

HB

126 -

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Wallace
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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

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

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

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

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

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

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

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

28 (d) A person may not serve as a judge advocate under the code of military
29 justice unless the person is a commissioned officer of the organized militia of a state
30 or of an active or reserve component of the armed forces or another uniformed service
31 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

1 than two-thirds of one month's pay.

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

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

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

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

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

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

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

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

- 29 (1) a person who may convene a general court-martial;
- 30 (2) the commanding officer of a garrison, fort, post, camp, station, Air
31 National Guard base, or naval base or station;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 shall preside over an open session of the court-martial to which the military judge has
2 been detailed.

3 (b) A military judge must be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (d) If the military judge of a court-martial composed of only a military judge
31 is unable to proceed with a trial because of a challenge or for other good cause, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) give the accused the opportunity to cross-examine witnesses
18 against the accused, if the witnesses are available; a victim of an offense under
19 AS 26.05.593, 26.05.620, 26.05.621, or 26.05.622 may not be required to testify at a
20 preliminary hearing; a victim of an offense under AS 26.05.593, 26.05.620, 26.05.621,
21 or 26.05.622 who declines to testify is considered unavailable for the purposes of the
22 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 before the imposition of nonjudicial punishment for the offense under the
12 code of 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
20 ordered by the President of the United States, and those operations actually prevented
21 the discovery of the offending behavior or the timely bringing of charges, as
22 determined by a military judge at court-martial, the running of a period of limitation
23 for an offense under this chapter is suspended until two years after the termination of
24 hostilities as proclaimed by the President of the United States or by a joint resolution
25 of the United States Congress if the offense

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

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

31 (3) is committed in connection with the negotiation, procurement,

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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. Former jeopardy protections provided to a member of the militia are equivalent to those provided under art. 1, sec. 9, Constitution of the State of Alaska, and under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

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

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

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

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

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

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

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

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

31 **Sec. 26.05.498. Defense of insanity.** (a) The accused may assert the

1 affirmative defense of insanity as provided in AS 12.47.010. If the accused gives
2 notice of the defense, the accused shall file with the military judge the notice required
3 by AS 12.47.090.

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

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

9 (1) guilty;

10 (2) not guilty; or

11 (3) not guilty by reason of insanity.

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

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

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

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

23 (1) guilty;

24 (2) not guilty; or

25 (3) not guilty by reason of insanity.

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

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

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

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

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

30 (e) When the custodian of an accused person hospitalized under (c) of this
31 section determines that the person has recovered to the extent that the accused is able

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

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

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

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

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

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

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

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

1 elements of the offense under this chapter and charge them that

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

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

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

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

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

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

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

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

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

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

28 **Sec. 26.05.508. Record of trial.** (a) Each general and special court-martial
29 shall keep a separate record of the proceedings in each case brought before it, and the
30 record must be authenticated by the signature of the military judge. If the military
31 judge cannot authenticate the record because of the military judge's death, disability,

1 or absence, the record shall be authenticated by the signature of the trial counsel or, if
2 the trial counsel is unable to authenticate the record because of the trial counsel's
3 death, disability, or absence, then by the signature of a member of the court. In a
4 court-martial consisting of only a military judge, the record shall be authenticated by
5 the court reporter under the same conditions that would impose a duty on a member
6 under this subsection.

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

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

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

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

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

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

31 **Sec. 26.05.515. Deferment of sentences.** (a) If an accused is under sentence to

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

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

13 (1) that had custody of the accused;

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

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

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

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

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

31 **Sec. 26.05.520. Error of law; lesser included offense.** (a) A finding or

1 sentence of a court-martial may not be held incorrect on the ground of an error of law
2 unless the error materially prejudices the substantial rights of the accused.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) be licensed to practice law

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

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

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

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

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

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

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

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

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

27 (g) The governor may remove a commissioner from office for cause including
28 incompetence, neglect of duty, or misconduct in office. A commissioner, to be
29 removed for cause, shall be given a copy of the charges and offered an opportunity to
30 be publicly heard in person or by counsel in the commissioner's own defense upon not
31 less than 10 days' notice. If a commissioner is removed for cause, the governor shall

1 file with the lieutenant governor a complete statement of all charges made against the
2 commissioner and the governor's finding based on the charges, together with a
3 complete record of the proceedings.

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

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

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

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

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

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

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

28 **Sec. 26.05.543. Appellate and civilian counsel.** (a) If the attorney general
29 requests representation, the senior force judge advocate shall detail a judge advocate
30 as appellate counsel to represent the state in a proceeding filed under AS 26.05.538 as
31 civilian counsel, in a petition filed under AS 26.05.540, or as counsel before any

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federal court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 26.05.580. Attempts.** (a) An act done with specific intent to commit an

1 offense under this chapter that amounts to more than mere preparation and tends, even
2 though failing, to effect its commission, is an attempt to commit the offense.

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

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

10 **Sec. 26.05.581. Conspiracy.** A member of the militia who conspires with
11 another person to commit an offense under this chapter shall, if one or more of the
12 conspirators does an act to effect the object of the conspiracy, be punished as a court-
13 martial may direct, unless otherwise specifically prescribed. However, a court-martial
14 may not direct a punishment for conspiracy to commit an offense that is greater than
15 the maximum punishment for the offense.

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

1 confinement, by separation with characterization up to dishonorable discharge, and by
2 such other punishment as a court-martial may direct.

3 **Sec. 26.05.593. Cruelty and maltreatment.** A member of the militia who is
4 guilty of cruelty toward, or oppression or maltreatment of, another person subject to
5 the member's orders shall be punished by up to one year of confinement, by separation
6 with characterization up to dishonorable discharge, and by such other punishment as a
7 court-martial may direct.

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

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

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

21 (d) A member who is found guilty of mutiny, sedition, or failure to suppress
22 or report a mutiny or sedition under this section shall be punished by up to 10 years of
23 confinement, by separation with characterization up to dishonorable discharge, and by
24 such other punishment as a court-martial may direct.

25 **Sec. 26.05.595. Resistance, flight, breach of arrest, and escape.** A member
26 of the militia who (1) resists apprehension, (2) flees from apprehension, (3) breaks
27 arrest, or (4) escapes from custody or confinement shall be punished by up to one year
28 of confinement, by separation with characterization up to dishonorable discharge, and
29 by such other punishment as a court-martial may direct.

30 **Sec. 26.05.596. Releasing prisoner without proper authority.** A member of
31 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 knowingly and intentionally (1) is responsible for unnecessary delay in the
11 disposition of the case of another person accused of an offense under this chapter shall
12 be punished by up to six months of confinement, by separation with characterization
13 up to a bad conduct discharge, and by such other punishment as a court-martial may
14 direct, or (2) fails to enforce or comply with a provision of this chapter regulating the
15 proceedings before, during, or after trial of an accused shall be punished by up to one
16 year of confinement, by separation with characterization up to dishonorable discharge,
17 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

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destroy enemy troops, combatants, vessels, aircraft, or other thing that the member has a duty to encounter, engage, capture, or destroy; or

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

(b) A member found guilty of misbehavior before the enemy 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. 26.05.600. Subordinate compelling surrender. A member of the militia who compels or attempts to compel the commander of the militia of this state or of any other state, of a place, a vessel, an aircraft, or another military property, or of a body of members of the armed forces to give it up to an enemy or to abandon it in the face of a threat described in AS 26.05.070, or who strikes the colors or flag to an enemy without proper authority, 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. 26.05.601. Improper use of countersign. A member of the militia who, in time of war, or emergency as described in AS 26.05.070, discloses the parole or countersign to a person not entitled to receive it or who gives to another person who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to the person's knowledge, the member was authorized and required to give 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. 26.05.602. Forcing a safeguard. A member of the militia who forces a safeguard 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. 26.05.603. Captured or abandoned property. (a) A member of the 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

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document made in the line of duty, knowing it to be false, or makes a false official statement in the line of duty, knowing it to be false, 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. 26.05.608. Military property; loss, damage, destruction, or wrongful disposition. A member of the militia who, without proper authority, (1) sells or otherwise disposes of, (2) wilfully or through neglect damages, destroys, or loses, or (3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of, military property of the United States or of any state, 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. 26.05.609. Property other than military property; waste, spoilage, or destruction. A member of the militia who wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongly destroys or damages any property other than military property of the United States or of any state 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. 26.05.610. Improper hazarding of vehicle, aircraft, or vessel. (a) A member of the militia who wilfully and wrongfully hazards or suffers to be hazarded a vehicle, aircraft, or vessel of the armed forces of the United States or the militia of the state shall be punished by up to five years of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

(b) A member of the militia who negligently hazards or suffers to be hazarded a vehicle, aircraft, or vessel of the armed forces of the United States or the militia of the state 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. 26.05.611. Drunken or reckless operation of a vehicle, aircraft, or vessel. (a) A member of the militia who operates or physically controls a nonmilitary vehicle, aircraft, or vessel in a negligent or reckless manner shall be punished by

1 separation with characterization up to dishonorable discharge and by such other
2 punishment as a court-martial may direct if the charge is for negligent operation or
3 control, and by up to one year of confinement, by separation with characterization up
4 to dishonorable discharge, and by such other punishment as a court-martial may direct
5 if the charge is for reckless operation or control. A court-martial may not impose a
6 sentence of confinement under this subsection if the charge is for negligent operation
7 or control.

8 (b) A member of the militia who operates or physically controls a nonmilitary
9 vehicle, aircraft, or vessel while (1) impaired by a substance described in
10 AS 26.05.614(c), or (2) operating or in actual physical control of a nonmilitary
11 vehicle, aircraft, or vessel while under the influence of alcohol or when the alcohol
12 concentration in the person's blood or breath is equal to or exceeds the applicable limit
13 under (d) of this section shall be punished by up to one year of confinement, by
14 separation with characterization up to dishonorable discharge, and by such other
15 punishment as a court-martial may direct, or under (e) of this section if the member is
16 not in active duty status at the time of the offense, or by up to five years of
17 confinement, by separation with characterization up to dishonorable discharge, and by
18 such other punishment as a court-martial may direct if the member is in active duty
19 status at the time of the offense.

20 (c) A member of the militia who (1) operates or physically controls a vehicle,
21 aircraft, or vessel of the armed forces of the United States or the militia of a state in a
22 negligent or reckless manner or while impaired by a substance described in
23 AS 26.05.614(c), or (2) operates or is in actual physical control of a vehicle, aircraft,
24 or vessel of the armed forces of the United States or the militia of a state while under
25 the influence of alcohol or when the alcohol concentration in the person's blood or
26 breath is equal to or exceeds the applicable limit under (d) of this section shall be
27 punished by up to five years of confinement, by separation with characterization up to
28 dishonorable discharge, and by such other punishment as a court-martial may direct.

29 (d) For purposes of (b) and (c) of this section,

30 (1) in the case of the operation or control of a vehicle, aircraft, or
31 vessel in the United States, the applicable limit on the alcohol concentration in a

1 person's blood or breath is the lesser of

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

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

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

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

16 (e) A member of the militia may be punished by up to five years of
17 confinement, by separation with characterization up to dishonorable discharge, and by
18 such other punishment as a court-martial may direct if the member of the militia is
19 convicted under (b) of this section and has been previously convicted two or more
20 times within the 10 years preceding the date of the present offense.

