

HB

126 -

FILE

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<TARGET><BILL>HB 126</BILL><SUBJECT>HB 126 - FILE
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LEGAL SERVICES

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MEMORANDUM

August 10, 2015

SUBJECT: Military Code of Justice
(CSHB 126()); Work Order No. 29-LS0473\N)

TO: Representative Gabrielle LeDoux
Attn: Lisa Vaught

FROM: Megan A. Wallace
Legislative Counsel

Enclosed please find the draft bill you requested. Please review it carefully. Please also be aware of the following drafting issues.

1. You requested that AS 26.05.380, relating to rules of procedure, be deleted. Please note, however, that there were internal references to AS 26.05.380 in AS 26.05.483, 26.05.523, and 26.05.533. I deleted the reference to "AS 26.05.380", but left a general reference to "rules of procedure." While I understand that you would like to make the punitive acts statutory, do you want to retain parts of AS 26.05.380 to allow for other rules of procedure to be adopted? If so, what parts? If not, all references to "rules of procedure" should be deleted from the bill. Please advise.
2. AS 26.05.400 has been revised in the draft bill, per your request, to that, with respect to an offense that violates both the military code of justice and state law, "a court-martial may be initiated only after the civilian court has declined to prosecute or dismissed the charge." First, "civilian court" is not the proper term to use, as courts do not prosecute crimes. In Alaska, only the state or a municipality may decline to prosecute a violation of their respective offenses or ordinances. I would recommend revising this section accordingly.
3. Under AS 26.05.400, when will a determination be made as to when the state or local body has "declined to prosecute"? Will it be when the statute of limitations expires?¹ Some sex-based crimes in Alaska, however, carry no statute of limitations, and the state can prosecute at any time.² It is unclear how this provision will be implemented, and this conflict should be discussed with the Department of Law.

¹ See AS 12.10.

² AS 12.10.010(a).

4. I made the revision you requested relating to applicability of the chapter. The code of military justice now applies to members of the militia at all times. At your request, all references to "active state service" were deleted from the draft bill. Please note, however, that existing AS 26.05.070, 26.05.075, 26.05.090, 26.06.140, 26.05.260, and 26.05.262 contain references to "active state service." Would you like to amend any of these provisions?
5. I did not delete the reference to "active state service" in AS 26.05.408 in the draft bill, relating to criminal acts committed outside of Alaska. This leaves the provision in line with the model code. If you would like to delete the reference to "active state service," please advise, but please note that Alaska law would not be applicable in other jurisdictions. Accordingly, there may be an instance when the member of the militia is subject to the Alaska code of justice and prosecution under the laws of a different state.
6. In AS 26.05.543(a), you state that a senior force judge advocate shall detail a judge advocate to serve as "civilian appellate trial counsel to represent the state." Then in (e), you state that an accused may be represented by "civilian appellate counsel at no expense to the state." Is the "civilian appellate counsel" in (e) also a judge advocate like in (a)? Or does this mean that an accused may hire his or her own attorney at his or her own expense? It is unclear as drafted in the material provided, and I would recommend revising this section to clarify.
7. On February 23, 2015, attorney Kathleen Strasbaugh sent you a memorandum relating to this bill. Please review this memorandum carefully, as the constitutional issues she raised in that memorandum are not cured by the current draft.
8. As discussed, this draft contains criminal acts that are inconsistent with existing state law, namely AS 26.05.741, 26.05.745, 26.05.760, 26.05.764, 26.05.766, 26.05.768, 26.05.770, and 26.05.772. This presents an issue, as the state is prosecuting the crimes under both AS 11 and under the code of military justice in AS 26.05. In one instance, the state prosecutes a civilian, and in another, the state (acting as the Alaska National Guard) prosecutes a militia member. Nevertheless, the same crime, depending on who is prosecuted, may have different elements, defenses, or levels of punishment. As a result, prosecution of these offenses may create unique and difficult double jeopardy and equal protection issues. These changes should be discussed with the Department of Law.
9. I have amended the draft bill to allow only a civilian appeal to the Alaska Supreme Court. Nevertheless, I would also discuss the appeal provisions in AS 26.05.540 with the Department of Law. Are the appeal rights in AS 26.05.513 consistent with the appeal rights provided for criminal cases under AS 12.55.120 and AS 22.07.020?

Representative Gabrielle LeDoux

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10. While you have added a grand jury requirement to the draft bill, it is unclear how this procedure will be executed. Under Alaska law, only a prosecuting attorney may bring a case before a grand jury. *See* AS 12.40.070. Do you intend that a prosecuting attorney conduct the grand jury for the court-martial proceeding? If not, your grand jury provision requires additional changes to substantive law. In addition, your request likely results in court rule changes. A court rule change would require a two-thirds vote in order to pass the measure under art. IV, sec. 15 of the Constitution of the State of Alaska, which reads:

Section 15. Rule-Making Power. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Rule 39(e) of the Uniform Rules requires:

(e) If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house. If the section effecting a change in the court rule fails to receive the required two-thirds vote, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which changes a court rule shall also be noted in the title of the bill.

Without additional information relating to the suggested grand jury proceeding, I cannot identify which rules might be subject to change.

Please contact me if you would like to make any revisions to the draft, have any questions, or need additional assistance.

MAW:dla
15-425.dla

Enclosure

29-LS0473\N
Wallace
8/11/15

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 a**
 2 **code of military justice by the adjutant general; relating to the authority of the adjutant**
 3 **general; relating to appeals of convictions and sentences of courts-martial; establishing**
 4 **the Military Appeals Commission; relating to the detention and incarceration of**
 5 **members of the militia; relating to the jurisdiction of the Supreme Court; relating to**
 6 **involuntary commitment for evaluation or treatment of a mental disease or defect before**
 7 **court-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. 26.05.400. Statement of policy on military justice.** Courts-martial have
31 primary jurisdiction over military offenses as defined in this chapter. A proper

1 civilian court has primary jurisdiction of a nonmilitary offense when an act or
2 omission violates both this chapter and local criminal law, foreign or domestic. In
3 that case, a court-martial may be initiated only after the civilian court has declined
4 to prosecute or dismissed the charge, provided jeopardy has not attached.
5 Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory
6 crimes must be determined by the underlying offense. These jurisdictional
7 requirements do not apply to nonjudicial punishment or administrative action taken by
8 military authorities.

9 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** (a) The
10 code of military justice applies to a member of the militia at all times. The code of
11 military justice does not apply to a member of the militia while in active federal
12 service.

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

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

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

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

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

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

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

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

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

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

28 **Sec. 26.05.420. Apprehension.** (a) A member of the militia or a person
29 authorized under 10 U.S.C. 801 - 946 or the code of military justice to apprehend
30 persons subject to the code of military justice, a marshal of a court-martial, and a
31 peace officer or civil officer having authority to apprehend offenders under the laws of

1 the United States or of a state may apprehend a person subject to the code of military
2 justice upon probable cause that a military offense has been committed and that the
3 person apprehended committed the military offense.

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

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

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

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

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

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

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

1 may be notified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 26.05.440. Jurisdiction of a special court-martial.** Subject to
28 AS 26.05.435, a special court-martial has jurisdiction to try a member of the militia for
29 a military offense and may impose a punishment not forbidden by the code of military
30 justice, other than dishonorable discharge, dismissal, confinement for more than one
31 year, forfeiture of pay exceeding two-thirds pay a month, or forfeiture of pay for more

1 than one year.

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

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

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

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

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

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

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

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

31 (1) the governor;

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

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

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

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

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

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

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

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

- 28 (1) a person who may convene a general or special court-martial;
- 29 (2) the commanding officer of a detached company or other
30 detachment or the commanding officer of a corresponding unit of the United States
31 Army;

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

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

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

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

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

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

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

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

31 (e) The accused may not be tried by a court-martial that includes a member

1 who is junior in rank or grade to the accused, unless the inclusion cannot be avoided.

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

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

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

18 (b) A military judge must be

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

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

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

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

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

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

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

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

11 (c) A person who has acted for the prosecution may not act in the same case
12 for the defense. A person who has acted for the defense may not act in the same case
13 for the prosecution.

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

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

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

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

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

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

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

31 (2) for good cause by the military judge or by order of the convening

1 authority.

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

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

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

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

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

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

31 (b) The person proffering the charges and specifications shall present them to

1 the proper authority. The proper authority receiving the charges and specifications
2 shall immediately determine the disposition of the charges in the interest of justice and
3 discipline, and the person accused shall be informed of the charges as soon as
4 practicable.

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

8 (b) A member of the militia may not interrogate or request a statement from a
9 person suspected of a military offense without first informing the person of the nature
10 of the accusation and advising the person that the person does not have to make any
11 statement regarding the military offense of which the person is accused or suspected
12 and that any statement made by the person may be used as evidence against the person
13 in a trial by court-martial.

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

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

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

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

1 (c) The investigating officer shall

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

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

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

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

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

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

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

30 (1) present at the investigation;

31 (2) informed of the nature of each uncharged military offense

1 investigated; and

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

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

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

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

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

21 (1) the specification alleges a military offense;

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

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

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

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

31 (2) recommending to the convening authority what action to take

1 regarding the specification; if the specification is referred for trial, the
2 recommendation of the judge advocate must accompany the specification.

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

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

12 **Sec. 26.05.478. Unlawfully influencing the action of a court.** (a) An
13 authority convening a general, special, or summary court-martial, a commanding
14 officer, or an officer serving on the staff of a convening authority or commanding
15 officer may not censure, reprimand, or admonish the court, a member of the court, the
16 military judge, or counsel appearing before the court, with respect to the findings of or
17 sentence imposed by the court, or with respect to another exercise of the respective
18 functions of the court, a member of the court, the military judge, or counsel appearing
19 before the court in the conduct of the proceedings.

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

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

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

29 (c) A member of the militia may not, in the preparation of an effectiveness,
30 fitness, or efficiency report, or any other report or document used, in whole or in part,
31 for the purpose of determining whether a member of the militia of the state is qualified

1 to be advanced in grade, in determining the assignment or transfer of a member of the
2 militia of the state, or in determining whether a member of the militia of the state
3 should be retained on active status,

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

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

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

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

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

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

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

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

31 (b) A period when the accused is absent without authority or fleeing from

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justice shall be excluded in computing the period of limitation in this section.

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

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

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

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

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

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

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

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

Sec. 26.05.488. Former jeopardy. (a) A person may not, without the person's

1 consent, be tried a second time for the same military offense.

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

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

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

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

21 **Sec. 26.05.493. Subpoena; process of military courts.** (a) A military judge,
22 the president of a court-martial, or a summary court-martial officer may issue
23 subpoenas and subpoenas duces tecum for the attendance of witnesses and production
24 of books and records, if the courts are sitting within the state and the witnesses, books,
25 and records sought are located in the state. A subpoena may be served by a person
26 designated by the military judge, the president of the court-martial, or summary court-
27 martial officer.

28 (b) If a person who is not a member of the militia of the state fails to comply
29 with a subpoena issued under this section, the military judge, president of the court-
30 martial, or summary court-martial officer may apply to a state court for an order to
31 compel obedience by proceedings for contempt as if the subpoena had been issued by

1 a court. The military judge, president of the court-martial, or summary court-martial
2 officer may request the attorney general to bring the action.

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

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

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

17 (c) A military judge or summary court-martial officer may punish a person
18 who is not a member of the militia for direct contempt in an amount not to exceed
19 \$100.

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

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

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

- 29 (1) guilty;
30 (2) not guilty; or
31 (3) not guilty by reason of insanity.

