

HB

126

<TARGET><BILL>HB 126</BILL><SUBJECT>HB
126</SUBJECT><COMM>HMLV29</COMM></TARGET>

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 25, 2015

FURTHER REFERRALS: Judiciary

Date of Committee Action: 3.31.15

The HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS considered: HB 126

HOUSE BILL NO. 126

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

HB 126 CODE OF MILITARY JUSTICE; APPEALS

Recommends it be replaced with HCS or CS for HB 126 (MLV)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

- List of Abbrev for Depts.:
- ADM
 - CEC
 - COR
 - CRT
 - EED
 - DEC
 - DFG
 - GOV
 - DHS
 - LWF
 - LAW
 - LEG
 - MVA
 - DNR
 - DPS
 - REV
 - DOT
 - UA

NEW FISCAL NOTES				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	COR			X
	DHS			X
	MVA	X		
	AJS	X		

PREVIOUS FISCAL NOTES				
FN#	List by Dept(s):	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Chris Tuck</i>	Tuck				✓
<i>Walter</i>	Walter				✓
<i>Colver</i>	Colver				X
<i>Lynn</i>	Lynn	X			
<i>Hughes</i>	Hughes				✓
<i>WEDD</i>	WEDD	X			
Chair:	<i>John</i>				
Chair:	HERRON	X			

LeDoux removes objection and amendment is adopted.

Tuck
<Ask ~~LeDoux~~ to move Amendment 2>

- Object for discussion

Tuck will speak to amendment #2.

Dunbar remains at the table to explain why Dept. wants the amendment.

- Remove objection

Tuck
<Ask ~~LeDoux~~ to move Amendment 3>

- Object for discussion

Tuck will speak to amendment #3.

Dunbar remains at the table to explain why Dept. wants the amendment.

- Remove objection

Assuming you want to move the Bill:

The chair would entertain a motion to move HB 126 from committee.

- version number (as amended?) with individual recommendations and
WITH ATTACHED 3 FISCAL NOTES

Take At Ease and remind members to sign the committee report

Adjournment

This may have been our last meeting of the year – we'll let you know if that changes.
But thanks to all committee members and to the LAA support staff for their help.
It is 1:38 and we are adjourned.