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

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

26 (2) "nonmilitary" means not of the armed forces of the United States or
27 of the militia of a state;

28 (3) "state" includes the District of Columbia, the Commonwealth of
29 Puerto Rico, the Virgin Islands, Guam, and American Samoa;

30 (4) "United States" includes the District of Columbia, the
31 Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

1 **Sec. 26.05.612. Drunk on duty.** A member of the militia, other than a sentinel
2 or lookout, who is found under the influence of alcohol while on duty shall be
3 punished by up to one year of confinement, by separation with characterization up to
4 dishonorable discharge, and by such other punishment as a court-martial may direct.

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

14 **Sec. 26.05.614. Wrongful use or possession of controlled substances.** (a) A
15 member of the militia who wrongfully uses, possesses, manufactures, distributes, or
16 imports a controlled substance into the customs territory of the United States, exports
17 from the United States in violation of the laws of the United States or the state, or who
18 wrongfully introduces a controlled substance into an installation, vessel, vehicle, or
19 aircraft used by or under the control of the armed forces of the United States or the
20 military forces of a state shall be punished by up to one year of confinement, by
21 separation with characterization up to dishonorable discharge, and by such other
22 punishment as a court-martial may direct if the charge is for wrongful use or
23 possession, and by up to five years of confinement, by separation with characterization
24 up to dishonorable discharge, and by such other punishment as a court-martial may
25 direct if the charge is for manufacturing, distributing, or importing.

26 (b) A court-martial may not impose a sentence of confinement under this
27 section if the charge is for use or possession of marijuana or any marijuana derivative
28 or compound.

29 (c) In this section, "controlled substance" means

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

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

3 (3) a substance not specified in (1) or (2) of this subsection that is
4 listed on a schedule of controlled substances prescribed by the President of the United
5 States for the purposes of the armed forces of the United States under 10 U.S.C. 801 -
6 946 (Uniform Code of Military Justice);

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

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

11 **Sec. 26.05.615. Malingering.** A member of the militia who, for the purpose of
12 avoiding work, duty, or service, (1) feigns illness, physical disablement, mental lapse,
13 or derangement, or (2) intentionally inflicts self-injury shall be punished by up to one
14 year of confinement, by separation with characterization up to dishonorable discharge,
15 and by such other punishment as a court-martial may direct.

16 **Sec. 26.05.616. Riot or breach of peace.** A member of the militia who causes
17 or participates in a riot or breach of the peace 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. 26.05.617. Provoking speeches or gestures.** (a) A member of the militia
21 who uses provoking or reproachful words or gestures toward another member of the
22 militia shall be punished by up to six months of confinement and by such other
23 punishment as a court-martial may direct.

24 (b) A court-martial may not impose a sentence of confinement or a discharge
25 under this section.

26 **Sec. 26.05.620. Sexual assault.** (a) A member of the militia who commits any
27 of the following acts is guilty of sexual assault and shall be punished by up to 10 years
28 of confinement, by separation with characterization up to dishonorable discharge, and
29 by such other punishment as a court-martial may direct:

30 (1) a sexual act on another person by

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

1 (B) causing bodily harm to another person;

2 (C) making a fraudulent representation that the sexual act
3 serves a professional purpose;

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

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

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

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

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

16 (b) A member of the militia who commits or causes sexual contact on or by
17 another person, and in doing so would have violated (a) of this section had the sexual
18 contact been a sexual act, is guilty of abusive sexual contact and shall be punished by
19 up to five years of confinement, by separation with characterization up to dishonorable
20 discharge, and by such other punishment as a court-martial may direct.

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

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

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

29 (1) an expression of lack of consent through words or conduct means
30 there is no consent; lack of verbal or physical resistance or submission resulting from
31 the use of force, threat of force, or placing another person in fear may not constitute

1 consent; a current or previous dating, social, or sexual relationship by itself or the
2 manner of dress of the person involved with the accused in the conduct at issue may
3 not constitute consent;

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

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

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

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

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

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

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

26 (5) "sexual act" means

27 (A) contact between the penis and the vulva, anus, or mouth; in
28 this subparagraph, contact involving the penis occurs upon penetration,
29 however slight;

30 (B) the penetration, however slight, of the vulva, anus, or
31 mouth of another person by any part of the body or any object, with an intent

1 to abuse, humiliate, harass, or degrade a person or to arouse or gratify the
2 sexual desire of a person;

3 (6) "sexual contact" means

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

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

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

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

17 **Sec. 26.05.621. Stalking.** (a) A member of the militia is guilty of stalking and
18 shall be punished by up to three years of confinement, by separation with
19 characterization up to dishonorable discharge, and by such other punishment as a
20 court-martial may direct if the member

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

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

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

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

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

5 (2) "immediate family" means a spouse, parent, child, or sibling of the
6 person, or any other family member, relative, or intimate partner of the person who
7 regularly resides in the household of the person or who, within the six months
8 preceding the commencement of the course of conduct, regularly resided in the
9 household of the person;

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

12 **Sec. 26.05.622. Other sexual misconduct; indecent viewing, visual**
13 **recording, or broadcasting.** (a) A member of the militia who knowingly commits
14 any of the following acts without legal justification or lawful authorization is guilty of
15 an offense under this section and shall be punished by up to one year of confinement,
16 by separation with characterization up to dishonorable discharge, and by such other
17 punishment as a court-martial may direct:

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

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

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

28 (b) A member of the militia who compels another person to engage in an act
29 of prostitution with another person is guilty of forcible pandering and shall be
30 punished by up to 10 years of confinement, by separation with characterization up to
31 dishonorable discharge, and by such other punishment as a court-martial may direct.

1 (c) A member of the militia who intentionally exposes, in an indecent manner,
2 the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure
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 (d) Unless otherwise specifically defined or unless the context otherwise
7 requires, in this section,

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

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

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

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

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

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

26 **Sec. 26.05.623. Larceny and wrongful appropriation.** (a) A member of the
27 militia who wrongfully takes, obtains, or withholds, by any means, from the
28 possession of the owner or another person any money, personal property, or article of
29 value with intent permanently to deprive or defraud another person of the use and
30 benefit of the property or to appropriate it for the person's own use or the use of a
31 person other than the owner steals that property and is guilty of larceny and shall be

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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.

(b) A member of the militia who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or another person any money, personal property, or article of value with intent temporarily to deprive or defraud another person of the use and benefit of the property or to appropriate it for the person's own use or the use of a person other than the owner is guilty of wrongful appropriation and shall be punished by up to six months of confinement, by separation with characterization up to a bad conduct discharge, and by such other punishment as a court-martial may direct.

Sec. 26.05.624. Forgery. A member of the militia who, with intent to defraud, (1) falsely makes or alters a signature to or a part of any writing that would, if genuine, apparently impose a legal liability on another person or change the legal right or liability of the person to their prejudice, or (2) utters, offers, issues, or transfers that writing, which the person knows to be falsely made or altered, is guilty of forgery and 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. 26.05.625. Making, drawing, or uttering check, draft, or order without sufficient funds. A member of the militia who makes, draws, utters, or delivers a check, draft, or order for the payment of money on a bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full on its presentment, with intent to defraud for the procurement of any article or thing of value or with intent to deceive, for the payment of a past due obligation or for another purpose 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. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of the person's intent to defraud

1 or deceive and of the knowledge of insufficient funds in, or credit with, that bank or
2 other depository, unless the maker or drawer pays the holder the amount due within
3 five days after receiving notice, orally or in writing, that the check, draft, or order was
4 not paid on presentment. In this section, "credit" means an arrangement or
5 understanding, express or implied, with the bank or other depository for the payment
6 of that check, draft, or order.

7 **Sec. 26.05.631. Perjury.** A member of the militia who, in a judicial
8 proceeding or in a course of justice, under lawful oath or in another form allowed by
9 law to be substituted for an oath, willfully and corruptly gives false testimony material
10 to the issue or matter of inquiry, or who, in a declaration, certificate, verification, or
11 statement under penalty of perjury, subscribes a false statement material to the issue or
12 matter of inquiry is guilty of perjury and shall be punished by up to one year of
13 confinement, by separation with characterization up to dishonorable discharge, and by
14 such other punishment as a court-martial may direct.

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

17 (1) knowing it to be false or fraudulent

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

20 (B) presents to a person in the civil or military service of the
21 United States, the state, or an officer of the United States or the state, for
22 approval or payment, a claim against the United States, the state, or an officer
23 of the United States or the state;

24 (2) for the purpose of obtaining the approval, allowance, or payment of
25 a claim against the United States, the state, or an officer of the United States or the
26 state

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

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

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

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

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

13 (b) A person found guilty of fraud against the government shall be punished
14 by up to one year of confinement, by separation with characterization up to
15 dishonorable discharge, and by such other punishment as a court-martial may direct.

16 **Sec. 26.05.633. Conduct unbecoming an officer.** (a) A commissioned officer,
17 cadet, candidate, or midshipman of the militia who is convicted of conduct
18 unbecoming an officer shall be punished by separation with characterization up to
19 dishonorable discharge and by such other punishment as a court-martial may direct.

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

22 **Sec. 26.05.634. General article.** (a) Although not specifically mentioned in
23 this chapter, all disorders and acts that prejudice good order and discipline in the
24 militia of the state and all conduct of a nature to bring discredit on the militia of the
25 state shall be considered by a court-martial and punished as a court-martial may direct.

26 (b) A member of the militia who commits an enumerated offense punishable
27 under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice), except for those
28 enumerated offenses relating to wrongful cohabitation, shall, upon conviction, be
29 punished by separation with characterization up to dishonorable discharge and by such
30 other punishment as a court-martial may direct.

31 (c) A court-martial may not impose a sentence of confinement under (a) or (b)

1 of this section.

2 **Sec. 26.05.900. Definitions.** In this chapter, unless the context otherwise
3 requires,

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

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

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

15 (4) "classified information" means

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

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

22 (5) "code of military justice" means the provisions of this chapter and
23 the regulations adopted by the adjutant general to implement this chapter;

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

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

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

31 (9) "day" means calendar day and is not synonymous with the term

1 "unit training assembly";

2 (10) "department" means the Department of Military and Veterans'
3 Affairs;

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

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

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

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

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

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

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

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

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

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

23 (19) "reviewing authority" means the Military Appeals Commission
24 and the Alaska Supreme Court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 * **Sec. 9.** AS 26.05.120, 26.05.130, 26.05.300, 26.05.310, 26.05.320, 26.05.322, 26.05.324,
28 26.05.326, 26.05.330, and 26.05.350 are repealed.

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

31 APPLICABILITY. AS 26.05.380 - 26.05.900, enacted by sec. 4 of this Act, and sec. 9

1 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
2 Act.

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

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

8 (1) one member shall be appointed for two years;

9 (2) one member shall be appointed for four years;

10 (3) one member shall be appointed for six years; and

11 (4) one alternate member may be appointed for six years.