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

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

4 (2) in the case of a court-martial composed of a military judge or a
5 summary court-martial officer sitting without court members, the military judge or
6 summary court-martial officer determines that the defense of insanity has been
7 established.

8 (e) In the case of a court-martial composed of a military judge or a summary
9 court-martial officer sitting without court members, if the defense of insanity is
10 properly at issue, the military judge or summary court-martial officer shall find the
11 accused

12 (1) guilty;

13 (2) not guilty; or

14 (3) not guilty by reason of insanity.

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

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

27 (b) If trial counsel or defense counsel has reason to believe that the accused is
28 unable to understand the nature of the proceedings or to conduct or cooperate
29 intelligently in the defense of the case, counsel may file a motion with the military
30 judge assigned to the case for a determination of the competency of the accused. Upon
31 the motion, or on the judge's own motion, the court shall order an examination to be

1 conducted and make a determination in accordance with the requirements of
2 AS 12.47.100. If the military judge determines that the accused must be committed for
3 the purpose of examination, and the accused is not otherwise subject to commitment
4 under AS 47.30.700 - 47.30.915, the military judge shall order the convening authority
5 to seek the assistance of the attorney general in seeking a commitment under
6 AS 12.47.100.

7 (c) If the military court determines that the accused is incompetent to stand
8 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
9 47.30.915, the military judge shall order the convening authority to seek the assistance
10 of the attorney general in seeking a commitment under AS 12.47.110.

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

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

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

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

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

1 section.

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

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

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

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

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

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

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

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

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

31 (1) determine all questions of law and fact arising during the

1 proceedings and, if the accused is convicted, adjudge an appropriate sentence;

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

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

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

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

17 **Sec. 26.05.508. Record of trial.** (a) Each general and special court-martial
18 shall keep a separate record of the proceedings in each case brought before it, and the
19 record must be authenticated by the signature of the military judge. If the military
20 judge cannot authenticate the record because of the military judge's death, disability,
21 or absence, the record shall be authenticated by the signature of the trial counsel or, if
22 the trial counsel is unable to authenticate the record because of the trial counsel's
23 death, disability, or absence, then by the signature of a member of the court. In a
24 court-martial consisting of only a military judge, the record shall be authenticated by
25 the court reporter under the same conditions that would impose a duty on a member
26 under this subsection.

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

31 (c) Each summary court-martial shall keep a separate record of the

1 proceedings in each case, and the record shall be authenticated in the manner as may
2 be prescribed by rules of procedure.

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

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

9 **Sec. 26.05.513. Punishments; maximum limits.** (a) A court-martial may not
10 impose a punishment for a military offense that exceeds the limits set out in the code
11 of military justice and may not impose a sentence of death. A sentence for a military
12 offense may not exceed 10 years. A crime for which a sentence of confinement for a
13 term of more than one year is authorized is a felony offense. Except for convictions by
14 a summary court-martial and except as otherwise specifically provided in the code of
15 military justice, all other military offenses are misdemeanors. A conviction by a
16 summary court-martial is a violation.

17 (b) The maximum punishment for a violation of the code of military justice
18 shall be the lesser of the sentences prescribed by the Manual for Courts-Martial of the
19 United States in effect on January 1, 2004, and the code of military justice.

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

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

1 state, the United States, or a foreign country

2 (1) that had custody of the accused;

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

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

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

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

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

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

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

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

31 **Sec. 26.05.525. Appeal by the state.** (a) In a trial by court-martial in which a

1 punitive discharge may be imposed, the state may appeal to the Military Appeals
2 Commission established under this chapter

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

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

7 (3) an order or ruling that directs the disclosure of classified
8 information;

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

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

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

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

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

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

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

31 **Sec. 26.05.528. Vacation of suspension.** (a) A probationer serving a period of

1 probation under a sentence suspended by a special court-martial that, as approved,
2 includes a bad-conduct discharge, or a suspended general court-martial sentence, is
3 entitled to a hearing before the suspension is vacated. The probationer shall be
4 represented at the hearing by military counsel if the probationer requests
5 representation.

6 (b) If the suspended sentence was imposed by a special court-martial, the
7 officer having special court-martial jurisdiction over the probationer shall hold a
8 hearing on the alleged violation of probation. The record of the hearing and the
9 recommendation of the officer having special court-martial jurisdiction shall be sent
10 for action to the officer exercising general court-martial jurisdiction over the
11 probationer. If the officer vacates the suspension, the unexecuted part of the sentence,
12 except a dismissal, shall be executed, subject to applicable restrictions in the code of
13 military justice.

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

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

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

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

30 (c) If a previously executed sentence of dismissal is not imposed on a new
31 trial, the governor may substitute an administrative form of discharge, and a

1 commissioned officer dismissed under the original sentence may be reappointed by the
2 governor alone to the commissioned grade and rank that, in the opinion of the
3 governor, the former officer would have attained had the officer not been dismissed.
4 The reappointment of the former officer shall be without regard to the existence of a
5 vacancy and shall affect the promotion status of other officers only to the extent the
6 governor may direct. The time between the dismissal and the reappointment shall be
7 considered as actual service for all purposes, including the right to pay and
8 allowances.

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

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

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

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

26 (1) be licensed to practice law

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

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

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

- 1 (2) have engaged in the active practice of law for at least five years;
2 (3) be a former commissioned officer in the armed forces of the United
3 States or the reserve components, or in the militia of a state; and
4 (4) have at least five years' experience as an officer in the judge
5 advocate general's corps of the armed forces of the United States or the militia of the
6 state.

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

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

13 (f) The members of the commission shall select a chair from among the
14 members of the commission. The selection shall be subject to the approval of the
15 adjutant general.

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

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

29 **Sec. 26.05.540. Appellate review.** (a) After exhausting all remedies available
30 under the code of military justice, a party may appeal to the Alaska Supreme Court a
31 conviction and sentence imposed by a general or special court-martial for a military

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offense if the sentence

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

and

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

(b) A decision by the Alaska Supreme Court on an appeal filed under (a) of this section is final and binding on all parties, the Military Appeals Commission, and the court-martial.

(c) A party filing an appeal under this section shall comply with the rules of court applicable to appeals, including the deadlines for filing.

Sec. 26.05.543. Civilian appellate counsel. (a) If the attorney general requests representation, the senior force judge advocate shall detail a judge advocate as civilian appellate trial counsel to represent the state in an appeal filed under AS 26.05.540, in a proceeding filed under AS 26.05.538, or before any federal court. Counsel appointed under this subsection shall be a member in good standing of the state bar.

(b) The accused has the right to be represented by detailed military counsel before the reviewing court in an appeal filed under AS 26.05.540.

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

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

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

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

- (1) a judge advocate;
- (2) a summary court-martial;
- (3) the adjutant general and assistant adjutant generals;

- 1 (4) a commanding officer of the militia;
2 (5) a person authorized by statute or by regulations of the armed forces
3 of the United States or the state to administer oaths or act as a notary public.

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

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

8 (2) an officer designated to take a deposition;

9 (3) a person detailed to conduct an investigation;

10 (4) a recruiting officer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **Sec. 26.05.660. Principals.** A member of the militia who commits a military
30 offense, or aids, abets, counsels, commands, or procures the commission of the
31 military offense, or causes an act to be done that, if directly performed by the member,

1 would be punishable under this chapter, is a principal.

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

6 **Sec. 26.05.665. Conviction of lesser included offense.** An accused may be
7 found guilty of an offense necessarily included in the military offense charged or of an
8 attempt to commit either the military offense charged or an offense necessarily
9 included in the military offense charged.

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

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

15 (c) A member of the militia may be convicted of an attempt to commit a
16 military offense even if it appears, on the trial, that the military offense was
17 consummated.

18 **Sec. 26.05.670. Conspiracy.** A member of the militia who conspires with
19 another person to commit a military offense shall, if one or more of the conspirators
20 does an act to effect the object of the conspiracy, be punished as a court-martial may
21 direct.

22 **Sec. 26.05.673. Solicitation.** (a) A member of the militia who solicits or
23 advises another or others to desert in violation of AS 26.05.680 or to mutiny in
24 violation of AS 26.05.703 shall, if the military offense solicited or advised is
25 attempted or committed, be punished with the punishment provided for the
26 commission of the military offense, but, if the military offense solicited or advised is
27 not attempted or committed, the member shall be punished as a court-martial may
28 direct.

29 (b) A member of the militia who solicits or advises another or others to
30 commit an act of misbehavior before the enemy in violation of AS 26.05.715 or an act
31 of sedition in violation of AS 26.05.703 shall, if the military offense solicited or

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

4 **Sec. 26.05.675. Fraudulent enlistment, appointment, or separation.** A
5 person who procures the person's own enlistment or appointment in the militia of the
6 state by knowingly false representation or deliberate concealment as to the person's
7 qualifications for the enlistment or appointment and receives pay or allowances under
8 the enlistment or appointment, or procures the person's own separation from the
9 militia of the state by knowingly false representation or deliberate concealment as to
10 the person's eligibility for that separation, shall be punished as a court-martial may
11 direct.

12 **Sec. 26.05.678. Unlawful enlistment, appointment, or separation.** A
13 member of the militia who effects an enlistment or appointment in or a separation
14 from the militia of the state of a person who is known to the member to be ineligible
15 for that enlistment, appointment, or separation because it is prohibited by law,
16 regulation, or order shall be punished as a court-martial may direct.

17 **Sec. 26.05.680. Desertion.** (a) A person is guilty of desertion if the person is a
18 member of the militia and

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

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

24 (3) without being regularly separated from one force of the militia of
25 the state,

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

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

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

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

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

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

10 **Sec. 26.05.683. Absence without leave.** A member of the militia who, without
11 authority, (1) fails to go to the member's appointed place of duty at the time
12 prescribed, (2) goes from the member's place of duty, or (3) is absent or remains
13 absent from the member's unit, organization, or place of duty at which the member is
14 required to be at the time prescribed shall be punished as a court-martial may direct.

15 **Sec. 26.05.685. Missing movement.** A member of the militia who, through
16 neglect or design, misses the movement of a ship, aircraft, or unit with which the
17 member is required, in the course of duty, to move shall be punished as a court-martial
18 may direct.

19 **Sec. 26.05.688. Contempt toward officials.** A commissioned officer of the
20 militia who uses contemptuous words against the President or Vice-President of the
21 United States, the United States Congress, the United States Secretary of Defense, the
22 United States Secretary of Homeland Security, the secretary of a military department
23 of the United States, or the governor or legislature of this state shall be punished as a
24 court-martial may direct.

25 **Sec. 26.05.690. Disrespect toward superior commissioned officer.** A
26 member of the militia who behaves with disrespect toward the member's superior
27 commissioned officer shall be punished as a court-martial may direct.

28 **Sec. 26.05.693. Assaulting or wilfully disobeying superior commissioned**
29 **officer.** A member of the militia who (1) strikes the member's superior commissioned
30 officer or draws or lifts up any weapon or offers any violence against the superior
31 officer while the superior officer is in the execution of the superior officer's office, or

1 (2) wilfully disobeys a lawful command of the member's superior commissioned
2 officer shall be punished, if the military offense is committed in time of war, by
3 confinement of not more than 10 years or another punishment as a court-martial may
4 direct and, if the military offense is committed at any other time, by the punishment as
5 a court-martial may direct.