Alaska Code of Military Justice

HB 126 AND THE ALASKA NATIONAL GUARD

AK National Guard Funding

General Fund
\$4,991.7 K

Federal Receipt Authority
\$6,083 K

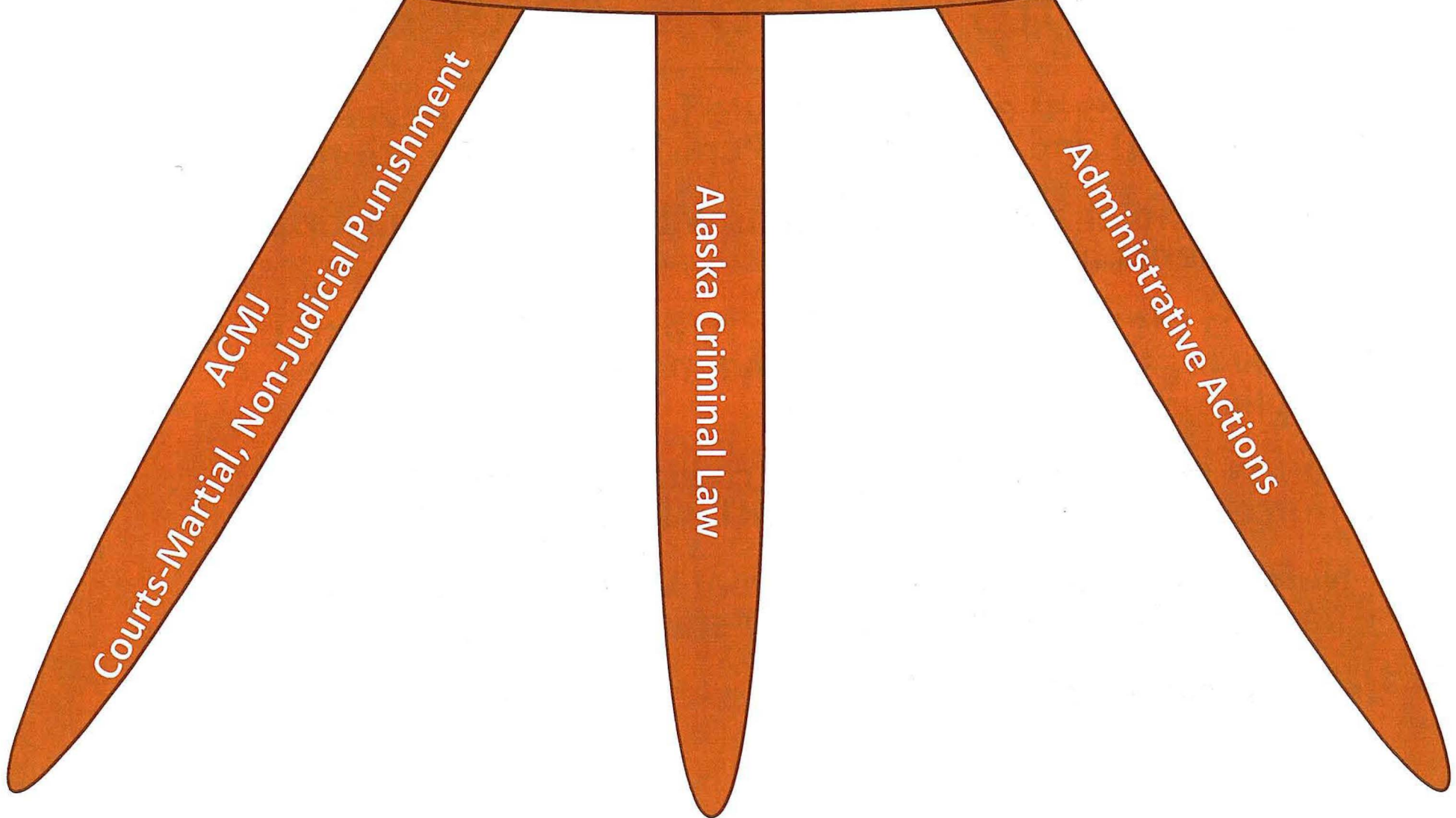
Direct Federal Payments
\$262,352.6 K

\$53.78 Federal dollars received for every State dollar spent

Key Points on HB 126 & ACMJ

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

Good order and Discipline



Courts-Martial, ACMJ, Non-Judicial Punishment

Alaska Criminal Law

Administrative Actions

Existing Relevant Law

1. Territorial Era Military Code

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

2. Federal Uniform Code of Military Justice (UCMJ)

3. Alaska state criminal code

Examples of Service-member Statuses

1. Title 32

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

2. Title 10

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

3. State Active Duty

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

Good order and Discipline

*Courts-Martial, Non-Judicial Punishment
ACMJ*

Alaska Criminal Law

Administrative Actions

Tools Required to Maintain Good Order & Discipline

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

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

The Guard's Current Plan of Action

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

QUESTIONS?

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



ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

REP. GABRIELLE LEDOUX
Chairman
State Capitol, Rm. 118
Juneau, AK 99801

Rep. Wes Keller, Vice-Chair
Rep. Charisse Millett
Rep. Matt Claman
907-465-4998

Rep. Max Gruenberg
Rep. Bob Lynn
Rep. Neal Foster
Rep. Kurt Olson, Alternate

HOUSE BILL 126

(29-LS0473\W)

SPONSOR STATEMENT

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

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

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

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

We urge your support of this legislation.

29-LS0473\H
Strasbaugh
3/24/15

CS FOR HOUSE BILL NO. 126()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL
FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

22 (2) a separate account for the Department of Military and Veterans'
23 Affairs' contribution to fund the system based on the actuarial requirements of the
24 system as established by the commissioner of administration under **AS 26.05.222 -**
25 **26.05.229** [THIS CHAPTER];

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

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

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

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

5 (b) The code adopted under this section must

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

8 (2) provide for nonjudicial punishment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (d) A person may not serve as a judge advocate under the code of military
16 justice unless the person is a commissioned officer of the organized militia of the state,
17 is a member in good standing of the bar of the highest court of a state, and is

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

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

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

1 peace officer or civil officer having authority to apprehend offenders under the laws of
2 the United States or of a state may apprehend a person subject to the code of military
3 justice upon probable cause that a military offense has been committed and that the
4 person apprehended committed the military offense.

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

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

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

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

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

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

31 (d) This section does not limit the authority of persons authorized to

1 apprehend offenders to secure the custody of an alleged offender until proper authority
2 may be notified.

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

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

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

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

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

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

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

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

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

1 authority, competent military authority shall request the civil authority to return the
2 offender to the custody of the military authority for completion of the sentence
3 imposed by court-martial.

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

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

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

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

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

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

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

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

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

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

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

29 **Sec. 26.05.440. Jurisdiction of a special court-martial.** Subject to
30 AS 26.05.435, a special court-martial has jurisdiction to try a member of the militia in
31 active state service for a military offense and may impose a punishment not forbidden

1 by the code of military justice, other than dishonorable discharge, dismissal,
2 confinement for more than one year, forfeiture of pay exceeding two-thirds pay a
3 month, or forfeiture of pay for more than one year.

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

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

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

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

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

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

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

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

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

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

10 (b) If an officer who is authorized to convene a special court-martial is the

11 accuser in the matter, the court hearing the matter shall be convened by superior

12 competent authority.