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

29-LS0473\GS
Wallace
~~1/4/15~~
1/14/16

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~~[THIS] such service. If a suit is commenced in a
8 court against an officer or enlisted person of the militia as a result of an act done by
9 the officer or enlisted person in an official capacity while in active service, the
10 defendant may require the person instituting the suit to give security for the payment
11 of costs. If judgment is for the defendant, treble costs shall be assessed against the
12 plaintiff. The defendant in the action shall be defended by the attorney general at the
13 expense of the state but the defendant may employ private counsel. **Nothing in this**
14 **subsection applies to a proceeding or action brought under this chapter or the**
15 **code of 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

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

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

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

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

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

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

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

28 (d) A person may not serve as a judge advocate under the code of military
29 justice unless the person is a commissioned officer of the organized militia of a state
30 or of an active or reserve component of the armed forces or another uniformed service
31 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

1 than two-thirds of one month's pay.

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

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

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

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

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

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

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

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

- 30 (1) a person who may convene a general court-martial;
31 (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 **of an offense under**
21 **AS 26.05.593, 26.05.620, 26.05.621, or 26.05.622** may not be required to testify at a
22 preliminary hearing; a victim **of an offense under AS 26.05.593, 26.05.620,**
23 **26.05.621, or 26.05.622** who declines to testify is considered unavailable for the
24 purposes of the preliminary hearing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 sentence imposed by the court, or with respect to another exercise of the respective
2 functions of the court, a member of the court, the military judge, or counsel appearing
3 before the court in the conduct of the proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) When the United States is at war or engaged in contingency operations
22 **ordered by the President of the United States, and those operations actually**
23 **prevented the discovery of the offending behavior or the timely bringing of**
24 **charges, as determined by a military judge at court-martial,** the running of a
25 period of limitation for an offense under this chapter is suspended until two years after
26 the termination of hostilities as proclaimed by the President of the United States or by
27 a joint resolution of the United States Congress if the offense

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

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

1 state; or

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

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

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

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

18 **Sec. 26.05.488. Former jeopardy.** ~~(a) A person may not, without the person's~~
19 ~~consent, be tried a second time for the same offense under this chapter.~~ **Former**
20 **jeopardy protections provided to a member of the militia are equivalent to those**
21 **provided under art. 1, sec. 9, Constitution of the State of Alaska, and under the**
22 **Double Jeopardy Clause of the Fifth Amendment to the United States**
23 **Constitution.**

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

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

31 **Sec. 26.05.490. Pleas of the accused.** (a) If, after arraignment, an accused

1 makes an irregular pleading or, after a plea of guilty, initiates an action inconsistent
2 with the plea, or if the accused appears to have entered the plea of guilty
3 improvidently or through lack of understanding of its meaning and effect, or if the
4 accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and
5 the court shall proceed as though the accused had pleaded not guilty.

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

12 **Sec. 26.05.493. Subpoena; process of military courts.** (a) A military judge,
13 the president of a court-martial, or a summary court-martial officer may issue
14 subpoenas and subpoenas duces tecum for the attendance of witnesses and production
15 of books and records, if the courts are sitting within the state and the witnesses, books,
16 and records sought are located in the state. A subpoena may be served by a person
17 designated by the military judge, the president of the court-martial, or summary court-
18 martial officer.

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

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

1 guilty of a violation and may be charged and punished as provided in AS 12.55.

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

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

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

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

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

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

20 (1) guilty;

21 (2) not guilty; or

22 (3) not guilty by reason of insanity.

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

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

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

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

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

3 (1) guilty;

4 (2) not guilty; or

5 (3) not guilty by reason of insanity.

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

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

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

29 (c) If the military court determines that the accused is incompetent to stand
30 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
31 47.30.915, the military judge shall order the convening authority to seek the assistance

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

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

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

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

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

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

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

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

1 the members of the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 26.05.513. Punishments; maximum limits.** (a) A court-martial may not

1 impose a punishment that exceeds the limits set out in the code of military justice and
2 may not impose a sentence of death. A sentence of confinement imposed under this
3 chapter may not exceed 10 years. An offense under this chapter for which a sentence
4 of confinement for a term of more than one year is ~~authorized~~**imposed** is a felony
5 offense. Except for convictions by a summary court-martial and except as otherwise
6 specifically provided in the code of military justice, all other offenses under this
7 chapter **for which a sentence of confinement for a term of one year or less is**
8 **imposed** are misdemeanors. A conviction by a summary court-martial is a violation.

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

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

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

24 (1) that had custody of the accused;

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

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

29 (c) In a case in which a court-martial sentences an accused to confinement and
30 the sentence to confinement has been ordered executed, but in which review of the
31 case under AS 26.05.525, 26.05.538, or 26.05.540 is pending, the adjutant general

1 may defer further service of the sentence to confinement while that review is pending.

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

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

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

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

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

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

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

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

29 (3) an order or ruling that directs the disclosure of classified
30 information;

31 (4) an order or ruling that imposes sanctions for nondisclosure of

1 classified information;

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

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

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

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

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

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

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

28 (b) If the suspended sentence was imposed by a special court-martial, the
29 officer having special court-martial jurisdiction over the probationer shall hold a
30 hearing on the alleged violation of probation. The record of the hearing and the
31 recommendation of the officer having special court-martial jurisdiction shall be sent

1 for action to the officer exercising general court-martial jurisdiction over the
2 probationer. If the officer vacates the suspension, the unexecuted part of the sentence,
3 except a dismissal, shall be executed, subject to applicable restrictions in the code of
4 military justice.

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

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

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

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

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

31 **Sec. 26.05.535. Leave required to be taken pending review of court-**

1 **martial convictions.** In accordance with rules adopted under AS 26.05.380, an
2 accused who has been sentenced by a court-martial may be required to take leave
3 pending completion of action under this section if the sentence includes an
4 unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The
5 accused may be required to begin the leave on the date on which the sentence is
6 approved under the code of military justice, or at any time after that date, and the leave
7 may be continued until the date on which action under this section is completed, or
8 may be terminated at an earlier time.

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

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

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

17 (1) be licensed to practice law

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

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

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

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

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

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

29 (d) Except as provided in AS 39.05.080(4), an appointee selected to fill a
30 vacancy shall hold office for the unexpired term of the member whose vacancy is
31 filled. A vacancy in the commission does not impair the authority of a quorum of

1 members to exercise the powers and perform the duties of the commission.

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

4 (f) The members of the commission shall select a chair from among the
5 members of the commission. The selection shall be subject to the approval of the
6 adjutant general.

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

15 (h) The adjutant general shall adopt regulations to govern appellate procedure
16 before the Military Appeals Commission. The regulations shall be substantially similar
17 to the provisions for post-trial procedure and review of courts-martial under 10 U.S.C.
18 801 - 946. The regulations must be approved by the governor. Regulations adopted
19 under this section are exempt from AS 44.62 (Administrative Procedure Act).

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

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

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

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

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

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

8 **Sec. 26.05.543. Appellate and civilian counsel.** (a) If the attorney general
9 requests representation, the senior force judge advocate shall detail a judge advocate
10 as appellate counsel to represent the state in a proceeding filed under AS 26.05.538 as
11 civilian counsel, in a petition filed under AS 26.05.540, or as counsel before any
12 federal court.

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

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

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

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

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

28 (1) a judge advocate;

29 (2) a summary court-martial;

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

31 (4) a commanding officer of the militia;

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

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

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

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

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

9 (4) a recruiting officer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **Sec. 26.05.581. Conspiracy.** A member of the militia who conspires with
22 another person to commit an offense under this chapter shall, if one or more of the
23 conspirators does an act to effect the object of the conspiracy, be punished ~~by up to~~
24 ~~one year of confinement, by separation with characterization up to dishonorable~~
25 ~~discharge, and by such other punishment as a court-martial may direct~~ **as a court-**
26 **martial may direct, unless otherwise specifically prescribed. However, a court-**
27 **martial may not direct a punishment for conspiracy to commit an offense that is**
28 **greater than the maximum punishment for the offense.**

29 **Sec. 26.05.582. Solicitation.** (a) A member of the militia who solicits or
30 advises another or others to desert in violation of AS 26.05.585 or to mutiny in
31 violation of AS 26.05.594 shall, if the offense solicited or advised is attempted or

1 committed, be punished with the punishment provided for the commission of the
2 offense, but, if the offense solicited or advised is not attempted or committed, the
3 member 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 (b) A member of the militia who solicits or advises another or others to
7 commit an act of misbehavior before the enemy in violation of AS 26.05.599 or an act
8 of sedition in violation of AS 26.05.594 shall, if the offense solicited or advised is
9 committed, be punished with the punishment provided for the commission of the
10 offense, but, if the offense solicited or advised is not committed, the member shall be
11 punished by up to one year of confinement, by separation with characterization up to
12 dishonorable discharge, and by such other punishment as a court-martial may direct.

13 **Sec. 26.05.583. Fraudulent enlistment, appointment, or separation.** A
14 person who procures the person's own enlistment or appointment in the militia of the
15 state by knowingly false representation or deliberate concealment as to the person's
16 qualifications for the enlistment or appointment and receives pay or allowances under
17 the enlistment or appointment, or procures the person's own separation from the
18 militia of the state by knowingly false representation or deliberate concealment as to
19 the person's eligibility for that separation, shall be punished by up to one year of
20 confinement, by separation with characterization up to dishonorable discharge, and by
21 such other punishment as a court-martial may direct.

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

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

31 (1) without authority, goes or remains absent from the person's unit,

1 organization, or place of duty with intent to remain away from the unit, organization,
2 or place of duty permanently;

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

5 (3) without being regularly separated from one force of the militia of
6 the state,

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

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

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

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

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

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

26 **Sec. 26.05.586. Absence without leave.** A member of the militia who, without
27 authority, (1) fails to go to the member's appointed place of duty at the time
28 prescribed, (2) goes from the member's place of duty, or (3) is absent or remains
29 absent from the member's unit, organization, or place of duty at which the member is
30 required to be at the time prescribed 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. 26.05.587. Missing movement.** A member of the militia who, through
3 neglect or design, misses the movement of a ship, aircraft, or unit with which the
4 member is required, in the course of duty, to move shall be punished by up to one year
5 of confinement, by separation with characterization up to dishonorable discharge, and
6 by such other punishment as a court-martial may direct.

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

14 (b) A court-martial may not impose a sentence of confinement under this
15 section.

16 **Sec. 26.05.589. Disrespect toward superior commissioned officer.** (a) A
17 member of the militia who behaves with disrespect toward the member's superior
18 commissioned officer shall be punished by separation with characterization up to
19 dishonorable discharge and by such other punishment as a court-martial may direct.

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

22 **Sec. 26.05.590. Assaulting or wilfully disobeying superior commissioned**
23 **officer.** A member of the militia who (1) strikes the member's superior commissioned
24 officer or draws or lifts up any weapon or offers any violence against the superior
25 officer while the superior officer is in the execution of the superior officer's office, or
26 (2) wilfully disobeys a lawful command of the member's superior commissioned
27 officer shall be punished by up to five 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. 26.05.591. Insubordinate conduct toward warrant officer,**
31 **noncommissioned officer, or petty officer.** A warrant officer or enlisted member of

1 the militia who (1) strikes or assaults a warrant officer, noncommissioned officer, or
2 petty officer, while the officer is in the execution of the officer's office, (2) wilfully
3 disobeys the lawful order of a warrant officer, noncommissioned officer, or petty
4 officer, or (3) treats with contempt or is disrespectful in language or deportment
5 toward a warrant officer, noncommissioned officer, or petty officer while the officer is
6 in the execution of the officer's office shall be punished by up to two years 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. 26.05.592. Failure to obey order or regulation.** Any member of the
10 militia who (1) violates or fails to obey a lawful general order or regulation, (2) having
11 knowledge of any other lawful order issued by a member of the militia of the state that
12 the member has a duty to obey, fails to obey the order, or (3) is derelict in the
13 performance of the member's duties 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.

