, or vessel in a careless or reckless manner or while impaired by a substance
29 described in AS 26.05.614(b); or (2) operates or is in actual physical control of a
30 vehicle, aircraft, or vessel while under the influence of alcohol or when the alcohol
31 concentration in the person's blood or breath is equal to or exceeds the applicable limit

1 under (b) of this section shall be punished as a court-martial may direct.

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

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

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

9 (B) the blood alcohol content limit under AS 28.35.030;

10 (2) in the case of the operation or control of a vehicle, aircraft, or
11 vessel outside the United States, the applicable blood alcohol content limit is 0.10
12 grams of alcohol for each 100 milliliters of blood with respect to alcohol concentration
13 in a person's blood and is 0.10 grams of alcohol for each 210 liters of breath with
14 respect to alcohol concentration in a person's breath, as shown by chemical analysis or
15 a lower limit that the Secretary of Defense may prescribe by regulation;

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

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

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

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

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

29 **Sec. 26.05.612. Drunk on duty.** A member of the militia, other than a sentinel
30 or lookout, who is found under the influence of alcohol while on duty shall be
31 punished as a court-martial may direct.

1 **Sec. 26.05.613. Misbehavior of sentinel.** A sentinel or lookout who is found
2 under the influence of alcohol or sleeping on the sentinel's or lookout's post or leaves
3 the post before being regularly relieved shall be punished, if the offense is committed
4 in time of war or emergency as described in AS 26.05.070, by confinement of not
5 more than 10 years or other punishment as a court-martial may direct, but if the
6 offense is committed at any other time, by the punishment as a court-martial may
7 direct.

8 **Sec. 26.05.614. Wrongful use or possession of controlled substances.** (a) A
9 member of the militia who uses, possesses, manufactures, distributes, or imports a
10 controlled substance into the customs territory of the United States, exports from the
11 United States in violation of the laws of the United States or the state, or who
12 introduces a controlled substance into an installation, vessel, vehicle, or aircraft used
13 by or under the control of the armed forces of the United States or the military forces
14 of a state shall be punished as a court-martial may direct.

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

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

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

20 (3) a substance not specified in (1) or (2) of this subsection that is
21 listed on a schedule of controlled substances prescribed by the President of the United
22 States for the purposes of the armed forces of the United States under 10 U.S.C. 801 -
23 946 (Uniform Code of Military Justice);

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

27 (5) an illicit synthetic drug identified in AS 17.21.010.

28 **Sec. 26.05.615. Malingering.** A member of the militia who, for the purpose of
29 avoiding work, duty, or service, (1) feigns illness, physical disablement, mental lapse,
30 or derangement, or (2) intentionally inflicts self-injury shall be punished as a court-
31 martial may direct.

1 **Sec. 26.05.616. Riot or breach of peace.** A member of the militia who causes
2 or participates in a riot or breach of the peace shall be punished as a court-martial may
3 direct.

4 **Sec. 26.05.617. Provoking speeches or gestures.** A member of the militia
5 who uses provoking or reproachful words or gestures toward another member of the
6 militia shall be punished as a court-martial may direct.

7 **Sec. 26.05.620. Sexual assault.** (a) A member of the militia who commits any
8 of the following acts is guilty of sexual assault and shall be punished as a court-martial
9 may direct:

10 (1) a sexual act on another person by

11 (A) threatening or placing another person in fear;

12 (B) causing bodily harm to another person;

13 (C) making a fraudulent representation that the sexual act
14 serves a professional purpose;

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

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

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

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

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

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

30 (c) In a prosecution under this section, in proving that a person made a threat,
31 it is not necessary to prove that the person actually intended to carry out the threat or

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had the ability to carry out the threat.

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

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

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

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

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

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

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

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

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

(4) "grievous bodily harm" means serious bodily injury, including

1 fractured or dislocated bones, deep cuts, torn members of the body, serious damage to
2 internal organs, and other severe bodily injuries; grievous bodily harm does not
3 include minor injuries such as a black eye or a bloody nose;

4 (5) "sexual act" means

5 (A) contact between the penis and the vulva, anus, or mouth; in
6 this subparagraph, contact involving the penis occurs upon penetration,
7 however slight;

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

12 (6) "sexual contact" means

13 (A) touching, or causing another person to touch, either directly
14 or through the clothing, the genitalia, anus, groin, breast, inner thigh, or
15 buttocks of a person, with an intent to abuse, humiliate, or degrade a person;

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

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

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

26 **Sec. 26.05.621. Stalking.** (a) A member of the militia is guilty of stalking and
27 shall be punished as a court-martial may direct if the member

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

31 (2) has knowledge, or should have knowledge, that the specific person

1 will be placed in reasonable fear of death or bodily harm, including sexual assault, to
2 the person or a member of the person's immediate family;

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

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

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

12 (2) "immediate family" means a spouse, parent, child, or sibling of the
13 person, or any other family member, relative, or intimate partner of the person who
14 regularly resides in the household of the person or who, within the six months
15 preceding the commencement of the course of conduct, regularly resided in the
16 household of the person;

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

19 **Sec. 26.05.622. Other sexual misconduct; indecent viewing, visual**
20 **recording, or broadcasting.** (a) A member of the militia who knowingly commits
21 any of the following acts without legal justification or lawful authorization is guilty of
22 an offense under this section and shall be punished as a court-martial may direct:

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

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

30 (3) knowingly and wrongfully broadcasts or distributes a recording
31 that the person knows or reasonably should know was made under the circumstances

1 described in (2) of this subsection.

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

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

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

10 (1) "act of prostitution" means a sexual act or sexual contact as defined
11 in AS 26.05.620 because of which anything of value is given to or received by another
12 person;

13 (2) "broadcast" means electronically transmitting a visual image with
14 the intent that it be viewed by a person or persons;

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

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

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

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

28 **Sec. 26.05.623. Larceny and wrongful appropriation.** (a) A member of the
29 militia who wrongfully takes, obtains, or withholds, by any means, from the
30 possession of the owner or another person any money, personal property, or article of
31 value with intent permanently to deprive or defraud another person of the use and

1 benefit of the property or to appropriate it for the person's own use or the use of a
2 person other than the owner steals that property and is guilty of larceny and shall be
3 punished as a court-martial may direct.

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

10 **Sec. 26.05.624. Forgery.** A member of the militia who, with intent to defraud,
11 (1) falsely makes or alters a signature to or a part of any writing that would, if genuine,
12 apparently impose a legal liability on another person or change the legal right or
13 liability of the person to their prejudice, or (2) who utters, offers, issues, or transfers
14 that writing, which the person knows to be falsely made or altered, is guilty of forgery
15 and shall be punished as a court-martial may direct.

16 **Sec. 26.05.625. Making, drawing, or uttering check, draft, or order**
17 **without sufficient funds.** A member of the militia who makes, draws, utters, or
18 delivers a check, draft, or order for the payment of money on a bank or other
19 depository, knowing at the time that the maker or drawer has not or will not have
20 sufficient funds in, or credit with, the bank or other depository for the payment of that
21 check, draft, or order in full on its presentment, with intent to defraud for the
22 procurement of any article or thing of value or with intent to deceive, for the payment
23 of a past due obligation or for another purpose shall be punished as a court-martial
24 may direct. The making, drawing, uttering, or delivering by a maker or drawer of a
25 check, draft, or order, payment of which is refused by the drawee because of
26 insufficient funds of the maker or drawer in the drawee's possession or control, is
27 prima facie evidence of the person's intent to defraud or deceive and of the knowledge
28 of insufficient funds in, or credit with, that bank or other depository, unless the maker
29 or drawer pays the holder the amount due within five days after receiving notice,
30 orally or in writing, that the check, draft, or order was not paid on presentment. In this
31 section, "credit" means an arrangement or understanding, express or implied, with the

1 bank or other depository for the payment of that check, draft, or order.

2 **Sec. 26.05.631. Perjury.** A member of the militia who, in a judicial
3 proceeding or in a course of justice, under lawful oath or in another form allowed by
4 law to be substituted for an oath, willfully and corruptly gives false testimony material
5 to the issue or matter of inquiry, or who, in a declaration, certificate, verification, or
6 statement under penalty of perjury, subscribes a false statement material to the issue or
7 matter of inquiry is guilty of perjury and shall be punished as a court-martial may
8 direct.