6 **Sec. 26.05.695. Insubordinate conduct toward warrant officer,**
7 **noncommissioned officer, or petty officer.** A warrant officer or enlisted member of
8 the militia who (1) strikes or assaults a warrant officer, noncommissioned officer, or
9 petty officer, while the officer is in the execution of the officer's office, (2) wilfully
10 disobeys the lawful order of a warrant officer, noncommissioned officer, or petty
11 officer, or (3) treats with contempt or is disrespectful in language or deportment
12 toward a warrant officer, noncommissioned officer, or petty officer while the officer is
13 in the execution of the officer's office shall be punished as a court-martial may direct.

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

19 **Sec. 26.05.700. Cruelty and maltreatment.** A member of the militia who is
20 guilty of cruelty toward, or oppression or maltreatment of, another person subject to
21 the member's orders shall be punished as a court-martial may direct.

22 **Sec. 26.05.703. Mutiny or sedition.** (a) A member of the militia is guilty of
23 mutiny if the member, with intent to usurp or override lawful military authority,
24 refuses, in concert with another person, to obey orders or otherwise do the member's
25 duty or creates violence or a disturbance.

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

29 (c) A member of the militia is guilty of a failure to suppress or report a mutiny
30 or sedition if the member fails to do the member's utmost to prevent and suppress a
31 mutiny or sedition being committed in the member's presence, or fails to take all

1 reasonable means to inform the member's superior commissioned officer or
2 commanding officer of a mutiny or sedition that the member knows or has reason to
3 believe is taking place.

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

7 **Sec. 26.05.705. Resistance, flight, breach of arrest, and escape.** A member
8 of the militia who (1) resists apprehension, (2) flees from apprehension, (3) breaks
9 arrest, or (4) escapes from custody or confinement shall be punished as a court-martial
10 may direct.

11 **Sec. 26.05.708. Releasing prisoner without proper authority.** A member of
12 the militia who, without proper authority, releases a prisoner committed to the
13 member's charge or, through neglect or design, suffers a prisoner to escape shall be
14 punished as a court-martial may direct, whether or not the prisoner was committed in
15 strict compliance with law.

16 **Sec. 26.05.710. Unlawful detention.** A member of the militia who, except as
17 provided by law or regulation, apprehends, arrests, or confines another person shall be
18 punished as a court-martial may direct.

19 **Sec. 26.05.713. Noncompliance with procedural rules.** A member of the
20 militia who (1) is responsible for unnecessary delay in the disposition of the case of
21 another person accused of a military offense, or (2) knowingly and intentionally fails
22 to enforce or comply with a provision of this chapter regulating the proceedings
23 before, during, or after trial of an accused shall be punished as a court-martial may
24 direct.

25 **Sec. 26.05.715. Misbehavior before the enemy.** (a) A member of the militia
26 is guilty of misbehavior before the enemy if the member is before or in the presence of
27 the enemy, or is facing a threat as described in AS 26.05.070, and

- 28 (1) runs away;
29 (2) shamefully abandons, surrenders, or delivers up a command, unit,
30 place, or military property that the member has a duty to defend;
31 (3) through disobedience, neglect, or intentional misconduct,

1 endangers the safety of the command, unit, place, or military property;

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

3 (5) engages in cowardly conduct;

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

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

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

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

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

15 **Sec. 26.05.718. Subordinate compelling surrender.** A member of the militia
16 who compels or attempts to compel the commander of the militia of this state or of
17 any other state, of a place, a vessel, an aircraft, or another military property, or of a
18 body of members of the armed forces to give it up to an enemy or to abandon it, or
19 who strikes the colors or flag to an enemy without proper authority, shall be punished
20 as a court-martial may direct.

21 **Sec. 26.05.720. Improper use of countersign.** A member of the militia who,
22 in time of war, discloses the parole or countersign to a person not entitled to receive it
23 or who gives to another person who is entitled to receive and use the parole or
24 countersign a different parole or countersign from that which, to the person's
25 knowledge, the member was authorized and required to give shall be punished as a
26 court-martial may direct.

27 **Sec. 26.05.723. Forcing a safeguard.** A member of the militia who forces a
28 safeguard shall be punished as a court-martial may direct.

29 **Sec. 26.05.725. Captured or abandoned property.** (a) A member of the
30 militia shall secure all public property taken for the service of the United States or the
31 state and shall give notice and turn over to the proper authority without delay all

1 captured or abandoned property in the member's possession, custody, or control.

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

8 **Sec. 26.05.728. Aiding the enemy.** A member of the militia who (1) aids or
9 attempts to aid the enemy or a hostile individual or group as described in
10 AS 26.05.070 with arms, ammunition, supplies, money, or other things, or (2) without
11 proper authority, knowingly harbors or protects or gives intelligence to, or
12 communicates or corresponds with or holds any intercourse with, the enemy or hostile
13 individual or group, either directly or indirectly, shall be punished as a court-martial
14 may direct.

15 **Sec. 26.05.730. Misconduct as prisoner.** A member of the militia who, while
16 in the hands of the enemy or a hostile individual or group as described in
17 AS 26.05.070 in time of war, (1) for the purpose of securing favorable treatment by
18 the person's captors, acts without proper authority in a manner contrary to law,
19 custom, or regulation, to the detriment of other persons of whatever nationality held by
20 the enemy or hostile individual or group as civilian or military prisoners, or (2) while
21 in a position of authority over a person, maltreats the person without justifiable cause
22 shall be punished as a court-martial may direct.

23 **Sec. 26.05.733. False official statements.** A member of the militia who, with
24 intent to deceive, signs a false record, return, regulation, order, or other official
25 document made in the line of duty, knowing it to be false, or makes a false official
26 statement in the line of duty, knowing it to be false, shall be punished as a court-
27 martial may direct.

28 **Sec. 26.05.735. Military property; loss, damage, destruction, or wrongful**
29 **disposition.** A member of the militia who, without proper authority, (1) sells or
30 otherwise disposes of, (2) wilfully or through neglect damages, destroys, or loses, or
31 (3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or

1 wrongfully disposed of, military property of the United States or of any state, shall be
2 punished as a court-martial may direct.

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

8 **Sec. 26.05.740. Improper hazarding of vessel.** A member of the militia who
9 wilfully, wrongfully, or with gross negligence hazards or suffers to be hazarded a
10 vessel of the armed forces of the United States or the militia of the state shall suffer
11 the punishment as a court-martial may direct.

12 **Sec. 26.05.741. Drunken or reckless operation of a vehicle, aircraft, or**
13 **vessel.** (a) A member of the militia who (1) operates or physically controls a vehicle,
14 aircraft, or vessel in a careless or reckless manner or while impaired by a substance
15 described in AS 26.05.745(b), or (2) operates or is in actual physical control of a
16 vehicle, aircraft, or vessel while under the influence of alcohol or when the alcohol
17 concentration in the person's blood or breath is equal to or exceeds the applicable limit
18 under (b) of this section shall be punished as a court-martial may direct.

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

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

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

26 (B) the blood alcohol content limit under AS 28.35.030; in this
27 paragraph, "blood alcohol content limit" is 0.10 grams of alcohol for each 100
28 milliliters of blood with respect to alcohol concentration in a person's blood
29 and is 0.10 grams of alcohol for each 210 liters of breath with respect to
30 alcohol concentration in a person's breath, as shown by chemical analysis;

31 (2) in the case of the operation or control of a vehicle, aircraft, or

1 vessel outside the United States, the applicable blood alcohol content limit is the blood
2 alcohol content limit specified in (4) of this subsection or a lower limit that the
3 Secretary of Defense may prescribe by regulation;

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

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

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

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

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

17 **Sec. 26.05.743. Drunk on duty.** A member of the militia, other than a sentinel
18 or lookout, who is found under the influence of alcohol while on duty shall be
19 punished as a court-martial may direct.

20 **Sec. 26.05.745. Wrongful use or possession of controlled substances.** (a) A
21 member of the militia who uses, possesses, manufactures, distributes, or imports a
22 controlled substance into the customs territory of the United States, exports from the
23 United States in violation of the laws of the United States or the state, or who
24 introduces a controlled substance into an installation, vessel, vehicle, or aircraft used
25 by or under the control of the armed forces of the United States or the military forces
26 of a state shall be punished as a court-martial may direct.

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

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

30 (2) a compound or derivative of a substance specified in (1) of this
31 subsection;

1 (3) a substance not specified in (1) or (2) of this subsection that is
2 listed on a schedule of controlled substances prescribed by the President of the United
3 States for the purposes of the armed forces of the United States under 10 U.S.C. 801 -
4 946 (Uniform Code of Military Justice);

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

8 **Sec. 26.05.748. Misbehavior of sentinel.** A sentinel or lookout who is found
9 under the influence of alcohol or sleeping on the sentinel's or lookout's post or leaves
10 the post before being regularly relieved shall be punished, if the military offense is
11 committed in time of war or emergency as described in AS 26.05.070, by confinement
12 of not more than 10 years or other punishment as a court-martial may direct, but if the
13 military offense is committed at any other time, by the punishment as a court-martial
14 may direct.

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

19 **Sec. 26.05.755. Riot or breach of peace.** A member of the militia who causes
20 or participates in a riot or breach of the peace shall be punished as a court-martial may
21 direct.

22 **Sec. 26.05.758. Provoking speeches or gestures.** A member of the militia
23 who uses provoking or reproachful words or gestures toward another member of the
24 militia shall be punished as a court-martial may direct.

25 **Sec. 26.05.760. Sexual assault.** (a) A member of the militia who commits any
26 of the following acts is guilty of sexual assault and shall be punished as a court-martial
27 may direct:

- 28 (1) a sexual act on another person by
29 (A) threatening or placing another person in fear;
30 (B) causing bodily harm to another person;
31 (C) making a fraudulent representation that the sexual act

1 serves a professional purpose;

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

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

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

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

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

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

17 (c) In a prosecution under this section, in proving that a person made a threat,
18 it is not necessary to prove that the person actually intended to carry out the threat or
19 had the ability to carry out the threat.

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

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

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

31 (2) a sleeping, unconscious, or incompetent person cannot consent; a

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

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

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

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

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

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

18 (4) "grievous bodily harm" means serious bodily injury, including
19 fractured or dislocated bones, deep cuts, torn members of the body, serious damage to
20 internal organs, and other severe bodily injuries; grievous bodily harm does not
21 include minor injuries such as a black eye or a bloody nose;

22 (5) "sexual act" means

23 (A) contact between the penis and the vulva, anus, or mouth; in
24 this subparagraph, contact involving the penis occurs upon penetration,
25 however slight;

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

30 (6) "sexual contact" means

31 (A) touching, or causing another person to touch, either directly

1 or through the clothing, the genitalia, anus, groin, breast, inner thigh, or
2 buttocks of a person, with an intent to abuse, humiliate, or degrade a person;

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

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

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

13 **Sec. 26.05.762. Stalking.** (a) A member of the militia is guilty of stalking and
14 shall be punished as a court-martial may direct if the member

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

18 (2) has knowledge, or should have knowledge, that the specific person
19 will be placed in reasonable fear of death or bodily harm, including sexual assault, to
20 the person or a member of the person's immediate family;

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

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

26 (1) "course of conduct" means a repeated maintenance of visual or
27 physical proximity to a specific person or a repeated conveyance of verbal threats,
28 written threats, or threats implied by conduct, or a combination of those threats,
29 directed at or toward a specific person;

30 (2) "immediate family" means a spouse, parent, child, or sibling of the
31 person, or any other family member, relative, or intimate partner of the person who

1 regularly resides in the household of the person or who, within the six months
2 preceding the commencement of the course of conduct, regularly resided in the
3 household of the person;

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

6 **Sec. 26.05.764. Other sexual misconduct; indecent viewing, visual**
7 **recording, or broadcasting.** (a) A member of the militia who knowingly commits
8 any of the following acts without legal justification or lawful authorization is guilty of
9 an offense under this section and shall be punished as a court-martial may direct:

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

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

17 (3) knowingly and wrongfully broadcasts or distributes a recording
18 that the person knows or reasonably should know was made under the circumstances
19 described in (2) of this subsection.