16 **Sec. 26.05.593. Cruelty and maltreatment.** A member of the militia who is
17 guilty of cruelty toward, or oppression or maltreatment of, another person subject to
18 the member's orders shall be punished by up to one year of confinement, by separation
19 with characterization up to dishonorable discharge, and by such other punishment as a
20 court-martial may direct.

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

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

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

1 commanding officer of a mutiny or sedition that the member knows or has reason to
2 believe is taking place.

3 (d) A member who is found guilty of ~~attempted mutiny~~, mutiny, sedition, or
4 failure to suppress or report a mutiny or sedition under this section shall be punished
5 by up to 10 years of confinement, by separation with characterization up to
6 dishonorable discharge, and by such other punishment as a court-martial may direct.

7 **Sec. 26.05.595. 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 by up to one year
10 of confinement, by separation with characterization up to dishonorable discharge, and
11 by such other punishment as a court-martial may direct.

12 **Sec. 26.05.596. Releasing prisoner without proper authority.** A member of
13 the militia who, without proper authority, releases a prisoner committed to the
14 member's charge or, through neglect or design, suffers a prisoner to escape shall be
15 punished by up to one year of confinement, by separation with characterization up to
16 dishonorable discharge, and by such other punishment as a court-martial may direct,
17 whether or not the prisoner was committed in strict compliance with law.

18 **Sec. 26.05.597. Unlawful detention.** A member of the militia who, except as
19 provided by law or regulation, apprehends, arrests, or confines another person shall be
20 punished by up to one year of confinement, by separation with characterization up to
21 dishonorable discharge, and by such other punishment as a court-martial may direct.

22 **Sec. 26.05.598. Noncompliance with procedural rules.** A member of the
23 militia who **knowingly and intentionally** (1) is responsible for unnecessary delay in
24 the disposition of the case of another person accused of an offense under this chapter
25 shall be punished by up to six months of confinement, by separation with
26 characterization up to a bad conduct discharge, and by such other punishment as a
27 court-martial may direct, or (2) ~~knowingly and intentionally~~ fails to enforce or comply
28 with a provision of this chapter regulating the proceedings before, during, or after trial
29 of an accused shall be punished by up to one year of confinement, by separation with
30 characterization up to dishonorable discharge, and by such other punishment as a
31 court-martial may direct.

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

4 (1) runs away;

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

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

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

10 (5) engages in cowardly conduct;

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

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

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

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

20 (b) A member found guilty of misbehavior before the enemy under this
21 section shall be punished by up to 10 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 **Sec. 26.05.600. Subordinate compelling surrender.** A member of the militia
25 who compels or attempts to compel the commander of the militia of this state or of
26 any other state, of a place, a vessel, an aircraft, or another military property, or of a
27 body of members of the armed forces to give it up to an enemy or to abandon it in the
28 face of a threat described in AS 26.05.070, or who strikes the colors or flag to an
29 enemy without proper authority, shall be punished by up to 10 years of confinement,
30 by separation with characterization up to dishonorable discharge, and by such other
31 punishment as a court-martial may direct.

1 **Sec. 26.05.601. Improper use of countersign.** A member of the militia who,
2 in time of war, or emergency as described in AS 26.05.070, discloses the parole or
3 countersign to a person not entitled to receive it or who gives to another person who is
4 entitled to receive and use the parole or countersign a different parole or countersign
5 from that which, to the person's knowledge, the member was authorized and required
6 to give shall be punished by up to 10 years of confinement, by separation with
7 characterization up to dishonorable discharge, and by such other punishment as a
8 court-martial may direct.

9 **Sec. 26.05.602. Forcing a safeguard.** A member of the militia who forces a
10 safeguard 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. 26.05.603. Captured or abandoned property.** (a) A member of the
14 militia shall secure all public property taken for the service of the United States or the
15 state and shall give notice and turn over to the proper authority without delay all
16 captured or abandoned property in the member's possession, custody, or control.

17 (b) A member of the militia who (1) fails to carry out the duties prescribed in
18 (a) of this section and buys, sells, trades, or in any way deals in or disposes of taken,
19 captured, or abandoned property, as a result of which the member receives or expects
20 to receive any profit, benefit, or advantage to the member or another person directly or
21 indirectly connected with the member shall be punished by up to one year of
22 confinement, by separation with characterization up to dishonorable discharge, and by
23 such other punishment as a court-martial may direct, or (2) engages in looting or
24 pillaging shall be punished by up to 10 years of confinement, by separation with
25 characterization up to dishonorable discharge, and by such other punishment as a
26 court-martial may direct.

27 **Sec. 26.05.604. Aiding the enemy.** A member of the militia who (1) aids or
28 attempts to aid the enemy or a hostile individual or group as described in
29 AS 26.05.070 with arms, ammunition, supplies, money, or other things, or (2) without
30 proper authority, knowingly harbors or protects or gives intelligence to, or
31 communicates or corresponds with or holds any intercourse with, the enemy or hostile

1 individual or group, either directly or indirectly, shall be punished by up to 10 years of
2 confinement, by separation with characterization up to dishonorable discharge, and by
3 such other punishment as a court-martial may direct.

4 **Sec. 26.05.605. Misconduct as prisoner.** A member of the militia who, while
5 in the hands of the enemy or a hostile individual or group as described in
6 AS 26.05.070, (1) for the purpose of securing favorable treatment by the person's
7 captors, acts without proper authority in a manner contrary to law, custom, or
8 regulation, to the detriment of other persons of whatever nationality held by the enemy
9 or hostile individual or group as civilian or military prisoners; or (2) while in a
10 position of authority over a person, maltreats the person without justifiable cause shall
11 be punished by up to 10 years of confinement, by separation with characterization up
12 to dishonorable discharge, and by such other punishment as a court-martial may direct.

13 **Sec. 26.05.607. False official statements.** A member of the militia who, with
14 intent to deceive, signs a false record, return, regulation, order, or other official
15 document made in the line of duty, knowing it to be false, or makes a false official
16 statement in the line of duty, knowing it to be false, shall be punished by up to one
17 year of confinement, by separation with characterization up to dishonorable discharge,
18 and by such other punishment as a court-martial may direct.

19 **Sec. 26.05.608. Military property; loss, damage, destruction, or wrongful
20 disposition.** A member of the militia who, without proper authority, (1) sells or
21 otherwise disposes of, (2) wilfully or through neglect damages, destroys, or loses, or
22 (3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or
23 wrongfully disposed of, military property of the United States or of any state, shall be
24 punished by up to one year of confinement, by separation with characterization up to
25 dishonorable discharge, and by such other punishment as a court-martial may direct.

26 **Sec. 26.05.609. Property other than military property; waste, spoilage, or
27 destruction.** A member of the militia who wilfully or recklessly wastes, spoils, or
28 otherwise wilfully and wrongly destroys or damages any property other than military
29 property of the United States or of any state shall be punished by up to one year of
30 confinement, by separation with characterization up to dishonorable discharge, and by
31 such other punishment as a court-martial may direct.

1 **Sec. 26.05.610. Improper hazarding of vehicle, aircraft, or vessel.** (a) A
2 member of the militia who wilfully and wrongfully hazards or suffers to be hazarded a
3 vehicle, aircraft, or vessel of the armed forces of the United States or the militia of the
4 state shall be punished by up to five years of confinement, by separation with
5 characterization up to dishonorable discharge, and by such other punishment as a
6 court-martial may direct.

7 (b) A member of the militia who negligently hazards or suffers to be hazarded
8 a vehicle, aircraft, or vessel of the armed forces of the United States or the militia of
9 the state shall be punished 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.

12 **Sec. 26.05.611. Drunken or reckless operation of a vehicle, aircraft, or**
13 **vessel.** (a) A member of the militia who ~~(1)~~ operates or physically controls a
14 nonmilitary vehicle, aircraft, or vessel in a ~~careless~~**negligent** or reckless manner **shall**
15 **be punished by separation with characterization up to dishonorable discharge**
16 **and by such other punishment as a court-martial may direct if the charge is for**
17 **negligent operation or control, and by up to one year of confinement, by**
18 **separation with characterization up to dishonorable discharge, and by such other**
19 **punishment as a court-martial may direct if the charge is for reckless operation**
20 **or control. A court-martial may not impose a sentence of confinement under this**
21 **subsection if the charge is for negligent operation or control.**

22 (b) A member of the militia who operates or physically controls a
23 **nonmilitary vehicle, aircraft, or vessel** while (1) impaired by a substance described
24 in AS 26.05.614(c);), or (2) ~~operates~~**operating** or ~~is~~ in actual physical control of a
25 nonmilitary vehicle, aircraft, or vessel while under the influence of alcohol or when
26 the alcohol concentration in the person's blood or breath is equal to or exceeds the
27 applicable limit under (ed) of this section shall be punished by up to one year of
28 confinement, by separation with characterization up to dishonorable discharge, and by
29 such other punishment as a court-martial may direct, or under (de) of this section if the
30 member is not in active duty status at the time of the offense, or by up to five years of
31 confinement, by separation with characterization up to dishonorable discharge, and by

1 such other punishment as a court-martial may direct if the member is in active duty
2 status at the time of the offense.

3 (bc) A member of the militia who (1) operates or physically controls a vehicle,
4 aircraft, or vessel of the armed forces of the United States or the militia of a state in a
5 ~~careless~~**negligent** or reckless manner or while impaired by a substance described in
6 AS 26.05.614(c);), or (2) operates or is in actual physical control of a vehicle, aircraft,
7 or vessel of the armed forces of the United States or the militia of a state while under
8 the influence of alcohol or when the alcohol concentration in the person's blood or
9 breath is equal to or exceeds the applicable limit under (ed) of this section shall be
10 punished by up to five years of confinement, by separation with characterization up to
11 dishonorable discharge, and by such other punishment as a court-martial may direct.

12 (ed) For purposes of (ab) and (bc) of this section,

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

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

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

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

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

30 (de) A member of the militia may be punished by up to five years of
31 confinement, by separation with characterization up to dishonorable discharge, and by

1 such other punishment as a court-martial may direct if the member of the militia is
2 convicted under (ab) of this section and has been previously convicted two or more
3 times within the 10 years preceding the date of the present offense.

4 (ef) Unless otherwise specifically defined or unless the context otherwise
5 requires, in this section,

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

9 (2) "nonmilitary" means not of the armed forces of the United States or
10 of the militia of a state;

11 (3) "state" includes the District of Columbia, the Commonwealth of
12 Puerto Rico, the Virgin Islands, Guam, and American Samoa;

13 (4) "United States" includes the District of Columbia, the
14 Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

15 **Sec. 26.05.612. Drunk on duty.** A member of the militia, other than a sentinel
16 or lookout, who is found under the influence of alcohol while on duty shall be
17 punished by up to one year of confinement, by separation with characterization up to
18 dishonorable discharge, and by such other punishment as a court-martial may direct.