9 **Sec. 26.05.632. Fraud against the government.** (a) A member of the militia
10 is guilty of fraud against the government if the member

11 (1) knowing it to be false or fraudulent

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

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

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

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

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

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

28 (3) having charge, possession, custody, or control of money or other
29 property of the United States or the state, that is furnished or intended for the armed
30 forces of the United States or the militia of the state, knowingly delivers to a person
31 having authority to receive it, any amount of the money or other property less than that

1 for which the member receives a certificate or receipt; or

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

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

9 **Sec. 26.05.633. Conduct unbecoming an officer.** A commissioned officer,
10 cadet, candidate, or midshipman of the militia who is convicted of conduct
11 unbecoming an officer shall be punished as a court-martial may direct.

12 **Sec. 26.05.634. General article.** (a) Although not specifically mentioned in
13 this chapter, all disorders and acts that prejudice good order and discipline in the
14 militia of the state and all conduct of a nature to bring discredit on the militia of the
15 state shall be considered by a court-martial and punished at the discretion of a military
16 court.

17 (b) A member of the militia who commits an enumerated offense punishable
18 under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice), except for those
19 enumerated offenses relating to assault, negligent homicide, and wrongful
20 cohabitation, shall, upon conviction, be punished as a court-martial may direct.

21 (c) A court-martial may not impose a sentence of confinement under (a) or (b)
22 of this section.

23 **Sec. 26.05.900. Definitions.** In this chapter, unless the context otherwise
24 requires,

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

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

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

5 (4) "classified information" means

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

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

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

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

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

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

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

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

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

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

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

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

30 (15) "national or state security" means the national defense and foreign
31 relations of the United States;

1 (16) "officer" means a commissioned or warrant officer;

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

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

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

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

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

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

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

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

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

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

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

27 (i) If requested by a military judge or the convening authority of a court-
28 martial, assist the court-martial in obtaining the commitment of a person accused of an
29 offense under AS 26.05 for a competency examination under AS 12.47.100 or on a
30 finding of incompetency under AS 12.47.110.

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

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

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

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

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

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

14 * **Sec. 9.** AS 26.05.120, 26.05.130, 26.05.300, 26.05.310, 26.05.320, 26.05.322, 26.05.324,
15 26.05.326, 26.05.330, and 26.05.350 are repealed.

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

18 APPLICABILITY. AS 26.05.380 - 26.05.900, enacted by sec. 4 of this Act, and sec. 9
19 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
20 Act.

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

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

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

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

29-LS0473\P
Wallace
8/31/15

CS FOR HOUSE BILL NO. 126()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

20 (2) a separate account for the Department of Military and Veterans'
21 Affairs' contribution to fund the system based on the actuarial requirements of the
22 system as established by the commissioner of administration under **AS 26.05.222 -**
23 **26.05.229** [THIS CHAPTER];

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

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

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

30 **Sec. 26.05.380. Regulations; adopting military justice procedures and**
31 **nonjudicial punishment.** (a) The adjutant general shall adopt regulations consistent

1 with this chapter for members of the militia. The regulations must be approved by the
2 governor.

3 (b) The regulations adopted under this section must

4 (1) provide for nonjudicial punishment;

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

10 (3) include rules of pretrial, trial, and post-trial procedure, including
11 methods of proof, for cases before courts-martial and courts of inquiry.

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

14 **Sec. 26.05.400. Statement of policy on military justice.** Courts-martial have
15 primary jurisdiction over offenses under this chapter. A proper civilian court has
16 primary jurisdiction of an offense not defined by this chapter when an act or omission
17 violates both this chapter and local criminal law, foreign or domestic. In that case, a
18 court-martial may be initiated only after a civilian authority has declined to prosecute
19 or dismissed the charge, provided jeopardy has not attached. Jurisdiction over
20 attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be
21 determined by the underlying offense. These jurisdictional requirements do not apply
22 to nonjudicial punishment or administrative action taken by military authorities.

23 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** The code of
24 military justice applies to a member of the militia at all times, except when a member
25 of the militia is in active federal service under 10 U.S.C. (Armed Forces).

26 **Sec. 26.05.405. Jurisdiction to try certain personnel.** (a) A person
27 discharged from the militia of the state who is later charged with having fraudulently
28 obtained a discharge is subject to trial by court-martial on that charge and is, after
29 apprehension, subject to the code of military justice while in custody under the
30 direction of the militia of the state for the trial. Upon conviction of the charge, the
31 person is subject to trial by court-martial for an offense under this chapter that is

1 committed before the fraudulent discharge.

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

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

9 (b) Courts-martial may be convened and held in units of the militia of the state
10 while those units are serving outside the state with the same jurisdiction and powers
11 granted under the code of military justice as if the proceedings were held inside the
12 state. Offenses under this chapter committed by members of the militia outside the
13 state may be tried and punished either inside or outside the state.

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

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

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

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

30 (1) certified or designated as a judge advocate in the Judge Advocate
31 General's Corps of the United States Army, Air Force, Navy, or the Marine Corps or

1 designated as a law specialist as an officer of the United States Coast Guard, or a
2 reserve component of one of them; or

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

10 **Sec. 26.05.420. Apprehension.** (a) A member of the militia or a person
11 authorized under 10 U.S.C. 801 - 946 or the code of military justice to apprehend
12 persons subject to the code of military justice, a marshal of a court-martial, and a
13 peace officer or civil officer having authority to apprehend offenders under the laws of
14 the United States or of a state may apprehend a person subject to the code of military
15 justice upon probable cause that an offense under this chapter has been committed and
16 that the person apprehended committed the offense.

17 (b) Commissioned officers, warrant officers, petty officers, and
18 noncommissioned officers have authority to suppress disorder or mutual combat
19 among members of the militia and to apprehend a person who participates in the
20 disorder or mutual combat.

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

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

27 **Sec. 26.05.423. Imposition of restraint.** (a) An enlisted member of the militia
28 may be arrested or confined by an oral or written order issued by a commissioned
29 officer or another member of the militia of the state acting at the commissioned
30 officer's direction. A commanding officer may authorize warrant officers, petty
31 officers, or noncommissioned officers to order enlisted members of the commanding

1 officer's command or subject to the commanding officer's authority into arrest or
2 confinement.

3 (b) A commissioned officer, warrant officer, or civilian subject to the code of
4 military justice may be arrested or confined only by a commanding officer who has
5 authority over the commissioned officer, warrant officer, or civilian. The commanding
6 officer shall deliver the order orally or in writing, in person or by another
7 commissioned officer. A commanding officer may not delegate the authority granted
8 in this subsection.

9 (c) A person may not be arrested or confined unless the officer issuing the
10 order for arrest or confinement has probable cause to believe that an offense under this
11 chapter has been committed and that the person has committed the offense.

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

15 **Sec. 26.05.425. Restraint of persons charged with offenses.** (a) A person
16 charged with an offense under this chapter may be arrested or confined as
17 circumstances may require. A person arrested or confined before trial is entitled to
18 prompt notice of the offense of which the person is accused.

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

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

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

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

1 offense charged against the prisoner.

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

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

10 (b) When a sentence imposed in a court-martial proceeding under the code of
11 military justice is interrupted by the delivery of the offender to a civil authority under
12 this section, and the offender is later convicted and sentenced by the civil authority,
13 competent military authority shall request the civil authority to return the offender to
14 the custody of the military authority for completion of the sentence imposed by court-
15 martial.

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

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

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

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

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

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

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

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

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

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

5 **Sec. 26.05.438. Jurisdiction of a general court-martial.** Subject to
6 AS 26.05.435, a general court-martial has jurisdiction to try a member of the militia
7 for an offense under this chapter and may impose a punishment not forbidden by the
8 code of military justice.

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

15 **Sec. 26.05.443. Jurisdiction of a summary court-martial.** (a) Subject to
16 AS 26.05.435, a summary court-martial has jurisdiction to try a member of the militia
17 except officers, cadets, candidates, and midshipmen for an offense under this chapter.

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

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

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

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

1 issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) An enlisted member of the militia of the state who is not a member of the

1 same unit as the accused is eligible to serve on a general or special court-martial for
2 the trial of an enlisted member, but only if the accused has, before the conclusion of a
3 session of the court-martial called by the military judge under AS 26.05.528,
4 personally requested, orally on the record or in writing, that enlisted members serve on
5 the court-martial.