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

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

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

28 (1) "act of prostitution" means a sexual act or sexual contact as defined
29 in AS 26.05.760 because of which anything of value is given to or received by another
30 person;

31 (2) "broadcast" means electronically transmitting a visual image with

1 the intent that it be viewed by a person or persons;

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

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

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

10 (6) "reasonable expectation of privacy" means circumstances in which
11 a reasonable person would believe that the person could disrobe in privacy without
12 being concerned that an image of a private area of the person was being captured or
13 circumstances in which a reasonable person would believe that a private area of the
14 person would not be visible to the public.

15 **Sec. 26.05.766. Larceny and wrongful appropriation.** (a) A member of the
16 militia who wrongfully takes, obtains, or withholds, by any means, from the
17 possession of the owner or another person any money, personal property, or article of
18 value with intent permanently to deprive or defraud another person of the use and
19 benefit of the property or to appropriate it for the person's own use or the use of a
20 person other than the owner steals that property and is guilty of larceny and shall be
21 punished as a court-martial may direct.

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

28 **Sec. 26.05.768. Forgery.** A member of the militia who, with intent to defraud,
29 (1) falsely makes or alters a signature to or a part of any writing that would, if genuine,
30 apparently impose a legal liability on another person or change the legal right or
31 liability of the person to their prejudice, or (2) who utters, offers, issues, or transfers

1 that writing, which the person knows to be falsely made or altered, is guilty of forgery
2 and shall be punished as a court-martial may direct.

3 **Sec. 26.05.770. Making, drawing, or uttering check, draft, or order**
4 **without sufficient funds.** A member of the militia who makes, draws, utters, or
5 delivers a check, draft, or order for the payment of money on a bank or other
6 depository, knowing at the time that the maker or drawer has not or will not have
7 sufficient funds in, or credit with, the bank or other depository for the payment of that
8 check, draft, or order in full on its presentment, with intent to defraud for the
9 procurement of any article or thing of value or with intent to deceive, for the payment
10 of a past due obligation or for another purpose shall be punished as a court-martial
11 may direct. The making, drawing, uttering, or delivering by a maker or drawer of a
12 check, draft, or order, payment of which is refused by the drawee because of
13 insufficient funds of the maker or drawer in the drawee's possession or control, is
14 prima facie evidence of the person's intent to defraud or deceive and of the knowledge
15 of insufficient funds in, or credit with, that bank or other depository, unless the maker
16 or drawer pays the holder the amount due within five days after receiving notice,
17 orally or in writing, that the check, draft, or order was not paid on presentment. In this
18 section, "credit" means an arrangement or understanding, express or implied, with the
19 bank or other depository for the payment of that check, draft, or order.

20 **Sec. 26.05.772. Perjury.** A member of the militia who, in a judicial
21 proceeding or in a course of justice, under lawful oath or in another form allowed by
22 law to be substituted for an oath, willfully and corruptly gives false testimony material
23 to the issue or matter of inquiry, or who, in a declaration, certificate, verification, or
24 statement under penalty of perjury, subscribes a false statement material to the issue or
25 matter of inquiry is guilty of perjury and shall be punished as a court-martial may
26 direct.

27 **Sec. 26.05.774. Fraud against the government.** (a) A member of the militia
28 is guilty of fraud against the government if the member

- 29 (1) knowing it to be false or fraudulent
- 30 (A) makes a claim against the United States, the state, or an
- 31 officer of the United States or the state; or

1 (B) presents to a person in the civil or military service of the
2 United States, the state, or an officer of the United States or the state, for
3 approval or payment, a claim against the United States, the state, or an officer
4 of the United States or the state;

5 (2) for the purpose of obtaining the approval, allowance, or payment of
6 a claim against the United States, the state, or an officer of the United States or the
7 state,

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

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

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

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

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

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

27 **Sec. 26.05.776. Conduct unbecoming an officer.** A commissioned officer,
28 cadet, candidate, or midshipman of the militia who is convicted of conduct
29 unbecoming an officer shall be punished as a court-martial may direct.

30 **Sec. 26.05.778. General article.** (a) Although not specifically mentioned in
31 this chapter, all disorders and acts that prejudice good order and discipline in the

1 militia of the state and all conduct of a nature to bring discredit on the militia of the
2 state shall be considered by a court-martial and punished at the discretion of a military
3 court.

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

8 **Sec. 26.05.900. Definitions.** In this chapter, unless the context otherwise
9 requires,

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

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

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

21 (4) "classified information" means

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

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

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

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

- 1 (7) "confinement" means the physical restraint of a person;
- 2 (8) "convening authority" includes, in addition to the person who
3 convened the court, a commissioned officer commanding for the time being or a
4 successor in command to the convening authority;
- 5 (9) "day" means calendar day and is not synonymous with the term
6 "unit training assembly";
- 7 (10) "department" means the Department of Military and Veterans'
8 Affairs;
- 9 (11) "enlisted member" means a person in an enlisted grade;
- 10 (12) "military court" means a court-martial;
- 11 (13) "military judge" means an official of a general or special court-
12 martial described under AS 26.05.453;
- 13 (14) "military offense" means an offense specified in AS 26.05.120
14 and 26.05.660 - 26.05.778;
- 15 (15) "militia" or "militia of the state" means the Alaska National
16 Guard, the Alaska Naval Militia, and the Alaska State Defense Force;
- 17 (16) "national security" means the national defense and foreign
18 relations of the United States;
- 19 (17) "officer" means a commissioned or warrant officer;
- 20 (18) "officer in charge" means a member of the naval militia, United
21 States Navy, United States Marine Corps, or United States Coast Guard designated by
22 the appropriate authority;
- 23 (19) "record," when used in connection with the proceedings of a
24 court-martial, means
- 25 (A) an official written transcript, written summary, or other
26 writing relating to the proceedings; or
- 27 (B) an official audiotape, videotape, digital image or file, or
28 similar material from which sound, or sound and visual images, depicting the
29 proceedings may be reproduced;
- 30 (20) "senior force judge advocate" means the senior judge advocate of
31 the commander of the same force of the militia of the state as the accused and who is

1 that commander's chief legal advisor;

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

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

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

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

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

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

14 (i) If requested by a military judge or the convening authority of a court-
15 martial, assist the court-martial in obtaining the commitment of a person accused of a
16 military offense under AS 26.05 for a competency examination under AS 12.47.100 or
17 on a finding of incompetency under AS 12.47.110. In this subsection, "military
18 offense" has the meaning given in AS 26.05.900.

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

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

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

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

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

30 (4) cooperate with the Department of Public Safety to develop and
31 implement missing vulnerable adult prompt response and notification plans under

1 AS 44.41.060.

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

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

6 APPLICABILITY. AS 26.05.400 - 26.05.900, enacted by sec. 4 of this Act, and sec. 9
7 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
8 Act.

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

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

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

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

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MEMORANDUM

September 21, 2015

SUBJECT: Code of Military Justice: Primary jurisdiction issues
(CSHB 126 (); Work Order No. 29-LS0473I)

TO: Representative Gabrielle LeDoux
Attn: Lisa Vaught

FROM: Megan A. Wallace
Legislative Counsel

You have asked for an opinion related to primary jurisdiction over offenses under the above-referenced bill. At your request, I am providing this opinion on an expedited basis.

As previously discussed and addressed in my August 10, 2015 memorandum, the above-referenced bill contains criminal acts that are duplicative and, in some instances, inconsistent with existing state law, namely AS 26.05.611, AS 26.05.614, AS 26.05.620, AS 26.05.621, AS 26.05.622, AS 26.05.623, AS 26.05.624, AS 26.05.625, and AS 26.05.631. Accordingly, criminal acts that fall under these offenses may be punishable by the state under both the Code of Military Justice ("the code") and AS 11. In the bill, AS 26.05.400 provides that "[a] proper civilian court has primary jurisdiction of an offense not defined by this chapter when an act or omission violates both this chapter and local criminal law, foreign or domestic." Despite providing that the civilian court has primary jurisdiction when an act or omission violates both the code and local criminal law, the provision remains ambiguous as it only gives the civilian court primary jurisdiction over offenses "not defined by this chapter." Therefore, it may be difficult to determine who has primary jurisdiction as provided under AS 26.05.400 in the bill.

The ambiguity created by the added overlapping military offenses and state crimes should be clarified, especially given that the bill now makes the code applicable to members of the militia at all times. Accordingly, even when acts are committed outside of state military service, the conduct of the members of the militia is subject to the code. While I would encourage you to discuss these issues with the Department of Law, as they will need to make the determination of primary jurisdiction on a case-by-case basis, the following are a few revision options to help clarify the jurisdictional issue:¹

¹ It is my understanding that you would like the bill drafted so that the state is given primary jurisdiction over certain offenses currently included under the code, including sexual assault cases. As such, the options are presented accordingly.

Representative Gabrielle LeDoux

September 21, 2015

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1. The offenses noted above that are inconsistent with existing state law may be removed from the bill. If these offenses are removed from the bill, the state will unquestionably retain primary jurisdiction over these offenses, as defined under existing state law.
2. AS 26.05.400 may be revised to state that a civilian court has primary jurisdiction over any criminal act that violates both the code and local criminal law. Because certain sexual assaults and drug offenses are defined by the bill as "military offenses" it is unclear who has primary jurisdiction of a military offense defined by the bill that also violates local or state criminal law. As drafted, the inconsistencies between the bill and AS 11 compound the issue and will likely make the determination as to primary jurisdiction difficult. Removal of the phrase "not defined by this chapter" would help clarify the issue related to primary jurisdiction, but it would not resolve the overlying issues caused by the inconsistencies between the bill and AS 11, including unique and difficult double jeopardy and equal protection issues.
3. The bill may also be revised to mandate that the adjutant general refer specified crimes (such as sexual assault or drug offenses, for example) to the Department of Law for prosecution. If the Department of Law declines to prosecute or dismiss the charge after referral of the offense, then the offense could be prosecuted under the code.

If you have any questions, or if I can be of further assistance, please advise.

MAW:dla
15-462.dla

29-LS0473\G
Wallace
11/4/15

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 over petitions from the**
6 **Military Appeals Commission; relating to involuntary commitment for evaluation or**
7 **treatment of a mental disease or defect before court-martial proceedings; relating to**
8 **offenses subject to court-martial proceedings; and providing for an effective date."**

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

10 *** Section 1.** AS 22.05.010 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; the regulations for nonjudicial
6 punishment may not provide for confinement or separation from military service;

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

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

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

16 **Sec. 26.05.400. Statement of policy on military justice.** Courts-martial have
17 primary jurisdiction over offenses under this chapter, except 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

27 (1) in active federal service under 10 U.S.C. (Armed Forces); or

28 (2) outside the state and not in active duty status.

29 **Sec. 26.05.405. Jurisdiction to try certain personnel.** (a) A person
30 discharged from the militia of the state who is later charged with having fraudulently
31 obtained a discharge is subject to trial by court-martial on that charge and is, after

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apprehension, subject to the code of military justice while in custody under the direction of the militia of the state for the trial. Upon conviction of the charge, the person is subject to trial by court-martial for an offense under this chapter that is committed before the fraudulent discharge.