19 **Sec. 26.05.613. Misbehavior of sentinel.** A sentinel or lookout who is found
20 under the influence of alcohol or sleeping on the sentinel's or lookout's post or leaves
21 the post before being regularly relieved shall be punished, if the offense is committed
22 in time of war or emergency as described in AS 26.05.070, by confinement of not
23 more than 10 years, by separation with characterization up to dishonorable discharge,
24 or by such other punishment as a court-martial may direct, but if the offense is
25 committed at any other time, 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. 26.05.614. Wrongful use or possession of controlled substances.** (a) A
29 member of the militia who **wrongfully** uses, possesses, manufactures, distributes, or
30 imports a controlled substance into the customs territory of the United States, exports
31 from the United States in violation of the laws of the United States or the state, or who

1 **wrongfully** introduces a controlled substance into an installation, vessel, vehicle, or
2 aircraft used by or under the control of the armed forces of the United States or the
3 military forces of a state shall be punished by up to one year of confinement, by
4 separation with characterization up to dishonorable discharge, and by such other
5 punishment as a court-martial may direct if the charge is for **wrongful** use or
6 possession, and by up to five years of confinement, by separation with characterization
7 up to dishonorable discharge, and by such other punishment as a court-martial may
8 direct if the charge is for manufacturing, distributing, or importing.

9 (b) A court-martial may not impose a sentence of confinement under this
10 section if the charge is for use or possession of marijuana or any marijuana derivative
11 or compound.

12 (c) In this section, "controlled substance" means

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

15 (2) a compound or derivative of a substance specified in (1) of this
16 subsection;

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

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

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

25 **Sec. 26.05.615. Malingering.** A member of the militia who, for the purpose of
26 avoiding work, duty, or service, (1) feigns illness, physical disablement, mental lapse,
27 or derangement, or (2) intentionally inflicts self-injury shall be punished by up to one
28 year of confinement, by separation with characterization up to dishonorable discharge,
29 and by such other punishment as a court-martial may direct.

30 **Sec. 26.05.616. Riot or breach of peace.** A member of the militia who causes
31 or participates in a riot or breach of the peace shall be punished by up to one year of

1 confinement, by separation with characterization up to dishonorable discharge, and by
2 such other punishment as a court-martial may direct.

3 **Sec. 26.05.617. Provoking speeches or gestures. (a)** A member of the militia
4 who uses provoking or reproachful words or gestures toward another member of the
5 militia shall be punished by up to six months of confinement and by such other
6 punishment as a court-martial may direct.

7 **(b) A court-martial may not impose a sentence of confinement or a**
8 **discharge under this section.**

9 **Sec. 26.05.620. Sexual assault. (a)** A member of the militia who commits any
10 of the following acts is guilty of sexual assault and shall be punished by up to 10 years
11 of confinement, by separation with characterization up to dishonorable discharge, and
12 by such other punishment as a court-martial may direct:

13 (1) a sexual act on another person by

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

15 (B) causing bodily harm to another person;

16 (C) making a fraudulent representation that the sexual act
17 serves a professional purpose;

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

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

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

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

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

30 (b) A member of the militia who commits or causes sexual contact on or by
31 another person, and in doing so ~~violates~~**would have violated** (a) of this section **had**

1 **the sexual contact been a sexual act**, is guilty of abusive sexual contact and shall be
2 punished by up to five years of confinement, by separation with characterization up to
3 dishonorable discharge, and by such other punishment as a court-martial may direct.

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

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

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

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

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

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

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

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

31 (2) "consent" means a freely given agreement to the conduct at issue

1 by a competent person;

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

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

9 (5) "sexual act" means

10 (A) contact between the penis and the vulva, anus, or mouth; in
11 this subparagraph, contact involving the penis occurs upon penetration,
12 however slight;

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

17 (6) "sexual contact" means

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

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

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

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

31 **Sec. 26.05.621. Stalking.** (a) A member of the militia is guilty of stalking and

1 shall be punished by up to three years of confinement, by separation with
2 characterization up to dishonorable discharge, and by such other punishment as a
3 court-martial may direct if the member

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

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

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

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

15 (1) "course of conduct" means a repeated maintenance of visual or
16 physical proximity to a specific person or a repeated conveyance of verbal threats,
17 written threats, or threats implied by conduct, or a combination of those threats,
18 directed at or toward a specific person;

19 (2) "immediate family" means a spouse, parent, child, or sibling of the
20 person, or any other family member, relative, or intimate partner of the person who
21 regularly resides in the household of the person or who, within the six months
22 preceding the commencement of the course of conduct, regularly resided in the
23 household of the person;

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

26 **Sec. 26.05.622. Other sexual misconduct; indecent viewing, visual**
27 **recording, or broadcasting.** (a) A member of the militia who knowingly commits
28 any of the following acts without legal justification or lawful authorization is guilty of
29 an offense under this section and shall be punished by up to one year of confinement,
30 by separation with characterization up to dishonorable discharge, and by such other
31 punishment as a court-martial may direct:

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

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

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

11 (b) A member of the militia who compels another person to engage in an act
12 of prostitution with another person is guilty of forcible pandering and shall be
13 punished by up to 10 years of confinement, by separation with characterization up to
14 dishonorable discharge, and by such other punishment as a court-martial may direct.

15 (c) A member of the militia who intentionally exposes, in an indecent manner,
16 the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure
17 and shall be punished by up to one year of confinement, by separation with
18 characterization up to dishonorable discharge, and by such other punishment as a
19 court-martial may direct.

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

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

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

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

29 (4) "indecent manner" means conduct that amounts to a form of
30 immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant
31 to common propriety and that tends to excite sexual desire or deprave morals with

1 respect to sexual relations;

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

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

9 **Sec. 26.05.623. Larceny and wrongful appropriation.** (a) A member of the
10 militia who wrongfully takes, obtains, or withholds, by any means, from the
11 possession of the owner or another person any money, personal property, or article of
12 value with intent permanently to deprive or defraud another person of the use and
13 benefit of the property or to appropriate it for the person's own use or the use of a
14 person other than the owner steals that property and is guilty of larceny and shall be
15 punished by up to one year of confinement, by separation with characterization up to
16 dishonorable discharge, and by such other punishment as a court-martial may direct.

17 (b) A member of the militia who wrongfully takes, obtains, or withholds, by
18 any means, from the possession of the owner or another person any money, personal
19 property, or article of value with intent temporarily to deprive or defraud another
20 person of the use and benefit of the property or to appropriate it for the person's own
21 use or the use of a person other than the owner is guilty of wrongful appropriation and
22 shall be punished **by up to six months of confinement, by separation with**
23 **characterization up to a bad conduct discharge, and by such other punishment** as
24 a court-martial may direct.

25 **Sec. 26.05.624. Forgery.** A member of the militia who, with intent to defraud,
26 (1) falsely makes or alters a signature to or a part of any writing that would, if genuine,
27 apparently impose a legal liability on another person or change the legal right or
28 liability of the person to their prejudice, or (2) ~~who~~ utters, offers, issues, or transfers
29 that writing, which the person knows to be falsely made or altered, is guilty of forgery
30 and shall be punished by up to one year of confinement, by separation with
31 characterization up to dishonorable discharge, and by such other punishment as a

1 court-martial may direct.

2 **Sec. 26.05.625. Making, drawing, or uttering check, draft, or order**
3 **without sufficient funds.** A member of the militia who makes, draws, utters, or
4 delivers a check, draft, or order for the payment of money on a bank or other
5 depository, knowing at the time that the maker or drawer has not or will not have
6 sufficient funds in, or credit with, the bank or other depository for the payment of that
7 check, draft, or order in full on its presentment, with intent to defraud for the
8 procurement of any article or thing of value or with intent to deceive, for the payment
9 of a past due obligation or for another purpose shall be punished by up to one year of
10 confinement, by separation with characterization up to dishonorable discharge, and by
11 such other punishment as a court-martial may direct. The making, drawing, uttering,
12 or delivering by a maker or drawer of a check, draft, or order, payment of which is
13 refused by the drawee because of insufficient funds of the maker or drawer in the
14 drawee's possession or control, is prima facie evidence of the person's intent to defraud
15 or deceive and of the knowledge of insufficient funds in, or credit with, that bank or
16 other depository, unless the maker or drawer pays the holder the amount due within
17 five days after receiving notice, orally or in writing, that the check, draft, or order was
18 not paid on presentment. In this section, "credit" means an arrangement or
19 understanding, express or implied, with the bank or other depository for the payment
20 of that check, draft, or order.

21 **Sec. 26.05.631. Perjury.** A member of the militia who, in a judicial
22 proceeding or in a course of justice, under lawful oath or in another form allowed by
23 law to be substituted for an oath, willfully and corruptly gives false testimony material
24 to the issue or matter of inquiry, or who, in a declaration, certificate, verification, or
25 statement under penalty of perjury, subscribes a false statement material to the issue or
26 matter of inquiry is guilty of perjury and shall be punished by up to one year of
27 confinement, by separation with characterization up to dishonorable discharge, and by
28 such other punishment as a court-martial may direct.

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

31 (1) knowing it to be false or fraudulent

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

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

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

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

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

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

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

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

27 (b) A person found guilty of fraud against the government shall be punished
28 by up to one year of confinement, by separation with characterization up to
29 dishonorable discharge, and by such other punishment as a court-martial may direct.

30 **Sec. 26.05.633. Conduct unbecoming an officer.** (a) A commissioned officer,
31 cadet, candidate, or midshipman of the militia who is convicted of conduct

1 unbecoming an officer shall be punished by separation with characterization up to
2 dishonorable discharge and by such other punishment as a court-martial may direct.

3 (b) A court-martial may not impose a sentence of confinement under this
4 section.

5 **Sec. 26.05.634. General article.** (a) Although not specifically mentioned in
6 this chapter, all disorders and acts that prejudice good order and discipline in the
7 militia of the state and all conduct of a nature to bring discredit on the militia of the
8 state shall be considered by a court-martial and punished as a court-martial may direct.

9 (b) A member of the militia who commits an enumerated offense punishable
10 under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice), except for those
11 enumerated offenses relating to ~~assault, negligent homicide, and~~ wrongful
12 cohabitation, shall, upon conviction, be punished by separation with characterization
13 up to dishonorable discharge and by such other punishment as a court-martial may
14 direct.

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

17 **Sec. 26.05.900. Definitions.** In this chapter, unless the context otherwise
18 requires,

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

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

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

30 (4) "classified information" means

31 (A) information or material that has been determined by an

1 official of the United States or any state under law, an executive order, or
2 regulation to require protection against unauthorized disclosure for reasons of
3 national or state security; and

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

6 (5) "code of military justice" means the provisions of this chapter and
7 the regulations adopted by the adjutant general to implement this chapter;

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

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

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

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

17 (10) "department" means the Department of Military and Veterans'
18 Affairs;

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

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

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

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

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

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

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

31 (18) "record," when used in connection with the proceedings of a

1 court-martial, means

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

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

7 (19) "reviewing authority" means the Military Appeals Commission
8 and the Alaska Supreme Court;

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

12 (2021) "unit" means a regularly organized body of the militia of the
13 state not larger than a company, a squadron, a division of the naval militia, or a body
14 corresponding to one of them.