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

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

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

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

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

31 (b) A military judge must be

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

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

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

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

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

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

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

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

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

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

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

31 (2) admitted to the practice of law in this state or otherwise permitted

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to appear in an action in the courts of this state.

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

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

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

- (1) as a result of a challenge; or
- (2) for good cause by the military judge or by order of the convening authority.

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

(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

1 senior force judge advocate shall detail a new military judge. The trial shall proceed as
2 if no evidence had previously been introduced, unless a verbatim record of the
3 evidence previously introduced or a written stipulation of the evidence is read in court
4 in the presence of the new military judge, the accused, and counsel for both sides.

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

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

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

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

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

21 (b) A member of the militia may not interrogate or request a statement from a
22 person suspected of an offense under this chapter without first informing the person of
23 the nature of the accusation and advising the person that the person does not have to
24 make any statement regarding the offense of which the person is accused or suspected
25 and that any statement made by the person may be used as evidence against the person
26 in a trial by court-martial.

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

30 (d) A statement obtained from a person in violation of this section or through
31 the use of coercion, unlawful influence, or unlawful inducement may not be admitted

1 into evidence against the person in a trial by court-martial.

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

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

13 (c) The authority investigating the accused shall

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

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

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

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

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

30 (f) If an investigation of an offense under this chapter is conducted before the
31 accused is charged with the offense and the accused is present at the investigation and

1 provided with counsel and an opportunity to cross-examine witnesses and present
2 evidence under (c) of this section, no further investigation of that charge is necessary
3 under this section unless the accused demands further investigation after the accused is
4 informed of the charge. A demand for further investigation entitles the accused to
5 recall witnesses for further cross-examination and to offer new evidence in the
6 accused's own behalf.

7 (g) If evidence adduced in an investigation under this section indicates that the
8 accused committed an uncharged offense, the investigating officer may investigate the
9 subject matter of that offense without the accused's having first been charged with an
10 offense under this chapter if the accused is

11 (1) present at the investigation;
12 (2) informed of the nature of each uncharged offense investigated; and
13 (3) provided with counsel and an opportunity to cross-examine
14 witnesses and present evidence under (c) of this section.

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

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

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

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

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

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

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

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

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

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

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

30 (b) A member of the militia may not attempt to coerce or, by unauthorized
31 means, influence the action of a court-martial or a member of a court, in reaching the

1 findings or sentence in a case, or the action of a convening, approving, or reviewing
2 authority with respect to a judicial act. This subsection does not apply to

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

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

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

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

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

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

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

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

27 (b) The form of the oath or affirmation, the time and place of taking, the
28 manner of recording, and a determination of whether the oath or affirmation shall be
29 taken for all cases in which the duties are to be performed or for a particular case, shall
30 be prescribed by rules of procedure. The rules may provide that, if a person takes an
31 oath or affirmation with respect to a duty, the person need not take the oath or

1 affirmation again on detailment to the duty.

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

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

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

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

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

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

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

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

30 (e) If charges or specifications are dismissed as defective or insufficient for
31 any cause, and the period prescribed by the applicable statute of limitations has

1 expired or will expire within 180 days after the date of dismissal of the charges and
2 specifications, trial and punishment under new charges and specifications are not
3 barred by the statute of limitations if the new charges and specifications

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

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

10 **Sec. 26.05.488. Former jeopardy.** (a) A person may not, without the person's
11 consent, be tried a second time for the same offense under this chapter.

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

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

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

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

31 **Sec. 26.05.493. Subpoena; process of military courts.** (a) A military judge,

1 the president of a court-martial, or a summary court-martial officer may issue
2 subpoenas and subpoenas duces tecum for the attendance of witnesses and production
3 of books and records, if the courts are sitting within the state and the witnesses, books,
4 and records sought are located in the state. A subpoena may be served by a person
5 designated by the military judge, the president of the court-martial, or summary court-
6 martial officer.

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

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

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

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

27 (c) A military judge or summary court-martial officer may punish a person
28 who is not a member of the militia for direct contempt in an amount not to exceed
29 \$100.

30 **Sec. 26.05.498. Defense of insanity.** (a) The accused may assert the
31 affirmative defense of insanity as provided in AS 12.47.010. If the accused gives

1 notice of the defense, the accused shall file with the military judge the notice required
2 by AS 12.47.090.

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

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

8 (1) guilty;

9 (2) not guilty; or

10 (3) not guilty by reason of insanity.

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

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

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

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

22 (1) guilty;

23 (2) not guilty; or

24 (3) not guilty by reason of insanity.

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

31 **Sec. 26.05.500. Lack of mental capacity or mental responsibility;**

1 **commitment of accused for examination and treatment.** (a) An accused who, as a
2 result of a mental disease or defect that renders the accused incompetent to the extent
3 that the accused is unable to understand the nature of the proceedings or to conduct or
4 cooperate intelligently in the defense of the case, may not be tried, convicted, or
5 sentenced for an offense under this chapter as long as the incompetency exists.

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

17 (c) If the military court determines that the accused is incompetent to stand
18 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
19 47.30.915, the military judge shall order the convening authority to seek the assistance
20 of the attorney general in seeking a commitment under AS 12.47.110.

21 (d) If, at the end of a period of commitment under (b) and (c) of this section, it
22 is determined that the accused's mental condition has not improved so as to permit the
23 trial to proceed, the charges shall be dismissed without prejudice, and continued
24 commitment proceedings shall be governed by the provisions relating to civil
25 commitment under AS 47.30.700 - 47.30.915. If the accused remains incompetent for
26 five years after the charges have been dismissed under this subsection, the accused
27 may not be charged again for an offense under this chapter arising out of the facts
28 alleged in the original charges.

29 (e) When the custodian of an accused person hospitalized under (c) of this
30 section determines that the person has recovered to the extent that the accused is able
31 to understand the nature of the proceedings against the accused and to conduct or

1 cooperate intelligently in the defense of the case, the custodian shall promptly transmit
2 a notification of the determination to the general court-martial convening authority for
3 the accused and trial and defense counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **Sec. 26.05.505. Number of votes required.** (a) A person may not be convicted
18 of an offense under this chapter that is tried by a court-martial unless by the
19 unanimous verdict of the members of the court present at the time the vote is taken.

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

27 **Sec. 26.05.508. Record of trial.** (a) Each general and special court-martial
28 shall keep a separate record of the proceedings in each case brought before it, and the
29 record must be authenticated by the signature of the military judge. If the military
30 judge cannot authenticate the record because of the military judge's death, disability,
31 or absence, the record shall be authenticated by the signature of the trial counsel or, if

1 the trial counsel is unable to authenticate the record because of the trial counsel's
2 death, disability, or absence, then by the signature of a member of the court. In a
3 court-martial consisting of only a military judge, the record shall be authenticated by
4 the court reporter under the same conditions that would impose a duty on a member
5 under this subsection.

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

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

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

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

19 **Sec. 26.05.513. Punishments; maximum limits.** (a) A court-martial may not
20 impose a punishment that exceeds the limits set out in the code of military justice and
21 may not impose a sentence of death. A sentence of imprisonment imposed under this
22 chapter may not exceed 10 years. An offense under this chapter for which a sentence
23 of confinement for a term of more than one year is authorized is a felony offense.
24 Except for convictions by a summary court-martial and except as otherwise
25 specifically provided in the code of military justice, all other offenses under this
26 chapter are misdemeanors. A conviction by a summary court-martial is a violation.

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

30 **Sec. 26.05.515. Deferment of sentences.** (a) If an accused is under sentence to
31 confinement that has not yet been ordered executed, the convening authority or, if the

1 accused is no longer under the convening authority's jurisdiction, the person exercising
2 general court-martial jurisdiction over the command to which the accused is currently
3 detailed may, in that person's sole discretion, defer service of the sentence to
4 confinement. The deferment terminates when the sentence is ordered to be executed.
5 The deferment may be rescinded at any time by the authority who granted it or, if the
6 accused is no longer under that person's jurisdiction, by the person exercising general
7 court-martial jurisdiction over the command to which the accused is currently detailed.