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

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

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

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

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

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

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

1 state, and is

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

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

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

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

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

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

30 **Sec. 26.05.423. Imposition of restraint.** (a) An enlisted member of the militia
31 may be arrested or confined by an oral or written order issued by a commissioned

1 officer or another member of the militia of the state acting at the commissioned
2 officer's direction. A commanding officer may authorize warrant officers, petty
3 officers, or noncommissioned officers to order enlisted members of the commanding
4 officer's command or subject to the commanding officer's authority into arrest or
5 confinement.

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

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

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

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

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

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

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

31 (b) Unless otherwise authorized by law, a person authorized to receive a

1 prisoner under (a) of this section may not refuse to receive or keep the prisoner
2 committed to the person's charge by a commissioned officer of the militia of the state
3 if the officer furnishes the person with a statement signed by the officer identifying the
4 offense charged against the prisoner.

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

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

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

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

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

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

24 (A) a military judge, not fewer than five members, and not
25 fewer than one alternate member; or

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

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

31 (A) a military judge, not fewer than three members, and not

1 fewer than one alternate member; or

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

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

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

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

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

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

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

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

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

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than two-thirds of one month's pay.

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

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

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

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

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

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

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

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

- (1) a person who may convene a general court-martial;
- (2) the commanding officer of a garrison, fort, post, camp, station, Air

1 National Guard base, or naval base or station;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 for the trial of a member of the militia.

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

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

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

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

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

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

31 **Sec. 26.05.453. Military judge of a general or special court-martial.** (a) A

1 senior force judge advocate who is in the same force as the accused, or a designee,
2 shall detail a military judge to a general and special court-martial. The military judge
3 shall preside over an open session of the court-martial to which the military judge has
4 been detailed.

5 (b) A military judge must be

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

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

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

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

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

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

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

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

29 (c) A person who has acted for the prosecution may not act in the same case
30 for the defense. A person who has acted for the defense may not act in the same case
31 for the prosecution.

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

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

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

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

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

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

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

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

20 (b) If a general court-martial, other than a general court-martial composed of
21 only a military judge, is reduced below five members, the military judge shall assign
22 an available alternate member to the general court-martial to restore the court to five
23 members. The trial may not proceed if a general court-martial, other than a general
24 court-martial composed of only a military judge, is reduced below five members and
25 no alternate is available for assignment.

26 (c) If a special court-martial, other than a special court-martial composed of
27 only a military judge, is reduced below three members, the military judge shall assign
28 an alternate member to the special court-martial to restore the court to three members.
29 The trial may not proceed if a special court-martial, other than a special court-martial
30 composed of only a military judge, is reduced below three members and no alternate is
31 available for assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (e) If, after the investigation, the charges are referred to the court-martial, the
31 investigating officer shall prepare a statement of the charges and the substance of the

1 testimony taken, and a copy shall be given to the accused.

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

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

14 (1) present at the investigation;

15 (2) informed of the nature of each uncharged offense investigated; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 before the court in the conduct of the proceedings.

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

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

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

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

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

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

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

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

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

30 (b) The form of the oath or affirmation, the time and place of taking, the
31 manner of recording, and a determination of whether the oath or affirmation shall be

1 taken for all cases in which the duties are to be performed or for a particular case, shall
2 be prescribed by rules of procedure. The rules may provide that, if a person takes an
3 oath or affirmation with respect to a duty, the person need not take the oath or
4 affirmation again on detailment to the duty.

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

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

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

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

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

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

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

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

1 contractor or government agency.

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

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

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

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

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

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

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

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

1 the plea of guilty is withdrawn before announcement of the sentence, in which event,
2 the proceedings shall continue as though the accused had pleaded not guilty.

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

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

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

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

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

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

1 \$100.

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

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

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

11 (1) guilty;

12 (2) not guilty; or

13 (3) not guilty by reason of insanity.

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

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

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

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

25 (1) guilty;

26 (2) not guilty; or

27 (3) not guilty by reason of insanity.

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

1 likely to cause serious harm to self or others. In this subsection, "mental illness" has
2 the meaning given in AS 47.30.915.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 26.05.508. Record of trial.** (a) Each general and special court-martial
31 shall keep a separate record of the proceedings in each case brought before it, and the

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

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

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

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

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

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

30 (b) A nonjudicial punishment may not include a sentence of confinement or
31 separation from military service.

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

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

14 (1) that had custody of the accused;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 proof of a fact material in the proceeding.

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

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

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

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

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

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

29 **Sec. 26.05.530. Petition for a new trial.** At any time within two years after
30 approval by the convening authority of a court-martial sentence, the accused may
31 petition the adjutant general for a new trial on the grounds of newly discovered

1 evidence or fraud on the court-martial.

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

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

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

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

30 **Sec. 26.05.538. Military Appeals Commission.** (a) The Military Appeals
31 Commission is established in the Department of Military and Veterans' Affairs. The

1 commission is a quasi-judicial agency.

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

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

7 (1) be licensed to practice law

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

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

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

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

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

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

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

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

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

28 (g) The governor may remove a commissioner from office for cause including
29 incompetence, neglect of duty, or misconduct in office. A commissioner, to be
30 removed for cause, shall be given a copy of the charges and offered an opportunity to
31 be publicly heard in person or by counsel in the commissioner's own defense upon not

1 less than 10 days' notice. If a commissioner is removed for cause, the governor shall
2 file with the lieutenant governor a complete statement of all charges made against the
3 commissioner and the governor's finding based on the charges, together with a
4 complete record of the proceedings.

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

10 (i) The governor may appoint an alternate member, who will serve temporarily
11 in cases where a Military Appeals Commission member is removed or otherwise
12 unavailable to perform the duties of a commission member. The alternate member
13 must be confirmed by a majority of the members of the legislature in joint session and
14 otherwise meet the qualifications specified in (c) of this section.

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

20 (1) includes confinement imposed under the code of military justice;
21 and

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

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

26 (c) A party filing a petition for review under this section shall comply with the
27 rules of court applicable to petitions for review in the appellate courts, including the
28 deadlines for filing.

29 **Sec. 26.05.543. Appellate and civilian counsel.** (a) If the attorney general
30 requests representation, the senior force judge advocate shall detail a judge advocate
31 as appellate counsel to represent the state in a proceeding filed under AS 26.05.538 as

1 civilian counsel, in a petition filed under AS 26.05.540, or as counsel before any
2 federal court.

3 (b) The accused has the right to be represented by detailed military counsel
4 before the Military Appeals Commission under AS 26.05.538 and before the
5 reviewing court in a petition filed under AS 26.05.540.

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

10 (d) A person who has acted as investigating officer, trial counsel, military
11 judge, witness, or court member in the case may not act as civilian review counsel for
12 the accused detailed under (c) of this section.

13 (e) An accused may choose to be represented by civilian counsel at the
14 expense of the accused.

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

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

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

- 26 (1) the president, military judge, and trial counsel for general and
27 special courts-martial;
- 28 (2) an officer designated to take a deposition;
- 29 (3) a person detailed to conduct an investigation;
- 30 (4) a recruiting officer;
- 31 (5) a person authorized by statute or by regulations of the armed forces

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of the United States to administer oaths or act as a notary public.

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

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

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

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

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

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

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

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

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

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

(1) retaining pay or allowances due or to become due to the person

1 fined from the militia of the state or the United States;

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

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

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

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

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

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

22 **Sec. 26.05.578. Accessory after the fact.** A member of the militia who,
23 knowing that an offense under this chapter has been committed, receives, comforts, or
24 assists the offender in order to hinder or prevent the offender's apprehension, trial, or
25 punishment shall be punished by up to one year of confinement, by separation with
26 characterization up to dishonorable discharge, and by such other punishment as a
27 court-martial may direct.

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

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

4 (b) A member of the militia who attempts to commit an offense under this
5 chapter shall be punished as a court-martial may direct, unless otherwise specifically
6 prescribed. However, a court-martial may not direct a punishment for an attempt to
7 commit an offense that is greater than the maximum punishment for the offense.

8 (c) A member of the militia may be convicted of an attempt to commit an
9 offense under this chapter even if it appears, at the trial, that the offense was
10 consummated.

11 **Sec. 26.05.581. Conspiracy.** A member of the militia who conspires with
12 another person to commit an offense under this chapter shall, if one or more of the
13 conspirators does an act to effect the object of the conspiracy, be punished by up to
14 one year of confinement, by separation with characterization up to dishonorable
15 discharge, and by such other punishment as a court-martial may direct.

16 **Sec. 26.05.582. Solicitation.** (a) A member of the militia who solicits or
17 advises another or others to desert in violation of AS 26.05.585 or to mutiny in
18 violation of AS 26.05.594 shall, if the offense solicited or advised is attempted or
19 committed, be punished with the punishment provided for the commission of the
20 offense, but, if the offense solicited or advised is not attempted or committed, the
21 member shall be punished by up to one year of confinement, by separation with
22 characterization up to dishonorable discharge, and by such other punishment as a
23 court-martial may direct.

24 (b) A member of the militia who solicits or advises another or others to
25 commit an act of misbehavior before the enemy in violation of AS 26.05.599 or an act
26 of sedition in violation of AS 26.05.594 shall, if the offense solicited or advised is
27 committed, be punished with the punishment provided for the commission of the
28 offense, but, if the offense solicited or advised is not committed, the member shall be
29 punished by up to one year of confinement, by separation with characterization up to
30 dishonorable discharge, and by such other punishment as a court-martial may direct.

31 **Sec. 26.05.583. Fraudulent enlistment, appointment, or separation.** A

1 person who procures the person's own enlistment or appointment in the militia of the
2 state by knowingly false representation or deliberate concealment as to the person's
3 qualifications for the enlistment or appointment and receives pay or allowances under
4 the enlistment or appointment, or procures the person's own separation from the
5 militia of the state by knowingly false representation or deliberate concealment as to
6 the person's eligibility for that separation, shall be punished by up to one year of
7 confinement, by separation with characterization up to dishonorable discharge, and by
8 such other punishment as a court-martial may direct.

9 **Sec. 26.05.584. Unlawful enlistment, appointment, or separation.** A
10 member of the militia who effects an enlistment or appointment in or a separation
11 from the militia of the state of a person who is known to the member to be ineligible
12 for that enlistment, appointment, or separation because it is prohibited by law,
13 regulation, or order shall be punished by up to one year of confinement, by separation
14 with characterization up to dishonorable discharge, and by such other punishment as a
15 court-martial may direct.

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

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

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

23 (3) without being regularly separated from one force of the militia of
24 the state,

25 (A) enlists or accepts an appointment in the same or another
26 force of the militia of the state, the military forces of another state, or in one of
27 the armed forces of the United States, without fully disclosing the fact that the
28 person has not been regularly separated; or

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

31 (b) A commissioned officer of the militia commits the offense of desertion if,

1 after tender of the officer's resignation and before notice of its acceptance, the officer
2 quits the officer's post or proper duties without leave and with intent to remain away
3 permanently.

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

6 (1) by confinement of not more than 10 years, by separation with a
7 characterization up to dishonorable discharge or by such other punishment as a court-
8 martial may direct if the offense is committed in time of war;

9 (2) by up to one year of confinement, by separation with
10 characterization up to dishonorable discharge, and by such other punishment as a
11 court-martial may direct if the desertion or attempt to desert occurs at a time other than
12 a time of war.