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

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

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

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

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

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

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

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

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

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

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

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

11 * **Sec. 9.** AS 26.05.120, 26.05.130, 26.05.300, 26.05.310, 26.05.320, 26.05.322, 26.05.324,
12 26.05.326, 26.05.330, and 26.05.350 are repealed.

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

15 **APPLICABILITY.** AS 26.05.380 - 26.05.900, enacted by sec. 4 of this Act, and sec. 9
16 of this Act apply to offenses occurring on or after the effective date of secs. 4 and 9 of this
17 Act.

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

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

23 (1) one member shall be appointed for two years;

24 (2) one member shall be appointed for four years;

25 (3) one member shall be appointed for six years; and

26 (4) one alternate member may be appointed for six years.

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

ALASKA STATE LEGISLATURE

Representative Gabrielle LeDoux,
Chair

Representative Wes Keller,
Vice Chair



Representative Charisse Millett
Representative Neal Foster
Representative Bob Lynn
Representative Matt Claman
Representative Max Gruenberg

HOUSE JUDICIARY COMMITTEE

Alaska State Capitol, Room 120
Juneau, AK 99801
907-465-4998 • 907-465-4419 (fax)

HB 126 – Code of Military Justice; Appeals Explanation of Changes: Version G to Version S

Section 2. AS 26.05.140(a):

Page 2, line 7: delete "this" after "while in"

Section 26.05.444 Grand jury requirement.

Page 9, lines 9-10: delete "a district attorney or" after "attorney general,"

Section 26.05.452 Who may serve on a courts-martial.

Page 11, line 7: delete "under AS 26.05.528" after "judge"

Section 26.05.468 Investigation; preliminary hearing.

Page 15, lines 18-19: add "under AS 26.05.593, 26.05.620, 26.05.621, or 26.05.622"

Page 15, lines 20-21: add "of an offense under AS 26.05.593, 26.05.620, 26.05.621, or 26.05.622"

Section 26.05.485 Statute of limitations.

Page 18, line 11: add "before"

Page 18, lines 20-22, add "ordered by the President of the United States, and those operations actually prevented the discovery of the offending behavior or the timely bringing of charges, as determined by a military judge at court-martial"

Section 26.05.488 Former jeopardy.

Page 20, lines 16-19: delete all section language and replace with: "Former jeopardy protections provided to a member of the militia are equivalent to those provided under art.1, sec. 9, Constitution of the State of Alaska, and under the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution."

Section 26.05.513 Punishments; maximum limits.

Page 26, line 24: replace "authorized" with "imposed"

Page 26, lines 26-27: add "for which a sentence of confinement for a term of one year or less is imposed"

Section 26.05.581 Conspiracy.

Page 36, lines 12-15: delete "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" after "punished" and insert "as a court-martial may direct, unless otherwise specifically prescribed. However, a court-martial may not direct a punishment for conspiracy to commit an offense that is greater than the maximum punishment for the offense."

Section 26.05.594 Mutiny or sedition.

Page 40, line 21: delete "attempted mutiny," after "of"

Section 26.05.498 Noncompliance with procedural rules

Page 41, line 10: add "knowingly and intentionally"

Page 41, line 14: delete "knowingly and intentionally" after "(2)"

Section 26.05.611 Drunken or reckless operation of a vehicle, aircraft, or vessel.

Page 44, line 30: delete "(1)" after "who"

Page 44, line 31: replace "careless" with "negligent"

Page 44, line 31-page 45, line 9: add "shall be punished by separation with characterization up to dishonorable discharge and by such other punishment as a court-martial may direct if the charge is for negligent operation or control, and 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 if the charge is for reckless operation or control. A court-martial may not impose a sentence of confinement under this section if the charge is for negligent operation or control.

"(b) A member of the militia who operates or physically controls a nonmilitary vehicle, aircraft, or vessel"

Page 45, line 9: add "(1)"

Page 45, line 10: replace "(c);" with "(c),"

Page 45, line 10: replace "operates" with "operating"

Page 45, line 10: delete "is" after "or"

Page 45, line 13: replace "(c)" with "(d)"

Page 45, line 15: replace "(d)" with "(e)"

Page 45, line 20: replace "(b)" with "(c)"

Page 45, line 22: replace "careless" with "reckless"

Page 45, line 23: replace "(c);" with "(c),"

Page 45, line 26: replace "(c)" with "(d)"

Page 45, line 29: replace "(c)" with "(d)"

Page 45, line 29: replace "(a)" with "(b)"

Page 45, line 29: replace "(b)" with "(c)"

Page 46, line 16: replace "(d)" with "(e)"

Page 46, line 19: replace "(a)" with "(b)"

Page 46, line 21: replace "(e)" with "(f)"

Section 26.05.614 Wrongful use or possession of controlled substances.

Page 47, line 15: add "wrongfully"

Page 47, line 18: add "wrongfully"

Page 47, line 22: add "wrongful"

Section 26.05.617 Provoking speeches or gestures.

Page 48, line 20: add "(a)"

Page 48, lines 24-25: add "(b) A court-martial may not impose a sentence of confinement or a discharge under this section."

Section 26.05.620 Sexual assault.

Page 49, line 17: replace "violates" with "would have violated"

Page 49, lines 17-18: add "had the sexual contact been a sexual act"

Section 26.05.623 Larceny and wrongful appropriation.

Page 54, lines 8-9: add "by up to six months of confinement, by separation with characterization up to a bad conduct discharge, and by such other punishment"

Section 26.05.624 Forgery.

Page 54, line 14: delete "who" after "(2)"

Section 26.05.634 General article.

Page 56, line 28: delete "assault, negligent homicide, and" after "to"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 15, 2016

SUBJECT: Sectional summary
(CSHB 126(); Work Order No. 29-LS0473\S)

TO: Representative Gabrielle LeDoux
Attn: Kalyssa Maile

FROM: Megan A. Wallace 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends AS 22.05.010 by adding a new subsection to allow for supreme court review of a final decision of the Military Appeals Commission under certain circumstances.

Section 2. Amends AS 26.05.140(a) to note that the provision does not apply to an action or proceeding brought under the code of military justice.

Section 3. Makes a conforming change to an internal reference in AS 26.05.228(b)(2).

Section 4. Amends AS 26.05 by adding new subsections under Article 2, Code of Military Justice.

AS 26.05.380. Provides for adoption of certain regulations.

AS 26.05.400. Provides a statement of policy on military justice, noting that courts-martial have primary jurisdiction over offenses under the chapter.

AS 26.05.403. Provides that the code applies to members of the militia at all times.

AS 26.05.405. Provides jurisdiction to try certain personnel by court-martial.

AS 26.05.408. Provides applicability to offenses and court-martials outside the state.

AS 26.05.410. Provides for and relates to judge advocates.

AS 26.05.420. Provides for apprehension of person subject to the code.

AS 26.05.423. Relates to imposition of restraint.

AS 26.05.423. Provides for restraint of persons charged with offenses.

AS 26.05.428. Relates to the place for confinement of prisoners and reports.

AS 26.05.430. Provides for the delivery of a person accused of a criminal offense to a civil authority.

- AS 26.05.433. Classifies courts-martial.
- AS 26.05.435 - AS 26.05.443. Provides for jurisdiction of courts-martial.
- AS 26.05.444 - AS 26.05.445. Makes grand jury requirements.
- AS 26.05.446 - AS 26.05.450. Provides who may convene a court-martial.
- AS 26.05.452. States who may serve on courts-martial.
- AS 26.05.453 - AS 26.05.458. Provides for the appointment to a court-martial of a military judge, trial and defense counsel, and other staff.
- AS 26.05.460. Relates to absences and additional members of courts-martial.
- AS 26.05.463. Details requirements of charges and specifications.
- AS 26.05.465. Prohibits compulsory self-incrimination.
- AS 26.05.468. Outlines investigation requirements of charges and specifications.
- AS 26.05.470. Provides for forwarding of charges.
- AS 26.05.473. Requires advice of judge advocate before trial.
- AS 26.05.475. Relates to service of charges on the accused.
- AS 26.05.478. Prohibits influencing the action of a court.
- AS 26.05.480. Relates to continuances.
- AS 26.05.483. Provides for oaths or affirmations.
- AS 26.05.485. Sets forth the statute of limitations for offenses.
- AS 26.05.488. Prohibits former jeopardy.
- AS 26.05.490. Relates to pleas of the accused.
- AS 26.05.493. Relates to subpoenas and service of process.
- AS 26.05.495. Provides for punishment of contempt.
- AS 26.05.498 - AS 26.05.500. Provides for defenses of insanity and lack of mental capacity or mental responsibility.
- AS 26.05.503 - AS 26.05.508. Relates to voting and rulings at courts-martial, number of votes required, and record of trial.
- AS 26.05.510 - AS 26.05.518. Sets forth prohibition of cruel and unusual punishment, outlines punishments, maximum limits on punishments, deferment of sentences, and execution of confinement.
- AS 26.05.520 - AS 26.05.543. Provides for appeals, including establishment of Military Appeals Commission.
- AS 26.05.545 - AS 26.05.558. Provides miscellaneous administrative provisions, including provisions regarding delegation by the governor and payment of fines.
- AS 26.05.560. Provides that the code shall be uniformly applied, so far as practicable.
- AS 26.05.563. Provides immunity for a person acting under the code.
- AS 26.05.577 - AS 26.05.634. Sets forth offenses for members of the militia subject to courts-martial.
- AS 26.05.900. Provides definitions for the chapter.

Section 5. Amends AS 33.30.011 to include definition of "held under authority of state law."

Section 6. Requires persons confined under the code to be committed to the custody of the commissioner of corrections as directed by the adjutant general.

Section 7. Requires the attorney general to assist a military court in obtaining the commitment of a person accused of an offense under AS 26.05 for a competency

Representative Gabrielle LeDoux

January 15, 2016

Page 3

examination or in the event of a finding of incompetence.

Section 8. Makes conforming changes to AS 44.35.020(a).

Section 9. Repeals provisions of existing military code of Alaska.

Section 10. Provides that the bill applies to offenses occurring on or after the effective date of the Act.

Section 11. Provides for staggered initial terms for the members of the Military Appeals Commission.

Section 12. Provides for a July 1, 2016, effective date.