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

12 (1) that had custody of the accused;

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

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

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

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

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

30 **Sec. 26.05.520. Error of law; lesser included offense.** (a) A finding or
31 sentence of a court-martial may not be held incorrect on the ground of an error of law

1 unless the error materially prejudices the substantial rights of the accused.

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

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

10 **Sec. 26.05.525. Appeal by the state.** (a) In a trial by court-martial in which a
11 punitive discharge may be imposed, the state may appeal to the Military Appeals
12 Commission established under this chapter

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

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

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

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

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

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

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

31 (c) An appeal under this section shall be forwarded to the Military Appeals

1 Commission under AS 26.05.538. In ruling on the appeal, the Military Appeals
2 Commission may act only with respect to matters of law.

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

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

10 **Sec. 26.05.528. Vacation of suspension.** (a) A probationer serving a period of
11 probation under a sentence suspended by a special court-martial that, as approved,
12 includes a bad-conduct discharge, or a suspended general court-martial sentence, is
13 entitled to a hearing before the suspension is vacated. The probationer shall be
14 represented at the hearing by military counsel if the probationer requests
15 representation.

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

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

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

31 **Sec. 26.05.533. Restoration.** (a) All rights, privileges, and property affected

1 by an executed part of a court-martial sentence that has been set aside or disapproved,
2 except an executed dismissal or discharge, shall be restored unless a new trial or
3 rehearing is ordered and the executed part is included in a sentence imposed on the
4 new trial or rehearing.

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

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

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

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

31 (b) The commission has jurisdiction to hear appeals from sentences and

1 punishments imposed by courts-martial under the code of military justice.

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

5 (1) be licensed to practice law

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

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

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

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

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

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

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

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

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

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

1 commissioner and the governor's finding based on the charges, together with a
2 complete record of the proceedings.

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

8 **Sec. 26.05.540. Appellate review.** (a) After exhausting all remedies available
9 under the code of military justice, a party may appeal to the Alaska supreme court a
10 conviction and sentence imposed by a general or special court-martial for an offense
11 under this chapter if the sentence

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

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

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

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

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

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

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

31 (d) A person who has acted as investigating officer, trial counsel, military

1 judge, witness, or court member in the case may not act as civilian appellate counsel
2 for the accused under (c) of this section.

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

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

- 8 (1) a judge advocate;
- 9 (2) a summary court-martial;
- 10 (3) the adjutant general and assistant adjutant generals;
- 11 (4) a commanding officer of the militia;
- 12 (5) a person authorized by statute or by regulations of the armed forces
13 of the United States or the state to administer oaths or act as a notary public.

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

- 16 (1) the president, military judge, and trial counsel for general and
17 special courts-martial;
- 18 (2) an officer designated to take a deposition;
- 19 (3) a person detailed to conduct an investigation;
- 20 (4) a recruiting officer;
- 21 (5) a person authorized by statute or by regulations of the armed forces
22 of the United States to administer oaths or act as a notary public.

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

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

30 **Sec. 26.05.553. Military justice account.** (a) The military justice account is
31 established in the general fund for the purpose of paying the expenses of the

1 department in carrying out its duties relating to the code of military justice, including
2 the fees and authorized travel expenses of witnesses, experts, victims, court reporters,
3 and interpreters, fees for the service of process, costs of collection, apprehension,
4 detention and confinement, pay and allowances for court-martial duty, and all other
5 necessary expenses of the prosecution and administration of military justice not
6 otherwise payable by another source.

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 26.05.560. Uniformity of interpretation.** The code of military justice

1 shall be construed to carry out their general purpose and, so far as practicable, in a
2 manner uniform with 10 U.S.C. 801 - 946.

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

8 **Sec. 26.05.577. Principals.** A member of the militia who commits an offense
9 under this chapter, or aids, abets, counsels, commands, or procures the commission of
10 the offense, or causes an act to be done that, if directly performed by the member,
11 would be punishable under this chapter, is a principal.

12 **Sec. 26.05.578. Accessory after the fact.** A member of the militia who,
13 knowing that an offense under this chapter has been committed, receives, comforts, or
14 assists the offender in order to hinder or prevent the offender's apprehension, trial, or
15 punishment shall be punished as a court-martial may direct.

16 **Sec. 26.05.579. Conviction of lesser included offense.** An accused may be
17 found guilty of an offense necessarily included in the offense charged or of an attempt
18 to commit either the offense under this chapter charged or an offense necessarily
19 included in the offense charged.

20 **Sec. 26.05.580. Attempts.** (a) An act done with specific intent to commit an
21 offense under this chapter that amounts to more than mere preparation and tends, even
22 though failing, to effect its commission, is an attempt to commit the offense.

23 (b) A member of the militia who attempts to commit an offense under this
24 chapter shall be punished as a court-martial may direct, unless otherwise specifically
25 prescribed.

26 (c) A member of the militia may be convicted of an attempt to commit an
27 offense under this chapter even if it appears, on the trial, that the offense was
28 consummated.

29 **Sec. 26.05.581. Conspiracy.** A member of the militia who conspires with
30 another person to commit an offense under this chapter shall, if one or more of the
31 conspirators does an act to effect the object of the conspiracy, be punished as a court-

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martial may direct.

Sec. 26.05.582. Solicitation. (a) A member of the militia who solicits or advises another or others to desert in violation of AS 26.05.585 or to mutiny in violation of AS 26.05.594 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not attempted or committed, the member shall be punished as a court-martial may direct.

(b) A member of the militia who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of AS 26.05.599 or an act of sedition in violation of AS 26.05.594 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the member shall be punished as a court-martial may direct.

Sec. 26.05.583. Fraudulent enlistment, appointment, or separation. A person who procures the person's own enlistment or appointment in the militia of the state by knowingly false representation or deliberate concealment as to the person's qualifications for the enlistment or appointment and receives pay or allowances under the enlistment or appointment, or procures the person's own separation from the militia of the state by knowingly false representation or deliberate concealment as to the person's eligibility for that separation, shall be punished as a court-martial may direct.

Sec. 26.05.584. Unlawful enlistment, appointment, or separation. A member of the militia who effects an enlistment or appointment in or a separation from the militia of the state of a person who is known to the member to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

Sec. 26.05.585. Desertion. (a) A person is guilty of desertion if the person is a member of the militia and

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

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

3 (3) without being regularly separated from one force of the militia of
4 the state,

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

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

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

15 (c) A person found guilty of desertion or attempt to desert is punishable, if the
16 offense is committed in time of war, or emergency as described in AS 26.05.070,

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

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

21 **Sec. 26.05.586. Absence without leave.** A member of the militia who, without
22 authority, (1) fails to go to the member's appointed place of duty at the time
23 prescribed, (2) goes from the member's place of duty, or (3) is absent or remains
24 absent from the member's unit, organization, or place of duty at which the member is
25 required to be at the time prescribed shall be punished as a court-martial may direct.

26 **Sec. 26.05.587. Missing movement.** A member of the militia who, through
27 neglect or design, misses the movement of a ship, aircraft, or unit with which the
28 member is required, in the course of duty, to move shall be punished as a court-martial
29 may direct.

30 **Sec. 26.05.588. Contempt toward officials.** A commissioned officer of the
31 militia who uses contemptuous words against the President or Vice-President of the

1 United States, the United States Congress, the United States Secretary of Defense, the
2 United States Secretary of Homeland Security, the secretary of a military department
3 of the United States, or the governor or legislature of this state shall be punished as a
4 court-martial may direct.

5 **Sec. 26.05.589. Disrespect toward superior commissioned officer.** A
6 member of the militia who behaves with disrespect toward the member's superior
7 commissioned officer shall be punished as a court-martial may direct.

8 **Sec. 26.05.590. Assaulting or wilfully disobeying superior commissioned**
9 **officer.** A member of the militia who (1) strikes the member's superior commissioned
10 officer or draws or lifts up any weapon or offers any violence against the superior
11 officer while the superior officer is in the execution of the superior officer's office, or
12 (2) wilfully disobeys a lawful command of the member's superior commissioned
13 officer shall be punished as a court-martial may direct.

14 **Sec. 26.05.591. Insubordinate conduct toward warrant officer,**
15 **noncommissioned officer, or petty officer.** A warrant officer or enlisted member of
16 the militia who (1) strikes or assaults a warrant officer, noncommissioned officer, or
17 petty officer, while the officer is in the execution of the officer's office, (2) wilfully
18 disobeys the lawful order of a warrant officer, noncommissioned officer, or petty
19 officer, or (3) treats with contempt or is disrespectful in language or deportment
20 toward a warrant officer, noncommissioned officer, or petty officer while the officer is
21 in the execution of the officer's office shall be punished as a court-martial may direct.