13 **Sec. 26.05.586. Absence without leave.** A member of the militia who, without
14 authority, (1) fails to go to the member's appointed place of duty at the time
15 prescribed, (2) goes from the member's place of duty, or (3) is absent or remains
16 absent from the member's unit, organization, or place of duty at which the member is
17 required to be at the time prescribed shall be punished by up to one year of
18 confinement, by separation with characterization up to dishonorable discharge, and by
19 such other punishment as a court-martial may direct.

20 **Sec. 26.05.587. Missing movement.** A member of the militia who, through
21 neglect or design, misses the movement of a ship, aircraft, or unit with which the
22 member is required, in the course of duty, to move shall be punished by up to one year
23 of confinement, by separation with characterization up to dishonorable discharge, and
24 by such other punishment as a court-martial may direct.

25 **Sec. 26.05.588. Contempt toward officials.** (a) A commissioned officer of the
26 militia who uses contemptuous words against the President or Vice-President of the
27 United States, the United States Congress, the United States Secretary of Defense, the
28 United States Secretary of Homeland Security, the secretary of a military department
29 of the United States, or the governor or legislature of this state shall be punished by
30 separation with characterization up to dishonorable discharge and by such other
31 punishment as a court-martial may direct.

1 (b) A court-martial may not impose a sentence of confinement under this
2 section.

3 **Sec. 26.05.589. Disrespect toward superior commissioned officer.** (a) A
4 member of the militia who behaves with disrespect toward the member's superior
5 commissioned officer shall be punished by separation with characterization up to
6 dishonorable discharge and by such other punishment as a court-martial may direct.

7 (b) A court-martial may not impose a sentence of confinement under this
8 section.

9 **Sec. 26.05.590. Assaulting or wilfully disobeying superior commissioned**
10 **officer.** A member of the militia who (1) strikes the member's superior commissioned
11 officer or draws or lifts up any weapon or offers any violence against the superior
12 officer while the superior officer is in the execution of the superior officer's office, or
13 (2) wilfully disobeys a lawful command of the member's superior commissioned
14 officer shall be punished by up to five years of confinement, by separation with
15 characterization up to dishonorable discharge, and by such other punishment as a
16 court-martial may direct.

17 **Sec. 26.05.591. Insubordinate conduct toward warrant officer,**
18 **noncommissioned officer, or petty officer.** A warrant officer or enlisted member of
19 the militia who (1) strikes or assaults a warrant officer, noncommissioned officer, or
20 petty officer, while the officer is in the execution of the officer's office, (2) wilfully
21 disobeys the lawful order of a warrant officer, noncommissioned officer, or petty
22 officer, or (3) treats with contempt or is disrespectful in language or deportment
23 toward a warrant officer, noncommissioned officer, or petty officer while the officer is
24 in the execution of the officer's office shall be punished by up to two years of
25 confinement, by separation with characterization up to dishonorable discharge, and by
26 such other punishment as a court-martial may direct.

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

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confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

Sec. 26.05.593. Cruelty and maltreatment. A member of the militia who is guilty of cruelty toward, or oppression or maltreatment of, another person subject to the member's orders shall be punished by up to one year of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

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

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

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

(d) A member who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition under this section shall be punished by up to 10 years of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

Sec. 26.05.595. Resistance, flight, breach of arrest, and escape. A member of the militia who (1) resists apprehension, (2) flees from apprehension, (3) breaks arrest, or (4) escapes from custody or confinement shall be punished by up to one year of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

Sec. 26.05.596. Releasing prisoner without proper authority. A member of the militia who, without proper authority, releases a prisoner committed to the

1 member's charge or, through neglect or design, suffers a prisoner to escape shall be
2 punished by up to one year of confinement, by separation with characterization up to
3 dishonorable discharge, and by such other punishment as a court-martial may direct,
4 whether or not the prisoner was committed in strict compliance with law.

5 **Sec. 26.05.597. Unlawful detention.** A member of the militia who, except as
6 provided by law or regulation, apprehends, arrests, or confines another person shall be
7 punished by up to one year of confinement, by separation with characterization up to
8 dishonorable discharge, and by such other punishment as a court-martial may direct.

9 **Sec. 26.05.598. Noncompliance with procedural rules.** A member of the
10 militia who (1) is responsible for unnecessary delay in the disposition of the case of
11 another person accused of an offense under this chapter shall be punished by up to six
12 months of confinement, by separation with characterization up to a bad conduct
13 discharge, and by such other punishment as a court-martial may direct, or (2)
14 knowingly and intentionally fails to enforce or comply with a provision of this chapter
15 regulating the proceedings before, during, or after trial of an accused shall be punished
16 by up to one year of confinement, by separation with characterization up to
17 dishonorable discharge, and by such other punishment as a court-martial may direct.

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

21 (1) runs away;

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

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

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

27 (5) engages in cowardly conduct;

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

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

31 (8) wilfully fails to do the utmost to encounter, engage, capture, or

1 destroy enemy troops, combatants, vessels, aircraft, or other thing that the member has
2 a duty to encounter, engage, capture, or destroy; or

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

6 (b) A member found guilty of misbehavior before the enemy under this
7 section shall be punished by up to 10 years of confinement, by separation with
8 characterization up to dishonorable discharge, and by such other punishment as a
9 court-martial may direct.

10 **Sec. 26.05.600. Subordinate compelling surrender.** A member of the militia
11 who compels or attempts to compel the commander of the militia of this state or of
12 any other state, of a place, a vessel, an aircraft, or another military property, or of a
13 body of members of the armed forces to give it up to an enemy or to abandon it in the
14 face of a threat described in AS 26.05.070, or who strikes the colors or flag to an
15 enemy without proper authority, shall be punished by up to 10 years of confinement,
16 by separation with characterization up to dishonorable discharge, and by such other
17 punishment as a court-martial may direct.

18 **Sec. 26.05.601. Improper use of countersign.** A member of the militia who,
19 in time of war, or emergency as described in AS 26.05.070, discloses the parole or
20 countersign to a person not entitled to receive it or who gives to another person who is
21 entitled to receive and use the parole or countersign a different parole or countersign
22 from that which, to the person's knowledge, the member was authorized and required
23 to give shall be punished by up to 10 years of confinement, by separation with
24 characterization up to dishonorable discharge, and by such other punishment as a
25 court-martial may direct.

26 **Sec. 26.05.602. Forcing a safeguard.** A member of the militia who forces a
27 safeguard shall be punished by up to 10 years of confinement, by separation with
28 characterization up to dishonorable discharge, and by such other punishment as a
29 court-martial may direct.

30 **Sec. 26.05.603. Captured or abandoned property.** (a) A member of the
31 militia shall secure all public property taken for the service of the United States or the

1 state and shall give notice and turn over to the proper authority without delay all
2 captured or abandoned property in the member's possession, custody, or control.

3 (b) A member of the militia who (1) fails to carry out the duties prescribed in
4 (a) of this section and buys, sells, trades, or in any way deals in or disposes of taken,
5 captured, or abandoned property, as a result of which the member receives or expects
6 to receive any profit, benefit, or advantage to the member or another person directly or
7 indirectly connected with the member shall be punished by up to one year of
8 confinement, by separation with characterization up to dishonorable discharge, and by
9 such other punishment as a court-martial may direct, or (2) engages in looting or
10 pillaging shall be punished by up to 10 years of confinement, by separation with
11 characterization up to dishonorable discharge, and by such other punishment as a
12 court-martial may direct.

13 **Sec. 26.05.604. Aiding the enemy.** A member of the militia who (1) aids or
14 attempts to aid the enemy or a hostile individual or group as described in
15 AS 26.05.070 with arms, ammunition, supplies, money, or other things, or (2) without
16 proper authority, knowingly harbors or protects or gives intelligence to, or
17 communicates or corresponds with or holds any intercourse with, the enemy or hostile
18 individual or group, either directly or indirectly, shall be punished by up to 10 years of
19 confinement, by separation with characterization up to dishonorable discharge, and by
20 such other punishment as a court-martial may direct.

21 **Sec. 26.05.605. Misconduct as prisoner.** A member of the militia who, while
22 in the hands of the enemy or a hostile individual or group as described in
23 AS 26.05.070, (1) for the purpose of securing favorable treatment by the person's
24 captors, acts without proper authority in a manner contrary to law, custom, or
25 regulation, to the detriment of other persons of whatever nationality held by the enemy
26 or hostile individual or group as civilian or military prisoners; or (2) while in a
27 position of authority over a person, maltreats the person without justifiable cause shall
28 be punished by up to 10 years of confinement, by separation with characterization up
29 to dishonorable discharge, and by such other punishment as a court-martial may direct.

30 **Sec. 26.05.607. False official statements.** A member of the militia who, with
31 intent to deceive, signs a false record, return, regulation, order, or other official

1 document made in the line of duty, knowing it to be false, or makes a false official
2 statement in the line of duty, knowing it to be false, shall be punished by up to one
3 year of confinement, by separation with characterization up to dishonorable discharge,
4 and by such other punishment as a court-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 by up to one year of confinement, by separation with characterization up to
11 dishonorable discharge, and by such other punishment as a court-martial may direct.

12 **Sec. 26.05.609. Property other than military property; waste, spoilage, or**
13 **destruction.** A member of the militia who wilfully or recklessly wastes, spoils, or
14 otherwise wilfully and wrongly destroys or damages any property other than military
15 property of the United States or of any state shall be punished by up to one year of
16 confinement, by separation with characterization up to dishonorable discharge, and by
17 such other punishment as a court-martial may direct.

18 **Sec. 26.05.610. Improper hazarding of vehicle, aircraft, or vessel.** (a) A
19 member of the militia who wilfully and wrongfully hazards or suffers to be hazarded a
20 vehicle, aircraft, or vessel of the armed forces of the United States or the militia of the
21 state shall be punished by up to five years of confinement, by separation with
22 characterization up to dishonorable discharge, and by such other punishment as a
23 court-martial may direct.

24 (b) A member of the militia who negligently hazards or suffers to be hazarded
25 a vehicle, aircraft, or vessel of the armed forces of the United States or the militia of
26 the state shall be punished by up to one year of confinement, by separation with
27 characterization up to dishonorable discharge, and by such other punishment as a
28 court-martial may direct.

29 **Sec. 26.05.611. Drunken or reckless operation of a vehicle, aircraft, or**
30 **vessel.** (a) A member of the militia who (1) operates or physically controls a
31 nonmilitary vehicle, aircraft, or vessel in a careless or reckless manner or while

1 impaired by a substance described in AS 26.05.614(c); or (2) operates or is in actual
2 physical control of a nonmilitary vehicle, aircraft, or vessel while under the influence
3 of alcohol or when the alcohol concentration in the person's blood or breath is equal to
4 or exceeds the applicable limit under (c) of this section shall be punished by up to one
5 year of confinement, by separation with characterization up to dishonorable discharge,
6 and by such other punishment as a court-martial may direct, or under (d) of this
7 section if the member is not in active duty status at the time of the offense, or by up to
8 five years of confinement, by separation with characterization up to dishonorable
9 discharge, and by such other punishment as a court-martial may direct if the member
10 is in active duty status at the time of the offense.

11 (b) A member of the militia who (1) operates or physically controls a vehicle,
12 aircraft, or vessel of the armed forces of the United States or the militia of a state in a
13 careless or reckless manner or while impaired by a substance described in
14 AS 26.05.614(c); or (2) operates or is in actual physical control of a vehicle, aircraft,
15 or vessel of the armed forces of the United States or the militia of a state while under
16 the influence of alcohol or when the alcohol concentration in the person's blood or
17 breath is equal to or exceeds the applicable limit under (c) of this section shall be
18 punished by up to five years of confinement, by separation with characterization up to
19 dishonorable discharge, and by such other punishment as a court-martial may direct.