MAW:dla

16-031.dla

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM

January 14, 2016

SUBJECT: Military Code of Justice
(CSHB 126 (); Work Order 29-LS0473\S)

TO: Representative Gabrielle LeDoux
Attn: Kalyssa Maile

FROM: Megan A. Wallace
Legislative Counsel *MAW*

Attached please find the draft bill you requested. I made the changes you requested, but please be aware of the following drafting issues:

1. You requested that "before" precede "the imposition of nonjudicial punishment" under AS 26.05.485, relating to the statute of limitations. It is still unclear, however, whether "not later than three years" applies to "before the imposition of nonjudicial punishment." I recommend that you revise to clarify by reversing the order of the clauses.
2. I made your requested change to AS 26.05.513 relating to classification of felonies and misdemeanors. Please be advised, however, that crimes are generally classified based on the sentence authorized, not the sentence actually imposed. This new approach makes it uncertain as to classification prior to conviction, and even after conviction, it is unclear how a court would interpret this classification system since it is so different from classification of AS 11 crimes.
3. You requested several changes to AS 26.05.611 relating to drunken or reckless operation of a vehicle, aircraft, or vessel, including changing the term "careless" to "negligent" in both (a) and (b) and adding related punishments in (a). Please be advised that I made technical changes to accommodate this change, so subsection (a) now exclusively relates to the negligent or reckless operation offenses, and subsection (b) relates to the impaired operation offenses. All other subsections were relettered accordingly. Please review this section carefully to ensure I have captured your intent.
4. In addition, while you requested that the term "careless" be changed to "negligent" in both AS 26.05.611(a) and (b), you only requested that the punishments for negligent or reckless operation be added to (a). Per my discussion with Ms. Maile in your office, it is

my understanding that you did not want punishments added to (b), so the punishments for negligent or reckless operation will be the same as for the impairment offenses in (b).¹

5. The changes made to AS 26.05.611(a) make it a crime to negligently operate a nonmilitary vehicle, even when not in active state duty. Please be advised that negligent operation of a vehicle is not a crime under AS 11 or AS 28, and is typically adjudicated civilly in district or superior court if a person negligently causes damage or injury to another person while operating a vehicle.

6. Also, the bill does not define any of the mental states used in the bill, including negligence or recklessness. You should consider defining the various mental states used in the bill so that they can be adequately described to the trier of fact. *See e.g.* AS 11.81.900(a). Also, it is usually not wise to assign two mental states to govern the same action by the defendant (for example, "knowingly" and "intentionally").

7. AS 26.05.611(e) (formerly AS 26.05.611(d)) makes it a felony if the person has been convicted under AS 26.05.611(b) two or more times. In this subsection, should "if the member of the militia is convicted under (b) of this section" read "if the member of the militia is convicted under (b) or (c) of this section", since both (b) and (c) are impairment offenses?

8. As previously mentioned in my August 10, 2015, memorandum, this draft contains criminal acts that are inconsistent with existing state law, including AS 26.05.611 and the most recent changes. 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. While I made the requested changes to the grand jury requirement under AS 26.05.444, as discussed in my August 10, 2015, memorandum, 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. AS 26.05.444(b) states that "with the consent of the attorney general, an attorney from the Department of Law *may* represent the convening authority at the grand jury." (emphasis added.) Does "represent" mean that you intend that a prosecuting attorney from the Department of Law will conduct the grand jury for the court-martial proceeding? If not, your grand jury provision requires additional changes to current law. Also, what happens if the attorney general declines consent? In that case it appears an additional change to current law is necessary. Further, the draft bill only refers to a grand jury "indicting" a member of the militia. I would recommend

¹ As a result of the technical changes discussed above, AS 26.05.611(b) is now AS 26.05.611(c) in the attached draft.

Representative Gabrielle LeDoux
January 14, 2016
Page 3

that you revise this provision to allow a grand jury to return an indictment or presentment, as both are provided for in the Constitution of the State of Alaska and in the Alaska Statutes.

In addition, as previously mentioned, this provision 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 how you intend the grand jury proceedings to be carried out, I cannot identify which rules might be subject to change.

10. Your request adds "bad conduct discharge" to sec. 26.05.263. Do you mean "dishonorable discharge"?

11. Finally, please be advised that the attached draft does not address the issue raised in item no. 6 of my November 5, 2015, memorandum relating to the draft bill.

If you have any questions or need further assistance, please advise.

MAW:lem
16-012.lem

Attachment

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 126
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB126CS(JUD)-MVA-NGMHQ-3-20-15
Title: CODE OF MILITARY JUSTICE; APPEALS
Sponsor: JUDICIARY
Requester: House Judiciary

Department: Department of Military and Veterans' Affairs
Appropriation: Military and Veterans' Affairs
Allocation: National Guard Military Headquarters
OMB Component Number: 2135

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/16

Why this fiscal note differs from previous version:

A previous version cited state costs associated with possible administration and completion of courts-martial, but more recent information indicates such expenses will be covered by federal funds, so there will be no cost to the state.

Prepared By:	Ron Clarke, Special Assistant	Phone:	(907)428-6007
Division:	Office of the Commissioner	Date:	01/15/2016 04:00 PM
Approved By:	Bob Doehl, Deputy Commissioner	Date:	01/15/16
Agency:	Military and Veterans' Affairs		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. CSHB 126

Analysis

This legislation creates a state code of military justice and instructs and authorizes the Department of Military and Veterans' Affairs and the Alaska National Guard to enact attendant regulations and procedures. It supplements and replaces portions of the existing Alaska Military Code (AS 26.05), which went into effect during Alaska's territorial days.

This bill identifies specific military offenses and penalties, lays out procedures for the administration of courts-martial, and requires the Alaska National Guard to create further regulations to fill any procedural gaps. It sets up a three-member Military Appeals Commission within the Department of Military and Veterans' Affairs to hear appeals from courts-martial.

If this bill is enacted, commanders will have a new disciplinary tool in the form of "non-judicial punishment." In severe cases, they will have the option to convene courts-martial. The administration and completion of a court-martial will involve expenditure of time and funds, including attorney salaries, witness costs, the training and employing of military judges, and other related costs. Based on the experience of National Guards in other states, the Department of Military and Veterans' Affairs predicts courts-martial will be rare events, averaging less than one per year.

The personnel required for a court-martial would include a military judge, attorneys for both sides, paralegals for both attorneys and the judge, bailiff, escorts for the accused, a court reporter, witnesses, and panel members. Because convening and running of courts-martial constitutes preparation and training for Active Duty service, all expenses related to courts-martial and administration of non-judicial punishment will be covered using federal funds.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 126
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB126CS(JUD)-ACS-APP-01-19-16
Title: CODE OF MILITARY JUSTICE; APPEALS
Sponsor: JUDICIARY
Requester: House Judiciary Committee

Department: Judiciary
Appropriation: Alaska Court System
Allocation: Appellate Courts
OMB Component Number: 767

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

The House Judiciary Committee Substitute for HB 126 revises the previous version's method for bringing a military justice case to the court system; rather than an appeal to the Court of Appeals, the method in the CS is via a petition for review to the Supreme Court. This results in no fiscal impact on the court system.

Prepared By: <u>Nancy Meade, General Counsel</u>	Phone: <u>(907)463-4736</u>
Division: <u>Alaska Court System</u>	Date: <u>01/19/2016 12:00 PM</u>
Approved By: <u>Nancy Meade for Christine Johnson, Administrative Director</u>	Date: <u>01/19/16</u>
Agency: <u>Alaska Court System</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB 126

Analysis

The House Judiciary Committee Substitute for House Bill 126 (version S) would substantially revise and expand AS 26.05 by adding a new Article 2 to Alaska's Code of Military Justice. It sets out substantive law and procedures for military courts martial and establishes a new Military Appeals Commission within the Department of Military and Veterans' Affairs. AS 26.05.538.

CSHB 126(JUD) also provides that after a person has appealed a court martial to the Military Appeals Commission, the person (if certain conditions are met) has the right to file a petition for review of that final military decision in the Alaska Supreme Court. AS 26.05.540. This new type of petition from the military court to the state (civilian) court would expand the Alaska Supreme Court's jurisdiction to include jurisdiction over these petitions. Section 1; AS 22.05.010. The Supreme Court would have the discretion to consider petitions for review of final decisions of the Military Appeals Commission when persons have filed a petition for review with the Supreme Court and exhausted their rights to appeal to the Commission, and the Commission has imposed a sentence of confinement.

Such petitions for review would involve violations of military law. Though the Supreme Court does not currently handle cases that concern either substantive or procedural aspects of courts martial and military offenses, the Supreme Court is prepared to review the petitions as contemplated by CSHB 126. The bill sponsors and members of the Alaska National Guard who have testified previously on this bill have stated that the number of petitions that will potentially be brought to the Supreme Court is expected to be very small; they have stated that it is expected to be no more than one to two per year.

Based on the representations of those testifiers, the court system anticipates that it can handle these new case types in the ordinary course of the Supreme Court's workload.

Further, CSHB 126(JUD) provides that a general court martial in which confinement of more than one year is sought will use a grand jury of the state to determine whether a true bill can issue. AS 26.05.444. Again, testifiers have stated that the National Guard expects this to be a minimal impact on the state court system's grand juries, that it would be quite rarely used, and that it would be coordinated such that the court system would not experience increased jury costs.

Based on these expectations of and assumptions about the bill's impacts, the court system submits a zero fiscal note for CSHB 126(JUD).

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 126
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB126CS(JUD)-DOC-IDO-01-21-2016
Title: CODE OF MILITARY JUSTICE; APPEALS
Sponsor: JUDICIARY
Requester: House Judiciary Committee

Department: Department of Corrections
Appropriation: Population Management
Allocation: Institution Director's Office
OMB Component Number: 1381

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Prepared By: <u>April Wilkerson</u>	Phone: <u>(907)465-3460</u>
Division: <u>Administrative Services - Department of Corrections</u>	Date: <u>01/21/2016 01:00 PM</u>
Approved By: <u>Remond Henderson, Deputy Commissioner</u>	Date: <u>01/21/2016</u>
Agency: <u>Department of Corrections</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. HB 126

Analysis

This legislation adds a new section to the Code of Military Justice establishing AS 26.05.380 Regulations adopting code of military justice for members of the militia of the state not in federal service and establishes a military court for members of the militia who are charged with a military offense.

Section 26.05.428 identifies the requirements regarding the confinement, receiving and reporting of prisoners. This section will require reporting of those confined within a correctional facility within 24 hours. The department currently has a process for reporting of all persons held in a correctional facility including: military, federal, municipal, city and state holds, therefore this section will have no fiscal impact to the department.

Section 26.05.513 establishes punishments and maximum limits for military offenses and identifies those where the sentence exceeds one-year as a felony offense and with the exception of convictions by a summary court martial, all other military offenses are misdemeanors. The department is unable to quantify any increases to the offender population for those that could be charged under this legislation, however, if passed, the department will monitor and track for future fiscal impacts.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 126
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB126CS(JUD)-DHSS-API-1-16-16
Title: CODE OF MILITARY JUSTICE; APPEALS
Sponsor: JUDICIARY
Requester: House Judiciary Committee

Department: Department of Health and Social Services
Appropriation: Behavioral Health
Allocation: Alaska Psychiatric Institute
OMB Component Number: 311

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
---------------------------	--	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

Why this fiscal note differs from previous version:

This version updated to reflect new year; no other changes.

Prepared By: <u>Randall Burns, acting Director</u>	Phone: <u>(907)269-5948</u>
Division: <u>Behavioral Health</u>	Date: <u>01/04/2016 04:45 PM</u>
Approved By: <u>Sana Efird, Asst. Commissioner, Finance and Management Services</u>	Date: <u>01/16/16</u>
Agency: <u>Health and Social Services</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. CSHB 126

Analysis

This bill outlines a Military Code of Justice for Alaska.

Relevant to the Department of Health and Social Services, this bill authorizes military court-ordered involuntary commitment for mental health competency evaluation and treatment services available at the Alaska Psychiatric Institute (API). As involuntary commitment for evaluation and treatment is currently provided through other courts for Alaska's general population under AS 12.47, this would not change API's current practice.

DHSS does not anticipate a need for additional funds resulting from this bill.