22 **Sec. 26.05.592. Failure to obey order or regulation.** Any member of the
23 militia who (1) violates or fails to obey a lawful general order or regulation, (2) having
24 knowledge of any other lawful order issued by a member of the militia of the state that
25 the member has a duty to obey, fails to obey the order, or (3) is derelict in the
26 performance of the member's duties shall be punished as a court-martial may direct.

27 **Sec. 26.05.593. Cruelty and maltreatment.** A member of the militia who is
28 guilty of cruelty toward, or oppression or maltreatment of, another person subject to
29 the member's orders shall be punished as a court-martial may direct.

30 **Sec. 26.05.594. Mutiny or sedition.** (a) A member of the militia is guilty of
31 mutiny if the member, with intent to usurp or override lawful military authority,

1 refuses, in concert with another person, to obey orders or otherwise do the member's
2 duty or creates violence or a disturbance.

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

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

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

15 **Sec. 26.05.595. Resistance, flight, breach of arrest, and escape.** A member
16 of the militia who (1) resists apprehension, (2) flees from apprehension, (3) breaks
17 arrest, or (4) escapes from custody or confinement shall be punished as a court-martial
18 may direct.

19 **Sec. 26.05.596. Releasing prisoner without proper authority.** A member of
20 the militia who, without proper authority, releases a prisoner committed to the
21 member's charge or, through neglect or design, suffers a prisoner to escape shall be
22 punished as a court-martial may direct, whether or not the prisoner was committed in
23 strict compliance with law.

24 **Sec. 26.05.597. Unlawful detention.** A member of the militia who, except as
25 provided by law or regulation, apprehends, arrests, or confines another person shall be
26 punished as a court-martial may direct.

27 **Sec. 26.05.598. Noncompliance with procedural rules.** A member of the
28 militia who (1) is responsible for unnecessary delay in the disposition of the case of
29 another person accused of an offense under this chapter, or (2) knowingly and
30 intentionally fails to enforce or comply with a provision of this chapter regulating the
31 proceedings before, during, or after trial of an accused shall be punished as a court-

1 martial may direct.

2 **Sec. 26.05.599. Misbehavior before the enemy.** (a) A member of the militia
3 is guilty of misbehavior before the enemy if the member is before or in the presence of
4 the enemy, or is facing a threat as described in AS 26.05.070, and

5 (1) runs away;

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

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

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

11 (5) engages in cowardly conduct;

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

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

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

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

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

23 **Sec. 26.05.600. Subordinate compelling surrender.** A member of the militia
24 who compels or attempts to compel the commander of the militia of this state or of
25 any other state, of a place, a vessel, an aircraft, or another military property, or of a
26 body of members of the armed forces to give it up to an enemy or to abandon it in the
27 face of a threat described in AS 26.05.070, or who strikes the colors or flag to an
28 enemy without proper authority, shall be punished as a court-martial may direct.

29 **Sec. 26.05.601. Improper use of countersign.** A member of the militia who,
30 in time of war, or emergency as described in AS 26.05.070, discloses the parole or
31 countersign to a person not entitled to receive it or who gives to another person who is

1 entitled to receive and use the parole or countersign a different parole or countersign
2 from that which, to the person's knowledge, the member was authorized and required
3 to give shall be punished as a court-martial may direct.

4 **Sec. 26.05.602. Forcing a safeguard.** A member of the militia who forces a
5 safeguard shall be punished as a court-martial may direct.

6 **Sec. 26.05.603. Captured or abandoned property.** (a) A member of the
7 militia shall secure all public property taken for the service of the United States or the
8 state and shall give notice and turn over to the proper authority without delay all
9 captured or abandoned property in the member's possession, custody, or control.

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

16 **Sec. 26.05.604. Aiding the enemy.** A member of the militia who (1) aids or
17 attempts to aid the enemy or a hostile individual or group as described in
18 AS 26.05.070 with arms, ammunition, supplies, money, or other things, or (2) without
19 proper authority, knowingly harbors or protects or gives intelligence to, or
20 communicates or corresponds with or holds any intercourse with, the enemy or hostile
21 individual or group, either directly or indirectly, shall be punished as a court-martial
22 may direct.

23 **Sec. 26.05.605. Misconduct as prisoner.** A member of the militia who, while
24 in the hands of the enemy or a hostile individual or group as described in
25 AS 26.05.070 in time of war, (1) for the purpose of securing favorable treatment by
26 the person's captors, acts without proper authority in a manner contrary to law,
27 custom, or regulation, to the detriment of other persons of whatever nationality held by
28 the enemy or hostile individual or group as civilian or military prisoners, or (2) while
29 in a position of authority over a person, maltreats the person without justifiable cause
30 shall be punished as a court-martial may direct.

31 **Sec. 26.05.607. False official statements.** A member of the militia who, with

1 intent to deceive, signs a false record, return, regulation, order, or other official
2 document made in the line of duty, knowing it to be false, or makes a false official
3 statement in the line of duty, knowing it to be false, shall be punished as a court-
4 martial may direct.

5 **Sec. 26.05.608. Military property; loss, damage, destruction, or wrongful**
6 **disposition.** A member of the militia who, without proper authority, (1) sells or
7 otherwise disposes of, (2) wilfully or through neglect damages, destroys, or loses, or
8 (3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or
9 wrongfully disposed of, military property of the United States or of any state, shall be
10 punished as a court-martial may direct.

11 **Sec. 26.05.609. Property other than military property; waste, spoilage, or**
12 **destruction.** A member of the militia who, while on active duty, wilfully or recklessly
13 wastes, spoils, or otherwise wilfully and wrongly destroys or damages any property
14 other than military property of the United States or of any state shall be punished as a
15 court-martial may direct.

16 **Sec. 26.05.610. Improper hazarding of vessel.** A member of the militia who
17 wilfully, wrongfully, or with gross negligence hazards or suffers to be hazarded a
18 vessel of the armed forces of the United States or the militia of the state shall suffer
19 the punishment as a court-martial may direct.

20 **Sec. 26.05.611. Drunken or reckless operation of a vehicle, aircraft, or**
21 **vessel.** (a) A member of the militia who (1) operates or physically controls a vehicle,
22 aircraft, or vessel in a careless or reckless manner or while impaired by a substance
23 described in AS 26.05.614(b), or (2) operates or is in actual physical control of a
24 vehicle, aircraft, or vessel while under the influence of alcohol or when the alcohol
25 concentration in the person's blood or breath is equal to or exceeds the applicable limit
26 under (b) of this section shall be punished as a court-martial may direct.

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

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

31 (A) the blood alcohol content limit under the law of the state in

1 which the conduct occurred, except as provided under (3) of this subsection for
2 conduct on a military installation that is in more than one state; and

3 (B) the blood alcohol content limit under AS 28.35.030;

4 (2) in the case of the operation or control of a vehicle, aircraft, or
5 vessel outside the United States, the applicable blood alcohol content limit is 0.10
6 grams of alcohol for each 100 milliliters of blood with respect to alcohol concentration
7 in a person's blood and is 0.10 grams of alcohol for each 210 liters of breath with
8 respect to alcohol concentration in a person's breath, as shown by chemical analysis or
9 a lower limit that the Secretary of Defense may prescribe by regulation;

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

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

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

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

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

23 **Sec. 26.05.612. Drunk on duty.** A member of the militia, other than a sentinel
24 or lookout, who is found under the influence of alcohol while on duty shall be
25 punished as a court-martial may direct.

26 **Sec. 26.05.613. Misbehavior of sentinel.** A sentinel or lookout who is found
27 under the influence of alcohol or sleeping on the sentinel's or lookout's post or leaves
28 the post before being regularly relieved shall be punished, if the offense is committed
29 in time of war or emergency as described in AS 26.05.070, by confinement of not
30 more than 10 years or other punishment as a court-martial may direct, but if the
31 offense is committed at any other time, by the punishment as a court-martial may

1 direct.