13 (c) A superior authority may convene a case if the superior authority considers

14 it desirable.

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

16 summary court-martial may be convened by

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

26 (b) If only one commissioned officer is present with a command or

27 detachment, that officer shall be the summary court-martial of that command or

28 detachment and shall hear and determine all summary court-martial cases.

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

30 the superior authority considers it desirable.

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 the state;

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 or court of inquiry shall detail
7 or employ qualified court reporters, who shall record the proceedings of and testimony
8 taken 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 trial may not proceed unless
20 the convening authority assigns new members sufficient in number to restore the court
21 to five members. The trial may proceed with the new members present after the
22 recorded evidence previously introduced before the members of the court has been
23 read to the court in the presence of the military judge, the accused, and counsel for
24 both sides.

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

1 accused, and counsel for both sides.

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

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

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

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

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

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

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

31 (c) A member of the militia in active state service may not compel a person to

1 make a statement or produce evidence before a military court if the statement or
2 evidence is not material to the issue before the court and may tend to degrade the
3 person.

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

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

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

19 (c) The authority investigating the accused shall

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

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

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

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

30 (e) If an investigation of a military offense is conducted before the accused is
31 charged with the military offense and the accused is present at the investigation and

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

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

11 (1) present at the investigation;

12 (2) informed of the nature of each uncharged military offense
13 investigated; and

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

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

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

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

29 (1) the specification alleges a military offense;

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

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

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

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

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

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

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

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

28 (b) A member of the militia in active state service may not attempt to coerce
29 or, by unauthorized means, influence the action of a court-martial or court of inquiry
30 or a member of a court, in reaching the findings or sentence in a case, or the action of
31 a convening, approving, or reviewing authority with respect to a judicial act. This

1 subsection does not apply to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (e) If charges or specifications are dismissed as defective or insufficient for
30 any cause, and the period prescribed by the applicable statute of limitations has
31 expired or will expire within 180 days after the date of dismissal of the charges and

1 specifications, trial and punishment under new charges and specifications are not
2 barred by the statute of limitations if the new charges and specifications

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

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

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

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

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

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

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

30 **Sec. 26.05.493. Subpoena; process of military courts.** (a) A military judge,
31 the president of a court-martial, or a summary court-martial officer may issue

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

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

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

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

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

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

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

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

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

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

8 (1) guilty;

9 (2) not guilty; or

10 (3) not guilty by reason of insanity.

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

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

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

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

22 (1) guilty;

23 (2) not guilty; or

24 (3) not guilty by reason of insanity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b) The maximum punishment for a violation of the code of military justice
31 shall be the lesser of the sentences prescribed by the manual for courts-martial of the

1 United States in effect on January 1, 2004, and the code of military justice.

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

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

15 (1) that had custody of the accused;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (1) be licensed to practice law

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

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

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

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

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

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

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

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

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

29 (g) The governor may remove a commissioner from office for cause including
30 but not limited to incompetence, neglect of duty, or misconduct in office. A
31 commissioner, to be removed for cause, shall be given a copy of the charges and

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

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

11 **Sec. 26.05.540. Appellate review.** (a) A person may, after exhausting all
12 remedies available under the code of military justice, appeal to the court of appeals the
13 conviction and sentence imposed by a general or special court-martial for a military
14 offense for which a sentence of confinement is imposed under the code of military
15 justice and as permitted by AS 12.55.120.

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

18 **Sec. 26.05.543. Appellate counsel.** (a) The senior force judge advocate shall
19 detail a judge advocate as appellate trial counsel to represent the state in an appeal
20 filed under AS 26.05.525, 26.05.538, or 26.05.540, and before any federal court when
21 requested to do so by the attorney general. Counsel appointed under this subsection
22 must be a member in good standing of the bar of the highest court of the state to which
23 the appeal is taken.

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

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

28 (d) Upon the request of an accused entitled to be represented under this
29 section, the senior force judge advocate shall detail a judge advocate to represent the
30 accused in the review or appeal of cases under (b) and (c) of this section. Counsel
31 detailed under this subsection shall be qualified as provided for counsel in general and

1 special courts-martial under AS 26.05.455(d).

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

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

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

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

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

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

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

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

1 AS 26.05.170 and 26.05.445.

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 26.05.558. Pay and allowances for court-martial duty.** For each day of
31 duty as a member of a general court-martial, or as a witness under summons from the

1 president or judge advocate of the court, officers and enlisted persons shall be paid as
2 provided in AS 26.05.260(b).