20 (c) For purposes of (a) and (b) of this section,

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

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

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

28 (2) in the case of the operation or control of a vehicle, aircraft, or
29 vessel outside the United States, the applicable blood alcohol content limit is 0.10
30 grams of alcohol for each 100 milliliters of blood with respect to alcohol concentration
31 in a person's blood and is 0.10 grams of alcohol for each 210 liters of breath with

1 respect to alcohol concentration in a person's breath, as shown by chemical analysis or
2 a lower limit that the Secretary of Defense may prescribe by regulation;

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

7 (d) A member of the militia may be punished by up to five years of
8 confinement, by separation with characterization up to dishonorable discharge, and by
9 such other punishment as a court-martial may direct if the member of the militia is
10 convicted under (a) of this section and has been previously convicted two or more
11 times within the 10 years preceding the date of the present offense.

12 (e) Unless otherwise specifically defined or unless the context otherwise
13 requires, in this section,

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

17 (2) "nonmilitary" means not of the armed forces of the United States or
18 of the militia of a state;

19 (3) "state" includes the District of Columbia, the Commonwealth of
20 Puerto Rico, the Virgin Islands, Guam, and American Samoa;

21 (4) "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 by up to one year of confinement, by separation with characterization up to
26 dishonorable discharge, and by such other punishment as a court-martial may direct.

27 **Sec. 26.05.613. Misbehavior of sentinel.** A sentinel or lookout who is found
28 under the influence of alcohol or sleeping on the sentinel's or lookout's post or leaves
29 the post before being regularly relieved shall be punished, if the offense is committed
30 in time of war or emergency as described in AS 26.05.070, by confinement of not
31 more than 10 years, by separation with characterization up to dishonorable discharge,

1 or by such other punishment as a court-martial may direct, but if the offense is
2 committed at any other time, by up to one year of confinement, by separation with
3 characterization up to dishonorable discharge, and by such other punishment as a
4 court-martial may direct.

5 **Sec. 26.05.614. Wrongful use or possession of controlled substances.** (a) A
6 member of the militia who uses, possesses, manufactures, distributes, or imports a
7 controlled substance into the customs territory of the United States, exports from the
8 United States in violation of the laws of the United States or the state, or who
9 introduces a controlled substance into an installation, vessel, vehicle, or aircraft used
10 by or under the control of the armed forces of the United States or the military forces
11 of a state shall be punished by up to one year of confinement, by separation with
12 characterization up to dishonorable discharge, and by such other punishment as a
13 court-martial may direct if the charge is for use or possession, and by up to five years
14 of confinement, by separation with characterization up to dishonorable discharge, and
15 by such other punishment as a court-martial may direct if the charge is for
16 manufacturing, distributing, or importing.

17 (b) A court-martial may not impose a sentence of confinement under this
18 section if the charge is for use or possession of marijuana or any marijuana derivative
19 or compound.

20 (c) In this section, "controlled substance" means

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

23 (2) a compound or derivative of a substance specified in (1) of this
24 subsection;

25 (3) a substance not specified in (1) or (2) of this subsection that is
26 listed on a schedule of controlled substances prescribed by the President of the United
27 States for the purposes of the armed forces of the United States under 10 U.S.C. 801 -
28 946 (Uniform Code of Military Justice);

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

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

2 **Sec. 26.05.615. Malingering.** A member of the militia who, for the purpose of
3 avoiding work, duty, or service, (1) feigns illness, physical disablement, mental lapse,
4 or derangement, or (2) intentionally inflicts self-injury shall be punished by up to one
5 year of confinement, by separation with characterization up to dishonorable discharge,
6 and by such other punishment as a court-martial may direct.

7 **Sec. 26.05.616. Riot or breach of peace.** A member of the militia who causes
8 or participates in a riot or breach of the peace shall be punished by up to one year of
9 confinement, by separation with characterization up to dishonorable discharge, and by
10 such other punishment as a court-martial may direct.

11 **Sec. 26.05.617. Provoking speeches or gestures.** A member of the militia
12 who uses provoking or reproachful words or gestures toward another member of the
13 militia shall be punished by up to six months of confinement and by such other
14 punishment as a court-martial may direct.

15 **Sec. 26.05.620. Sexual assault.** (a) A member of the militia who commits any
16 of the following acts is guilty of sexual assault and shall be punished by up to 10 years
17 of confinement, by separation with characterization up to dishonorable discharge, and
18 by such other punishment as a court-martial may direct:

19 (1) a sexual act on another person by

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

21 (B) causing bodily harm to another person;

22 (C) making a fraudulent representation that the sexual act
23 serves a professional purpose;

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

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

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

31 (A) impairment by a drug, intoxicant, or other similar

1 substance, and that condition is known or reasonably should be known by the
2 person;

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

5 (b) A member of the militia who commits or causes sexual contact on or by
6 another person, and in doing so violates (a) of this section, is guilty of abusive sexual
7 contact and shall be punished by up to five years of confinement, by separation with
8 characterization up to dishonorable discharge, and by such other punishment as a
9 court-martial may direct.

10 (c) In a prosecution under this section, in proving that a person made a threat,
11 it is not necessary to prove that the person actually intended to carry out the threat or
12 had the ability to carry out the threat.

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

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

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

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

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

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

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

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

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

11 (4) "grievous bodily harm" means serious bodily injury, including
12 fractured or dislocated bones, deep cuts, torn members of the body, serious damage to
13 internal organs, and other severe bodily injuries; grievous bodily harm does not
14 include minor injuries such as a black eye or a bloody nose;

15 (5) "sexual act" means

16 (A) contact between the penis and the vulva, anus, or mouth; in
17 this subparagraph, contact involving the penis occurs upon penetration,
18 however slight;

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

23 (6) "sexual contact" means

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

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

31 (7) "threatening or placing another person in fear" means a

1 communication or action that is of sufficient consequence to cause a reasonable fear
2 that noncompliance will result in the victim or another person being subjected to the
3 wrongful action contemplated by the communication or action;

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

6 **Sec. 26.05.621. Stalking.** (a) A member of the militia is guilty of stalking and
7 shall be punished by up to three years of confinement, by separation with
8 characterization up to dishonorable discharge, and by such other punishment as a
9 court-martial may direct if the member

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

13 (2) has knowledge, or should have knowledge, that the specific person
14 will be placed in reasonable fear of death or bodily harm, including sexual assault, to
15 the person or a member of the person's immediate family;

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

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

21 (1) "course of conduct" means a repeated maintenance of visual or
22 physical proximity to a specific person or a repeated conveyance of verbal threats,
23 written threats, or threats implied by conduct, or a combination of those threats,
24 directed at or toward a specific person;

25 (2) "immediate family" means a spouse, parent, child, or sibling of the
26 person, or any other family member, relative, or intimate partner of the person who
27 regularly resides in the household of the person or who, within the six months
28 preceding the commencement of the course of conduct, regularly resided in the
29 household of the person;

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

1 **Sec. 26.05.622. Other sexual misconduct; indecent viewing, visual**
2 **recording, or broadcasting.** (a) A member of the militia who knowingly commits
3 any of the following acts without legal justification or lawful authorization is guilty of
4 an offense under this section and shall be punished by up to one year of confinement,
5 by separation with characterization up to dishonorable discharge, and by such other
6 punishment as a court-martial may direct:

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

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

14 (3) knowingly and wrongfully broadcasts or distributes a recording
15 that the person knows or reasonably should know was made under the circumstances
16 described in (2) of this subsection.

17 (b) A member of the militia who compels another person to engage in an act
18 of prostitution with another person is guilty of forcible pandering and shall be
19 punished by up to 10 years of confinement, by separation with characterization up to
20 dishonorable discharge, and by such other punishment as a court-martial may direct.

21 (c) A member of the militia who intentionally exposes, in an indecent manner,
22 the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure
23 and shall be punished by up to one year of confinement, by separation with
24 characterization up to dishonorable discharge, and by such other punishment as a
25 court-martial may direct.

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

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

31 (2) "broadcast" means electronically transmitting a visual image with

1 the intent that it be viewed by a person or persons;

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

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

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

10 (6) "reasonable expectation of privacy" means circumstances in which
11 a reasonable person would believe that the person could disrobe in privacy without
12 being concerned that an image of a private area of the person was being captured or
13 circumstances in which a reasonable person would believe that a private area of the
14 person would not be visible to the public.

15 **Sec. 26.05.623. Larceny and wrongful appropriation.** (a) A member of the
16 militia who wrongfully takes, obtains, or withholds, by any means, from the
17 possession of the owner or another person any money, personal property, or article of
18 value with intent permanently to deprive or defraud another person of the use and
19 benefit of the property or to appropriate it for the person's own use or the use of a
20 person other than the owner steals that property and is guilty of larceny and shall be
21 punished by up to one year of confinement, by separation with characterization up to
22 dishonorable discharge, and by such other punishment as a court-martial may direct.

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

29 **Sec. 26.05.624. Forgery.** A member of the militia who, with intent to defraud,
30 (1) falsely makes or alters a signature to or a part of any writing that would, if genuine,
31 apparently impose a legal liability on another person or change the legal right or

1 liability of the person to their prejudice, or (2) who utters, offers, issues, or transfers
2 that writing, which the person knows to be falsely made or altered, is guilty of forgery
3 and shall be punished by up to one year of confinement, by separation with
4 characterization up to dishonorable discharge, and by such other punishment as a
5 court-martial may direct.

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

25 **Sec. 26.05.631. Perjury.** A member of the militia who, in a judicial
26 proceeding or in a course of justice, under lawful oath or in another form allowed by
27 law to be substituted for an oath, willfully and corruptly gives false testimony material
28 to the issue or matter of inquiry, or who, in a declaration, certificate, verification, or
29 statement under penalty of perjury, subscribes a false statement material to the issue or
30 matter of inquiry is guilty of perjury and shall be punished by up to one year of
31 confinement, by separation with characterization up to dishonorable discharge, and by

1 such other punishment as a court-martial may direct.

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

4 (1) knowing it to be false or fraudulent

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

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

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

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

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

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

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

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

31 (b) A person found guilty of fraud against the government shall be punished

1 by up to one year of confinement, by separation with characterization up to
2 dishonorable discharge, and by such other punishment as a court-martial may direct.

3 **Sec. 26.05.633. Conduct unbecoming an officer.** (a) A commissioned officer,
4 cadet, candidate, or midshipman of the militia who is convicted of conduct
5 unbecoming an officer shall be punished by separation with characterization up to
6 dishonorable discharge and by such other punishment as a court-martial may direct.

7 (b) A court-martial may not impose a sentence of confinement under this
8 section.

9 **Sec. 26.05.634. General article.** (a) Although not specifically mentioned in
10 this chapter, all disorders and acts that prejudice good order and discipline in the
11 militia of the state and all conduct of a nature to bring discredit on the militia of the
12 state shall be considered by a court-martial and punished as a court-martial may direct.

13 (b) A member of the militia who commits an enumerated offense punishable
14 under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice), except for those
15 enumerated offenses relating to assault, negligent homicide, and wrongful
16 cohabitation, shall, upon conviction, be punished by separation with characterization
17 up to dishonorable discharge and by such other punishment as a court-martial may
18 direct.