2 **Sec. 26.05.614. Wrongful use or possession of controlled substances.** (a) A
3 member of the militia who uses, possesses, manufactures, distributes, or imports a
4 controlled substance into the customs territory of the United States, exports from the
5 United States in violation of the laws of the United States or the state, or who
6 introduces a controlled substance into an installation, vessel, vehicle, or aircraft used
7 by or under the control of the armed forces of the United States or the military forces
8 of a state shall be punished as a court-martial may direct.

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

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

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

14 (3) a substance not specified in (1) or (2) of this subsection that is
15 listed on a schedule of controlled substances prescribed by the President of the United
16 States for the purposes of the armed forces of the United States under 10 U.S.C. 801 -
17 946 (Uniform Code of Military Justice);

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

21 **Sec. 26.05.615. Malingering.** A member of the militia who, for the purpose of
22 avoiding work, duty, or service, (1) feigns illness, physical disablement, mental lapse,
23 or derangement, or (2) intentionally inflicts self-injury shall be punished as a court-
24 martial may direct.

25 **Sec. 26.05.616. Riot or breach of peace.** A member of the militia who causes
26 or participates in a riot or breach of the peace shall be punished as a court-martial may
27 direct.

28 **Sec. 26.05.617. Provoking speeches or gestures.** A member of the militia
29 who uses provoking or reproachful words or gestures toward another member of the
30 militia shall be punished as a court-martial may direct.

31 **Sec. 26.05.620. Sexual assault.** (a) A member of the militia who commits any

1 of the following acts is guilty of sexual assault and shall be punished as a court-martial
2 may direct:

3 (1) a sexual act on another person by

4 (A) threatening or placing another person in fear;

5 (B) causing bodily harm to another person;

6 (C) making a fraudulent representation that the sexual act
7 serves a professional purpose;

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

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

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

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

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

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

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

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

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

31 (1) an expression of lack of consent through words or conduct means

1 there is no consent; lack of verbal or physical resistance or submission resulting from
2 the use of force, threat of force, or placing another person in fear may not constitute
3 consent; a current or previous dating, social, or sexual relationship by itself or the
4 manner of dress of the person involved with the accused in the conduct at issue may
5 not constitute consent;

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

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

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

16 (1) "bodily harm" means any offensive touching of another person,
17 however slight, including any nonconsensual sexual act or nonconsensual sexual
18 contact;

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

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

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

28 (5) "sexual act" means

29 (A) contact between the penis and the vulva, anus, or mouth; in
30 this subparagraph, contact involving the penis occurs upon penetration,
31 however slight;

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

5 (6) "sexual contact" means

6 (A) touching, or causing another person to touch, either directly
7 or through the clothing, the genitalia, anus, groin, breast, inner thigh, or
8 buttocks of a person, with an intent to abuse, humiliate, or degrade a person;

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

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

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

19 **Sec. 26.05.621. Stalking.** (a) A member of the militia is guilty of stalking and
20 shall be punished as a court-martial may direct if the member

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

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

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

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

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

5 (2) "immediate family" means a spouse, parent, child, or sibling of the
6 person, or any other family member, relative, or intimate partner of the person who
7 regularly resides in the household of the person or who, within the six months
8 preceding the commencement of the course of conduct, regularly resided in the
9 household of the person;

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

12 **Sec. 26.05.622. Other sexual misconduct; indecent viewing, visual**
13 **recording, or broadcasting.** (a) A member of the militia who knowingly commits
14 any of the following acts without legal justification or lawful authorization is guilty of
15 an offense under this section and shall be punished as a court-martial may direct:

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

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

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

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

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

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

3 (1) "act of prostitution" means a sexual act or sexual contact as defined
4 in AS 26.05.620 because of which anything of value is given to or received by another
5 person;

6 (2) "broadcast" means electronically transmitting a visual image with
7 the intent that it be viewed by a person or persons;

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

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

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

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

21 **Sec. 26.05.623. Larceny and wrongful appropriation.** (a) A member of the
22 militia who wrongfully takes, obtains, or withholds, by any means, from the
23 possession of the owner or another person any money, personal property, or article of
24 value with intent permanently to deprive or defraud another person of the use and
25 benefit of the property or to appropriate it for the person's own use or the use of a
26 person other than the owner steals that property and is guilty of larceny and shall be
27 punished as a court-martial may direct.

28 (b) A member of the militia who wrongfully takes, obtains, or withholds, by
29 any means, from the possession of the owner or another person any money, personal
30 property, or article of value with intent temporarily to deprive or defraud another
31 person of the use and benefit of the property or to appropriate it for the person's own

1 use or the use of a person other than the owner is guilty of wrongful appropriation and
2 shall be punished as a court-martial may direct.

3 **Sec. 26.05.624. Forgery.** A member of the militia who, with intent to defraud,
4 (1) falsely makes or alters a signature to or a part of any writing that would, if genuine,
5 apparently impose a legal liability on another person or change the legal right or
6 liability of the person to their prejudice, or (2) who utters, offers, issues, or transfers
7 that writing, which the person knows to be falsely made or altered, is guilty of forgery
8 and shall be punished as a court-martial may direct.

9 **Sec. 26.05.625. Making, drawing, or uttering check, draft, or order**
10 **without sufficient funds.** A member of the militia who makes, draws, utters, or
11 delivers a check, draft, or order for the payment of money on a bank or other
12 depository, knowing at the time that the maker or drawer has not or will not have
13 sufficient funds in, or credit with, the bank or other depository for the payment of that
14 check, draft, or order in full on its presentment, with intent to defraud for the
15 procurement of any article or thing of value or with intent to deceive, for the payment
16 of a past due obligation or for another purpose shall be punished as a court-martial
17 may direct. The making, drawing, uttering, or delivering by a maker or drawer of a
18 check, draft, or order, payment of which is refused by the drawee because of
19 insufficient funds of the maker or drawer in the drawee's possession or control, is
20 prima facie evidence of the person's intent to defraud or deceive and of the knowledge
21 of insufficient funds in, or credit with, that bank or other depository, unless the maker
22 or drawer pays the holder the amount due within five days after receiving notice,
23 orally or in writing, that the check, draft, or order was not paid on presentment. In this
24 section, "credit" means an arrangement or understanding, express or implied, with the
25 bank or other depository for the payment of that check, draft, or order.

26 **Sec. 26.05.631. Perjury.** A member of the militia who, in a judicial
27 proceeding or in a course of justice, under lawful oath or in another form allowed by
28 law to be substituted for an oath, willfully and corruptly gives false testimony material
29 to the issue or matter of inquiry, or who, in a declaration, certificate, verification, or
30 statement under penalty of perjury, subscribes a false statement material to the issue or
31 matter of inquiry is guilty of perjury and shall be punished as a court-martial may

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direct.

Sec. 26.05.632. Fraud against the government. (a) A member of the militia is guilty of fraud against the government if the member

(1) knowing it to be false or fraudulent

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

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

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

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

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

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

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

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

(b) A person found guilty of fraud against the government shall be punished as

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a court-martial may direct.

Sec. 26.05.633. Conduct unbecoming an officer. A commissioned officer, cadet, candidate, or midshipman of the militia who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.

Sec. 26.05.634. General article. (a) Although not specifically mentioned in this chapter, all disorders and acts that prejudice good order and discipline in the militia of the state and all conduct of a nature to bring discredit on the militia of the state shall be considered by a court-martial and punished at the discretion of a military court.

(b) A member of the militia who commits an enumerated offense punishable under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice), except for those enumerated offenses relating to assault, negligent homicide, and wrongful cohabitation, shall, upon conviction, be punished as a court-martial may direct.

(c) A court-martial may not impose a sentence of confinement under (a) or (b) of this section.

Sec. 26.05.900. 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) "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;

(3) "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;

(4) "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

1 regulation to require protection against unauthorized disclosure for reasons of
2 national or state security; and

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

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

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

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

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

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

15 (10) "department" means the Department of Military and Veterans'
16 Affairs;

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

18 (12) "military court" means a court-martial;

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

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

23 (15) "national or state security" means the national defense and foreign
24 relations of the United States;

25 (16) "officer" means a commissioned or warrant officer;

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

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

31 (A) an official written transcript, written summary, or other

1 writing relating to the proceedings; or

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

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

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

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

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

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

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

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

20 (i) If requested by a military judge or the convening authority of a court-
21 martial, assist the court-martial in obtaining the commitment of a person accused of an
22 offense under AS 26.05 for a competency examination under AS 12.47.100 or on a
23 finding of incompetency under AS 12.47.110.