AMENDMENT

1

OFFERED IN THE HOUSE

BY REPRESENTATIVE LEDOUX

TO: CSHB 126(), Draft Version "S"

- 1 Page 35, line 24:
 - 2 Delete "shall"
 - 3 Insert "may"
 - 4
- 5 Page 36, line 4:
 - 6 Delete "shall"
 - 7 Insert "may"
 - 8
- 9 Page 36, line 11:
 - 10 Delete "shall"
 - 11 Insert "may"
 - 12
- 13 Page 36, line 18:
 - 14 Delete "shall"
 - 15 Insert "may"
 - 16
- 17 Page 36, line 21:
 - 18 Delete "shall"
 - 19 Insert "may"
 - 20
- 21 Page 36, line 26:
 - 22 Delete "shall"
 - 23 Insert "may"

1

2 Page 36, line 28:

3 Delete "shall"

4 Insert "may"

5

6 Page 37, line 6:

7 Delete "shall"

8 Insert "may"

9

10 Page 37, line 13:

11 Delete "shall"

12 Insert "may"

13

14 Page 38, line 4:

15 Delete "is punishable"

16 Insert "may be punished"

17

18 Page 38, line 17:

19 Delete "shall"

20 Insert "may"

21

22 Page 38, line 22:

23 Delete "shall"

24 Insert "may"

25

26 Page 38, line 29:

27 Delete "shall"

28 Insert "may"

29

30 Page 39, line 5:

31 Delete "shall"

- 1 Insert "may"
- 2
- 3 Page 39, line 14:
- 4 Delete "shall"
- 5 Insert "may"
- 6
- 7 Page 39, line 24:
- 8 Delete "shall"
- 9 Insert "may"
- 10
- 11 Page 39, line 31:
- 12 Delete "shall"
- 13 Insert "may"
- 14
- 15 Page 40, line 5:
- 16 Delete "shall"
- 17 Insert "may"
- 18
- 19 Page 40, line 22:
- 20 Delete "shall"
- 21 Insert "may"
- 22
- 23 Page 40, line 27:
- 24 Delete "shall"
- 25 Insert "may"
- 26
- 27 Page 41, line 1:
- 28 Delete "shall"
- 29 Insert "may"
- 30
- 31 Page 41, line 6:

- 1 Delete "shall"
- 2 Insert "may"
- 3
- 4 Page 41, line 11:
- 5 Delete "shall"
- 6 Insert "may"
- 7
- 8 Page 41, line 15:
- 9 Delete "shall"
- 10 Insert "may"
- 11
- 12 Page 42, line 7:
- 13 Delete "shall"
- 14 Insert "may"
- 15
- 16 Page 42, line 15:
- 17 Delete "shall"
- 18 Insert "may"
- 19
- 20 Page 42, line 23:
- 21 Delete "shall"
- 22 Insert "may"
- 23
- 24 Page 42, line 27:
- 25 Delete "shall"
- 26 Insert "may"
- 27
- 28 Page 43, line 7:
- 29 Delete "shall"
- 30 Insert "may"
- 31

- 1 Page 43, line 10:
 - 2 Delete "shall"
 - 3 Insert "may"
 - 4
- 5 Page 43, line 18:
 - 6 Delete "shall"
 - 7 Insert "may"
 - 8
- 9 Page 43, line 27:
 - 10 Delete "shall"
 - 11 Insert "may"
 - 12
- 13 Page 44, line 2:
 - 14 Delete "shall"
 - 15 Insert "may"
 - 16
- 17 Page 44, line 9:
 - 18 Delete "shall"
 - 19 Insert "may"
 - 20
- 21 Page 44, line 15:
 - 22 Delete "shall"
 - 23 Insert "may"
 - 24
- 25 Page 44, line 21:
 - 26 Delete "shall"
 - 27 Insert "may"
 - 28
- 29 Page 44, line 26:
 - 30 Delete "shall"
 - 31 Insert "may"

- 1
- 2 Page 44, line 31:
 - 3 Delete "shall"
 - 4 Insert "may"
 - 5
- 6 Page 45, line 3:
 - 7 Delete "and"
 - 8 Insert "or"
 - 9
- 10 Page 45, line 13:
 - 11 Delete "shall"
 - 12 Insert "may"
 - 13
- 14 Page 45, line 26:
 - 15 Delete "shall"
 - 16 Insert "may"
 - 17
- 18 Page 47, line 2:
 - 19 Delete "shall"
 - 20 Insert "may"
 - 21
- 22 Page 47, line 7:
 - 23 Delete "shall"
 - 24 Insert "may"
 - 25
- 26 Page 47, line 20:
 - 27 Delete "shall"
 - 28 Insert "may"
 - 29
- 30 Page 47, line 23:
 - 31 Delete "and"

1 Insert "or"

2

3 Page 48, line 13:

4 Delete "shall"

5 Insert "may"

6

7 Page 48, line 17:

8 Delete "shall"

9 Insert "may"

10

11 Page 48, line 22:

12 Delete "shall"

13 Insert "may"

14

15 Page 48, line 27:

16 Delete "shall"

17 Insert "may"

18

19 Page 49, line 18:

20 Delete "shall"

21 Insert "may"

22

23 Page 51, line 18:

24 Delete "shall"

25 Insert "may"

26

27 Page 52, line 15:

28 Delete "shall"

29 Insert "may"

30

31 Page 52, line 29:

1 Delete "shall"
2 Insert "may"
3
4 Page 53, line 3:
5 Delete "shall"
6 Insert "may"
7
8 Page 53, line 31:
9 Delete "shall"
10 Insert "may"
11
12 Page 54, line 8:
13 Delete "shall"
14 Insert "may"
15
16 Page 54, line 16:
17 Delete "shall"
18 Insert "may"
19
20 Page 54, line 26:
21 Delete "shall"
22 Insert "may"
23
24 Page 55, line 12:
25 Delete "shall"
26 Insert "may"
27
28 Page 56, line 13:
29 Delete "shall"
30 Insert "may"
31

1 Page 56, line 18:

2 Delete "shall"

3 Insert "may"

4

5 Page 56, line 28:

6 Delete "shall"

7 Insert "may"

AMENDMENT

2

OFFERED IN THE HOUSE

BY REPRESENTATIVE LEDOUX

TO: CSHB 126(), Draft Version "S"

- 1 Page 19, line 11:
- 2 Delete "before the imposition of nonjudicial punishment"
- 3 Insert "not later than two years after commission of the offense if the imposition of
- 4 nonjudicial punishment is sought"

AMENDMENT

3

OFFERED IN THE HOUSE

BY REPRESENTATIVE LEDOUX

TO: CSHB 126(), Draft Version "S"

- 1 Page 7, line 4:
- 2 Delete "charged against the prisoner"
- 3 Insert "for which the prisoner was convicted"
- 4
- 5 Page 7, line 8:
- 6 Delete "charged against the prisoner"
- 7 Insert "for which the prisoner was convicted"

AMENDMENT

4

OFFERED IN THE HOUSE

BY REPRESENTATIVE LEDOUX

TO: CSHB 126(), Draft Version "S"

1 Page 1, line 8, following "**proceedings;**":

2 Insert "**amending Rule 6, Alaska Rules of Criminal Procedure;**"

3

4 Page 59, following line 28:

5 Insert a new bill section to read:

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

8 INDIRECT COURT RULE AMENDMENT. The provisions of AS 26.05.444 and
9 26.05.445, enacted by sec. 4 of this Act, have the effect of changing Rule 6, Alaska Rules of
10 Criminal Procedure, by changing the procedure for grand jury proceedings conducted before
11 courts-martial."

12

13 Renumber the following bill sections accordingly.

AMENDMENT 5

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLER

TO: CSHB 126(), Draft Version "S"

1 Page 6, line 8:

2 Delete the first occurrence of "or"

3 Insert ","

4 Following "person":

5 Insert ","

6

7 Page 6, line 9:

8 Delete "commissioned officer"

9 Insert "member of the militia"

AMENDMENT 6

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLER

TO: CSHB 126(), Draft Version "S"

- 1 Page 19, line 19, following "war":
- 2 Insert "declared by the United States Congress"

AMENDMENT

7

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

1 Page 2, lines 10 - 12:

2 Delete "require the person instituting the suit to give security for the payment of costs.
3 If judgment is for the defendant, treble costs shall be assessed against the plaintiff. The
4 defendant in the action shall"

5 Insert "[REQUIRE THE PERSON INSTITUTING THE SUIT TO GIVE SECURITY
6 FOR THE PAYMENT OF COSTS. IF JUDGMENT IS FOR THE DEFENDANT, TREBLE
7 COSTS SHALL BE ASSESSED AGAINST THE PLAINTIFF. THE DEFENDANT IN THE
8 ACTION SHALL]"

AMENDMENT 8

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 4, lines 6 - 7:
- 2 Delete "be relieved from amenability"
- 3 Insert "raise a defense that the person is not subject"

AMENDMENT

9

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 5, line 1, following "is":
- 2 Insert "currently"

AMENDMENT

10

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

1 Page 10, line 25, following "cases.":

2 Insert "If the officer who is authorized to convene a summary court-martial is the
3 accuser in the matter, the court hearing the matter shall be convened by a superior competent
4 authority, if practicable."

5

6 Page 10, line 26:

7 Delete "competent"

AMENDMENT

11

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 16, line 29, following "delay":
- 2 Insert "as soon as possible"

AMENDMENT 12

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

1 Page 21, lines 26 - 27:

2 Delete "by confinement not to exceed 30 days or a fine of \$100, or both"

3 Insert "as provided in AS 09.50.020 for civil contempt"

4

5 Page 21, lines 29 - 30:

6 Delete "in an amount not to exceed \$100"

7 Insert "as provided in AS 09.50.020 for civil contempt"

AMENDMENT

13

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 24, line 16:
- 2 Delete "what further action may be appropriate"
- 3 Insert "further action that is legally permissible"

AMENDMENT



OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 24, line 21, following "court":
- 2 Insert "on the record, in an open court, and in the presence of all parties to the trial"

AMENDMENT

15

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 24, line 26, following "trial":
- 2 Insert "before a vote is taken on the findings"

AMENDMENT

16

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 29, line 7:
- 2 Delete "totally"

AMENDMENT

17

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

1 Page 31, lines 1 - 2:

2 Delete all material and insert:

3 "(b) The commission has

4 (1) jurisdiction to hear appeals from courts-martial by the

5 (A) state in accordance with AS 26.05.525; and

6 (B) accused regarding sentences, punishments, clearly
7 erroneous findings, and matters of law; and

8 (2) the discretion to remand those cases to a competent court martial."

AMENDMENT

18

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 33, line 30:
- 2 Delete "statute"
- 3 Insert "federal or state statute or regulation"

AMENDMENT

19

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 35, line 18, following "commands,":
- 2 Insert "solicits,"

AMENDMENT 20

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

1 Page 48, line 16, following "who":

2 Insert "intentionally"

3

4 Page 48, line 17, following the first occurrence of "or":

5 Insert "wilfully"

AMENDMENT

21

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 48, lines 22 - 23:
- 2 Delete "by up to six months of confinement and by such other punishment"

AMENDMENT



OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 126(), Draft Version "S"

- 1 Page 56, line 16, following "officer,":
- 2 Insert "warrant officer,"