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

21 **Sec. 26.05.900. Definitions.** In this chapter, unless the context otherwise
22 requires,

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

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

30 (3) "cadet," "candidate," or "midshipman" means a person who is
31 enrolled in or attending a state military academy, a regional training institute, or any

1 other formal education program for the purpose of becoming a commissioned officer
2 in the militia of the state;

3 (4) "classified information" means

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

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

10 (5) "code of military justice" means the provisions of this chapter and
11 the regulations adopted by the adjutant general to implement this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (19) "reviewing authority" means the Military Appeals Commission
12 and the Alaska Supreme Court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 * **Sec. 9.** AS 26.05.120, 26.05.130, 26.05.300, 26.05.310, 26.05.320, 26.05.322, 26.05.324,
16 26.05.326, 26.05.330, and 26.05.350 are repealed.

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

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

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

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

27 (1) one member shall be appointed for two years;

28 (2) one member shall be appointed for four years;

29 (3) one member shall be appointed for six years; and

30 (4) one alternate member may be appointed for six years.

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

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

CORRECTION 11/12/15: pg. 2, no. 4, line 2 & no. 6, line 3.

November 4, 2015

MEMORANDUM

SUBJECT: Military Code of Justice
CSHB 126(); (Work Order No. 29-LS0473\G)

TO: Representative Gabrielle LeDoux
Attn: Kalyssa Maile

FROM: Megan A. Wallace
Legislative Counsel *MAW*

Enclosed please find the draft bill you requested. I made the changes you requested, but please be aware of the following drafting issues:

1. You previously expressed a desire that this office not change any language provided for the draft,¹ which I advised is contrary to our legislative drafting process and the Manual of Legislative Drafting.² For this reason we have

¹ While I understand that the language you have and continue to provide 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.

² 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

incorporated the additional language changes you requested, but have not revised or reviewed the remaining portion of the bill for clarity, other legal problems, or cohesiveness. Nevertheless, please note some legal issues identified below in revision of the requested sections of the bill.

2. I have adhered to your above request, but please be advised that I did make a minor language change in AS 26.05.614(b) to better conform to language used in AS 26.05.588(b), 26.05.589(b), 26.05.633(b), and 26.05.634(c).
3. Per your request, I revised the bill to provide for alternate members of a court-martial. Please review AS 26.05.433 and 26.05.460 carefully to ensure I have captured your intent in this regard.
4. Similarly, please carefully review AS 26.05.425(a) and (b), 26.05.513(b), and 26.05.580(b) relating to nonjudicial punishment and attempt to ensure that I have captured your intent.
5. As I discussed with Kalyssa in your office, you requested that we delete AS 26.05.513(b) from the previous draft relating to maximum punishments, which has now been removed from this draft. In his revisions relating to sentencing, Captain Dunbar noted that the bill contains the maximum punishment language. As such, it was unclear from his note whether he intended for AS 26.05.513(b) to remain in the bill. I would recommend that you review AS 26.05.513(b) from the previous draft and discuss with Captain Dunbar to confirm that its deletion was appropriate.
6. Finally, because AS 33.30.051 in sec. 6 of the bill refers to persons convicted under AS 26.05 and confined under sec. 26.05.428 for commitment to state custody, AS 26.05.428(b) and (c) should be changed to apply to convictions.

If you have any questions or need further assistance, please advise.

MAW:dla
15-510.dla

Enclosure

be accepted for introduction in the House or Senate, and other legislative documents must be prepared and processed as provided in this manual.

Alaska Code of Military Justice

HB 126 AND THE ALASKA NATIONAL GUARD



Progress since September 22nd

- Since the last hearing, this bill has been briefed to the Governor. Remains a priority for him and for the Adjutant General.
- Many comments and concerns from previous hearing were turned into amendments and forwarded to Legislative Legal
- Red Team is now meeting weekly. Scenarios have included:
 - Drug Use
 - Inappropriate relationships
 - AWOL
 - Sexual Assault

Changes to the Latest Version

1. Maximum Punishments defined in the Punitive Articles.
 - Sec 26.05.577 through Sec. 26.05.634.
 - One year or less confinement = misdemeanor charge.
2. Clarifies that civilian authorities have right of first refusal.
 - Sec. 26.05.400
3. Long arm provision changed; no jurisdiction over behavior of Servicemembers outside the state who are not on orders.
 - Sec. 26.05.403

Additional Changes to the Latest Version

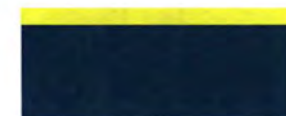
1. Amends title relating to jurisdiction of the supreme court over petitions from the Military Appeals Commission
2. Creates three strikes system in DUI provision.
 - Sec. 26.05.611
3. Expands system of alternates
 - Sec. 26.05.460 Absent and additional members (court martial)
 - Sec. 26.05.538 (i) (Military Appeals Commission)

Good Order and Discipline

ACMJ
Courts-Martial,
Non-Judicial Punishment

Administrative Actions

Alaska Criminal Law




Moving Forward

1. This version of HB 126 is again supported by the AKNG.
2. AKNG feels that the bill as written now would create a functioning system of military justice.
3. Nonjudicial Punishment regulation is being worked through by Red Team. Preliminary results are positive.
4. AKNG desires that HB 126 is passed during the 2016 session, 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





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JOINT BASE ELMENDORF - RICHARDSON AK 99505-0800

13 November 2015

Maximum Punishments Matrix: A Comparison between Maximum Allowable Punishments in the Federal Uniform Code of Military Justice and the Alaska Code of Military Justice.

Note: These punishments available in Courts-Martial, NOT in Nonjudicial Punishment.

<u>Offense</u>	<u>Maximum Punishment ACMJ</u> (years refer to years of confinement)	<u>Maximum Punishment UCMJ</u> (years refer to years of confinement)
Accessory after the fact	1 year; Dishonorable Discharge	Variable
Conspiracy	1 year; Dishonorable Discharge	Variable
Solicitation	1 year; Dishonorable Discharge	10 years; Dishonorable Discharge
Fraudulent enlistment, appointment, or separation	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Desertion (in time of war)	10 years; Dishonorable Discharge	Death
Desertion (at other times)	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Absence without leave	1 year; Dishonorable Discharge	18 months; Dishonorable Discharge
Missing movement	1 year; Dishonorable Discharge	2 years; Dishonorable Discharge
Contempt toward officials	No confinement; Dishonorable Discharge	1 year; Dismissal
Disrespect toward superior commissioned officer	No confinement; Bad Conduct Discharge	1 year; Bad Conduct Discharge
Assaulting or willfully disobeying superior commissioned officer	5 years; Dishonorable Discharge	In time of war: Death At other times: 10 years; Dishonorable Discharge
Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer	2 years; Dishonorable Discharge	5 years; Dishonorable Discharge
Failure to obey order or regulation	1 year; Dishonorable Discharge	2 years; Dishonorable Discharge
Cruelty and maltreatment	1 year; Dishonorable Discharge	1 year; Dishonorable Discharge
Mutiny or sedition	10 years; Dishonorable Discharge	Death
Resistance, flight, breach of arrest, and escape	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Releasing prisoner without proper authority	1 year; Dishonorable Discharge	2 years; Dishonorable Discharge
Unlawful detention	1 year; Dishonorable Discharge	3 years; Dishonorable Discharge
Noncompliance with procedural rules (unnecessary delay of disposition of case)	6 months; Bad Conduct Discharge	6 months; Bad Conduct Discharge
Noncompliance with procedural rules (knowingly and intentionally fails to enforce or comply)	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Misbehavior before the enemy or in time of emergency	10 years; Dishonorable Discharge	Death



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<u>Offense</u>	<u>Maximum Punishment ACMJ</u>	<u>Maximum Punishment UCMJ</u>
Subordinate Compelling Surrender	10 years; Dishonorable Discharge	Death
Improper use of countersign	10 years; Dishonorable Discharge	Death
Forcing a safeguard	10 years; Dishonorable Discharge	Death
Captured or abandoned property (disposes for personal advantage)	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Captured or abandoned property (looting or pillaging)	10 years; Dishonorable Discharge	Life in prison; Dishonorable Discharge
Aiding the enemy	10 years; Dishonorable Discharge	Death
Misconduct as prisoner	10 years; Dishonorable Discharge	Life in prison; Dishonorable Discharge
False official statements	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Military property-Loss, damage, destruction, or wrongful disposition	1 year; Dishonorable Discharge	10 years; Dishonorable Discharge
Improper hazarding of vehicle, aircraft, or vessel (willful and wrongful)	5 years; Dishonorable Discharge	Death
Improper hazarding of vehicle, aircraft, or vessel (negligently hazards)	1 year; Dishonorable Discharge	2 years; Dishonorable Discharge
Drunken or reckless operation of a vehicle, aircraft, or vessel (first two offenses)	1 years; Dishonorable Discharge	18 months; Dishonorable Discharge
Drunken or reckless operation of a vehicle, aircraft, or vessel (third and subsequent offenses)	5 years; Dishonorable Discharge	18 months; Dishonorable Discharge
Drunk on duty	1 year; Bad Conduct Discharge	9 months; Bad Conduct Discharge
Wrongful use, possession, etc., of controlled substance (possession)	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Wrongful use, possession, etc., of controlled substance (manufacturing, distributing, importing)	5 years; Dishonorable Discharge	15 years; Dishonorable Discharge
Wrongful use, possession, etc., of controlled substance (Marijuana)	No confinement; Dishonorable Discharge	2 years for possession; 10 years for production/distribution; Dishonorable Discharge
Misbehavior of sentinel (in time of war)	10 years; Dishonorable Discharge	Death
Misbehavior of sentinel (at other times)	1 year; Dishonorable Discharge	10 years when receiving special pay; 1 year; Dishonorable Discharge
Malingering	1 year; Dishonorable Discharge	10 years in time of war; otherwise 5 years; Dishonorable Discharge



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<u>Offense</u>	<u>Maximum Punishment ACMJ</u>	<u>Maximum Punishment UCMJ</u>
Riot or breach of peace	1 year; Dishonorable Discharge	10 years; Dishonorable Discharge
Provoking speeches or gestures	6 months; Dishonorable Discharge	6 months; no discharge
Sex assault (sexual act)	10 years; Dishonorable Discharge	30 years; Dishonorable Discharge
Sex assault (sexual contact)	5 years; Dishonorable Discharge	Aggravated sexual contact: 20 years; Dishonorable Discharge Abusive Sexual contact: 7 years; Dishonorable Discharge
Stalking	3 years; Dishonorable Discharge	3 years; Dishonorable Discharge
Other sexual misconduct (indecent viewing, visual recording, or broadcasting)	1 year; Dishonorable Discharge	Viewing: 1 year; Dishonorable Discharge Recording: 5 years; Dishonorable Discharge Distributing: 7 years; Dishonorable Discharge
Other sexual misconduct (compelling another to engage in prostitution)	10 years; Dishonorable Discharge	12 years; Dishonorable Discharge
Other sexual misconduct (indecent exposure)	1 year; Dishonorable Discharge	1 year; Dishonorable Discharge
Larceny and wrongful appropriation (permanent)	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Larceny and wrongful appropriation (temporary)	6 months; Dishonorable Discharge	2 years; Dishonorable Discharge
Forgery	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Making, drawing, or uttering check, draft, or order without sufficient funds	1 year; Dishonorable Discharge	5 years; Bad Conduct Discharge
Perjury	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Frauds against the governments	1 year; Dishonorable Discharge	5 years; Dishonorable Discharge
Conduct Unbecoming an Officer	No Confinement; Dishonorable Discharge	1 year; Dismissal
General Article	No Confinement; Dishonorable Discharge	Variable, with prison sentences; Dishonorable Discharge