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

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

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

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

31 (3) annually, not later than February 1, make available a report to the

1 legislature, through the governor, outlining the department's activities during the
2 previous calendar year; the department shall notify the legislature that the report is
3 available; and

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

7 * **Sec. 9.** AS 26.05.120, 26.05.130, 26.05.300, 26.05.310, 26.05.320, 26.05.322, 26.05.324,
8 26.05.326, 26.05.330, and 26.05.350 are repealed.

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

11 **APPLICABILITY.** AS 26.05.380 - 26.05.900, enacted by sec. 4 of this Act, and sec. 9
12 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
13 Act.

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

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

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

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

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

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

LEGAL SERVICES

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

August 31, 2015

SUBJECT: Military Code of Justice
(CSHB 126() ; Work Order No. 29-LS0473\P)

TO: Representative Gabrielle LeDoux
Attn: Lisa Vaught

FROM: Megan A. Wallace
Legislative Counsel

Enclosed please find the draft bill you requested. I made the changes you requested, but please be aware of the following drafting issues:

1. I revised AS 26.05.380 as requested. You only included three specific items in this provision allowing regulations. Do you want to include a provision, similar to AS 26.05.380(b)(12) from the "E" version, that generally allows the adjutant general to "include other provisions necessary to provide for the administration of military justice."? If so, please advise. Otherwise, the regulations will only contain nonjudicial punishment and rules of pretrial, trial, and post-trial procedure. Other items would not be permitted to be added by regulation.
2. On August 18, 2015, you expressed a desire that this office not change any language provided for the draft, which I advised is contrary to our legislative drafting process and the Manual of Legislative Drafting.¹ While I understand that

¹ Uniform Rule 10 states:

Rule 10. Drafting Manual. The legislative drafting manual prepared by the enrolling secretary of the legislature and the revisor of statutes and adopted by the Legislative Council is to be followed by all officers and employees of the legislature in the preparation, processing, and disposition of all legislative documents and records.

The drafting manual quotes Rule 10 on page 3 and states the requirement to follow the manual as follows:

Therefore, persons drafting bills, resolutions, or amendments must follow this manual as required by law and rule to ensure that their documents will

the language you have previously provided is model language proposed for use in other jurisdictions, and also contains language consistent with the Uniform Code of Military Justice, generally this is not a sufficient reason to deviate from the way in which Alaska statutes are drafted, as this can create ambiguity in the way that statutes are later interpreted. Model acts (as opposed to uniform acts or compacts, where uniformity of language and style is important) may generally be altered or changed to fit the drafting style of the state adopting the act to prevent such ambiguities.

3. For the reasons stated above, I did not make any changes to the draft bill relating to the term "nonjudicial punishment." However, given the provisions relating to "punishment" in AS 26.05.513, should "nonjudicial punishment" be changed to "nonjudicial discipline"?
4. After further review, in AS 26.05.425(b), it is unclear what you mean by a "minor offense normally tried by a summary court-martial or subject to the code of military justice." Should the term "minor offense" be revised, or can this subsection be clarified?
5. Also, who is the "reviewing authority" in AS 26.05.520? I recommend this provision be revised to replace "reviewing authority" with the name of a proper entity. It is also unclear what you mean by "may approve or affirm, instead."
6. I made the change requested to AS 26.05.468(c). However, I am unsure who "the authority investigating" the accused is referring to. Is this different than an "investigating officer"? If so, does AS 26.05.468(a) need to be revised? I would recommend clarifying the issue.
7. I deleted the definition of "blood alcohol content limit" as instructed in AS 26.05.611. However, there was an internal reference to the definition in AS 26.05.611(b)(2), so I inserted the contents in that paragraph. Please review to ensure I captured your intent in this section.
8. As it relates to the definitions section, do you want the definition of "code of military justice" in AS 26.05.900(5), to include the regulations adopted under AS 26.05.380? Also, the term "national or state security," defined in AS 26.05.900(15), is only used one time in the draft bill. Do you still want to define "national security"?

be accepted for introduction in the House or Senate, and other legislative documents must be prepared and processed as provided in this manual.

Representative Gabrielle LeDoux

August 31, 2015

Page 3

Finally, please be advised that the enclosed draft does not address the issues raised in items number 3, 4, 5, and 8 - 10 of my memorandum dated August 10, 2015.

If you have any additional changes, or if I can be of further assistance, please advise.

MAW:dla

15-442.dla

Enclosure

LEGAL SERVICES

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MEMORANDUM

September 15, 2015

SUBJECT: Sectional summary (CSHB 126 ();
Work Order No. 29-LS0473\P)

TO: Representative Gabrielle LeDoux

FROM: Megan A. Wallace
Legislative Counsel *MAW*

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends AS 22.05.010 by adding a new subsection to allow for supreme court review of a final decision of the Military Appeals Commission under certain circumstances.

Section 2. Amends AS 26.05.140(a) to note that the provision does not apply to an action or proceeding brought under the code of military justice.

Section 3. Makes a conforming change to an internal reference in AS 26.05.228(b)(2).

Section 4. Amends AS 26.05 by adding new subsections under Article 2, Code of Military Justice.

AS 26.05.380. Provides for adoption of certain regulations.

AS 26.05.400. Provides a statement of policy on military justice, noting that civilian courts have primary jurisdiction over offenses not defined by the chapter.

AS 26.05.403. Provides that the code applies to members of the militia at all times.

AS 26.05.405. Provides jurisdiction to try certain personnel by court-martial.

AS 26.05.408. Provides applicability to offenses and court-martials outside the state.

AS 26.05.410. Provides for and relates to judge advocates.

AS 26.05.420. Provides for apprehension of person subject to the code.

AS 26.05.423. Relates to imposition of restraint.

AS 26.05.423. Provides for restraint of persons charged with offenses.

AS 26.05.428. Relates to the place for confinement of prisoners and reports.

AS 26.05.430. Provides for the delivery of a person accused of a criminal offense to a civil authority.

AS 26.05.433. Classifies courts-martial.

- AS 26.05.435 - AS 26.05.443. Provides for jurisdiction of courts-martial.
- AS 26.05.444 - AS 26.05.445. Makes grand jury requirements.
- AS 26.05.446 - AS 26.05.450. Provides who may convene a court-martial.
- AS 26.05.452. States who may serve on courts-martial.
- AS 26.05.445 - AS 26.05.458. Provides for the appointment to a court-martial of a military judge, trial and defense counsel, and other staff.
- AS 26.05.460. Relates to absences and additional members of courts-martial.
- AS 26.05.463. Details requirements of charges and specifications.
- AS 26.05.465. Prohibits compulsory self-incrimination.
- AS 26.05.468. Outlines investigation requirements of charges and specifications.
- AS 26.05.470. Provides for forwarding of charges.
- AS 26.05.473. Requires advice of judge advocate before trial.
- AS 26.05.475. Relates to service of charges on the accused.
- AS 26.05.478. Prohibits influencing the action of a court.
- AS 26.05.480. Relates to continuances.
- AS 26.05.483. Provides for oaths or affirmations.
- AS 26.05.485. Sets forth the statute of limitations for offenses.
- AS 26.05.488. Prohibits former jeopardy.
- AS 26.05.490. Relates to pleas of the accused.
- AS 26.05.495. Provides for punishment of contempt.
- AS 26.05.498 - AS 26.05.500. Provides for defenses of insanity and lack of mental capacity or mental responsibility.
- AS 26.05.503 - AS 26.05.508. Relates to voting and rulings at courts-martial, number of votes required, and record of trial.
- AS 26.05.510 - AS 26.05.518. Sets forth prohibition of cruel and unusual punishment, outlines punishments, maximum limits on punishments, deferment of sentences, and execution of confinement.
- AS 26.05.520 - AS 26.05.543. Provides for appeals, including establishment of Military Appeals Commission.
- AS 26.05.545 - AS 26.05.558. Provides miscellaneous administrative provisions, including provisions regarding delegation by the governor and payment of fines.
- AS 26.05.560. Provides that the code shall be uniformly applied, so far as practicable.
- AS 26.05.563. Provides immunity for a person acting under the code.
- AS 26.05.577 - AS 26.05.634. Sets forth offenses for members of the militia subject to courts-martial.
- AS 26.05.900. Provides definitions for the chapter.

Section 5. Amends AS 33.30.011 to include definition of "held under authority of state law."

Section 6. Requires persons confined under the code to be committed to the custody of the commissioner of corrections as directed by the adjutant general.

Section 7. Requires the attorney general to assist a military court in obtaining the commitment of a person accused of an offense under AS 26.05 for a competency examination or in the event of a finding of incompetence.

Section 8. Makes conforming changes to AS 44.35.020(a).

Representative Gabrielle LeDoux
September 15, 2015
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Section 9. Repeals provisions of existing military code of Alaska.

Section 10. Provides that the bill applies to offenses occurring on or after the effective date of the Act.

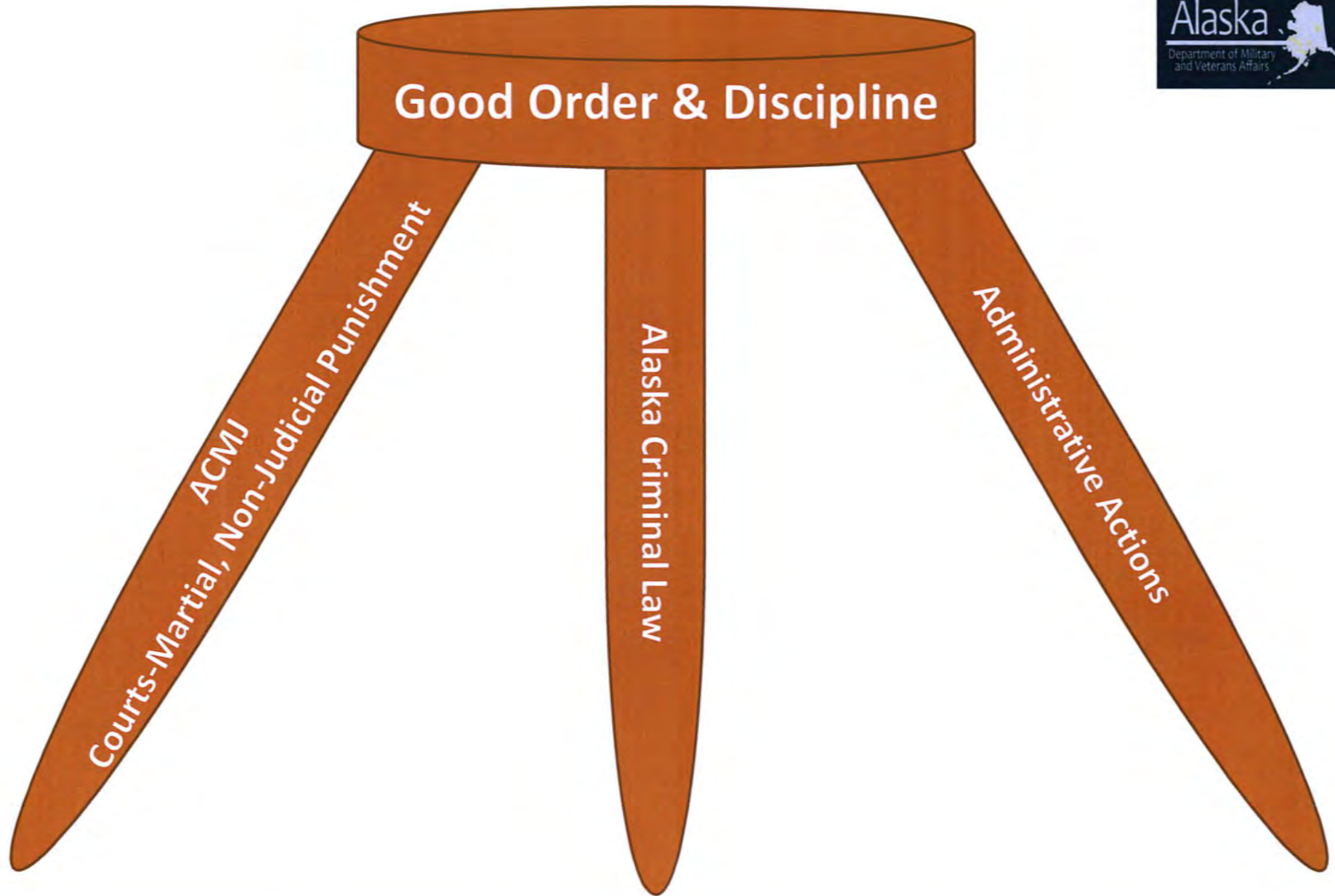
Section 11. Provides for staggered initial terms for the members of the Military Appeals Commission.

Section 12. Provides for a July 1, 2016, effective date.

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Alaska Code of Military Justice

HB 126 AND THE ALASKA NATIONAL GUARD



How We Got Here

- This bill is a priority for the Alaska National Guard (AKNG), and is supported by the governor.
- Earlier version of HB 126 Passed DMVA committee in spring (Rep. LeDoux & Rep. Tuck).
- Earlier version instructed the AKNG to create regulations related to the Punitive Articles of the ACMJ and Nonjudicial punishment.
- The AKNG has been working, both internally and with legislative offices, over the course of the summer.

Commanders Action Group

1. Established by the BG (AK) Hummel.
2. Composed of Soldiers/Airmen, Officers/Enlisted.
3. Conducted detailed read-throughs and discussions of the Punitive Articles of the UCMJ, the State Model Code, and other state codes.
4. Additional work on Nonjudicial Punishment regulation.

Changes to the Latest Version

1. The Punitive Articles are now in statute, not regulation.
 - Sec 26.05.577 through Sec. 26.05.634.
2. The ACMJ will apply to all soldiers/airmen at all times.
 - Will apply equally to the State Defense Force.
3. Addition of DUI and Sexual Assault Charges
 - Sex Assault provisions (Sec. 620, 621 & 622) taken from Louisiana Code, itself adapted from federal code.
 - Both required further language clarifying jurisdiction. Civilians will always get the first right of refusal.

****Nonjudicial Punishment has remained regulatory****

Additional Changes to the Latest Version


1. Amendment requested by the Court System
2. Addition of Grand Jury Provision (Sec. 26.05.444)
3. Revision to Investigation Section, now referred to as “Probable Cause Hearing” Section (Sec. 26.05.468)

Moving Forward

1. This version of HB 126 is supported by the AKNG.
2. AKNG will continue to work with legislators to refine the bill, as needed.
3. While this bill is discussed during the session, AKNG should have a fully-formed Nonjudicial Punishment regulation to present to legislators.
4. AKNG desires that HB 126 is passed during the winter/spring of 2016, so that implementation can begin in summer of that year.

QUESTIONS?

For further questions or comments at a later date
please email forrest.dunbar2.mil@mail.mil



HB 126-CS Version P- Peter Savage Comments

I would like to share ideas that pertain to officer/enlisted conduct and organizational operation of the Alaska Guard based on my extensive military and military family background. My military family history in Alaska goes back three generations as senior officers having worked in Alaska ie., grandfather, father, and myself.

Alaska Guard

What I'm seeing in this legislation is a rewrite of Alaska military justice system and not the checks and balances/oversight needed of its leaders that run it. Further this legislation does not address the lack of Alaska militia manpower and monies needed to run an internal judicial system.

What is needed is a specific military code of conduct of militia leaders/members and legislative oversight of the Alaska Department of Military And Veteran Affairs. What we have lost is the Active Duty military adviser group which helped provide oversight of the Alaska National Guard.

Things that should be addressed are:

- State oversight board composed of non-military members and a process for Grievance submission outside the military chain of command. TAG report card to the Governor
- Nepotism/duel spousal affiliation within the Alaska National Guard. Enlisted E6/Staff Sargent and above; Officer 01/2LT and above
- Timely OER evaluations based on published rating chain and penalties for late/improper submissions
- Mandatory turnover of senior leadership Enlisted/E9; Officer 06 and above (maximum of three years)
- Officer career management
- Promotion/retention boards
- Eliminate War College for consideration to 06/COL because of limited availability to LTCs.
- One year requirement as 06 to ask for War College consideration for; but not requirement for General Officer

Sincerely,

Peter F. Savage
LTC, Army (ret.)