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

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

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

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

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

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

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

29 (5) "classified information" means

30 (A) information or material that has been determined by an
31 official of the United States or any state under law, an executive order, or

1 regulation to require protection against unauthorized disclosure for reasons of
2 national or state security; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 a military offense
20 by court-martial under AS 26.05 and confined under AS 26.05.428 shall be committed
21 to the custody of the commissioner for the period of restraint or confinement as
22 directed 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 a
26 military offense under AS 26.05, including the code of military justice adopted under
27 AS 26.05.380, for a competency examination under AS 12.47.100 or on a finding of
28 incompetency under AS 12.47.110. In this subsection, "military offense" has the
29 meaning given in AS 26.05.590.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 TRANSITION: REGULATIONS. The adjutant general may adopt regulations to

1 implement AS 26.05.380 - 26.05.590, enacted by sec. 4 of this Act. The regulations take
2 effect when approved by the governor, but not before the effective date of the law being
3 implemented.

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

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



HOUSE JUDICIARY COMMITTEE

SECTIONAL ANALYSIS

CS for HB 126

29-LS0473\H

CODE OF MILITARY JUSTICE; APPEALS

Section 1, page 1 – amends 22.07.020. Designates the Alaska Court of Appeals as the appellate court for service-members who have exhausted their administrative appeals.

Section 2, page 2 – amends 26.05.140(a). Limits criminal liability for Guard members for any act done in their official capacity in the line of duty, but does not apply to charges already brought before a military court;

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

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

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

Other sections in the new Code of Military Justice include:

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

- Sets jurisdiction of the military code over deserters and fraudulently discharged personnel and those members who commit their offense outside of the state or live outside of the state when charged with the offense, p.4;
- Details the duties and qualifications of those who serve as judge advocates, p.5;
- Defines who may apprehend members accused of a military offense and how that apprehension is to take place, p. 5-6;
- Defines how a member may be arrested, under what conditions they may be arrested, who may do so, and how they may be confined, p. 6-7;
- Defines how a member accused of a military offense may be delivered to a civilian authority, p.7;
- Describes the composition, duties, terms of service, and jurisdictions of courts-martial, p.8-11;
- Describes the duties and qualifications of trial counsel, defense counsel, assistant counsel, court reporters, and interpreters of courts-martial, p. 11-12;
- Specifies the procedures for bringing charges against a member. p.13;
- Prevents the self-incrimination of the accused, p.13;
- Defines the investigatory process,p.14;
- Lays out how charges may be processed and the procedures for continuances, oaths of office for court officers,p.15-17;
- Defines the statutes of limitations for military offenses,p.19;
- Prohibits double jeopardy charges and describes how pleas of the accused are to be processed,p.19;
- Defines how subpoenas and contempt of court charges are to be processed,p.19-20;
- Provides for an insanity defense for the accused and the determination for mental competency of the accused, p. 20-23;
- Describes the procedures for voting and ruling in courts-martial,p.23-24;
- Requires the recording of courts-martial,p.24-25;
- Describes the allowable punishments and sentences and prohibits cruel and unusual punishments, p. 25-27;
- Describes the appeals process in the military code, including appeals by the state,p.27-28;
- Allows for a vacation of suspension under certain circumstances,p.28;
- Allows for the accused to petition for a new trial and the restoration of privileges,p.28-29;
- Describes the composition and duties of the Military Appeals Commission,p.29-32;
- Defines who may administer oaths for the purposes of military administration proceedings,p.32;
- Allows for the governor to delegate authority for the code of military justice,p.32;
- Creates a military justice account in the general fund,p.33;
- Describes the system of paying and collection of fines associated with the military code,p.33;
- Describes the pay scale of officers and witnesses of the courts-martial,p.33-34;
- Provides immunity for persons who acted pursuant to their duties under the military code,p.34;
- Defines terms associated with the new Article,p.34-36;

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

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

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

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

Section 9, page 37 – Repeal section;

Section 10, page 37 – Applicability clause;

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

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

Section 13, page 38 – Effective date for section 12

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

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version: HB 126
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB126-DOC-IDO-03-21-2015
Title: CODE OF MILITARY JUSTICE; APPEALS
Sponsor: JUDICIARY
Requester: (H) Military & Veterans' Affairs

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)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
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 (FY2015) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) 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>03/21/2015 12:00 PM</u>
Approved By: <u>Remond Henderson, Deputy Commissioner</u>	Date: <u>03/21/2015</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 26.05.478 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
2015 Legislative Session

Bill Version: HB 126
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB126-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)

	FY2016	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2016 Request	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Personal Services	99.4		99.4	99.4	99.4	99.4	99.4
Travel	7.6		7.6	7.6	7.6	7.6	7.6
Services	0.1		0.1	0.1	0.1	0.1	0.1
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	107.1	0.0	107.1	107.1	107.1	107.1	107.1

Fund Source (Operating Only)

1004 Gen Fund	107.1		107.1	107.1	107.1	107.1	107.1
Total	107.1	0.0	107.1	107.1	107.1	107.1	107.1

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

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Estimated SUPPLEMENTAL (FY2015) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) 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:

Not applicable, initial version.

Prepared By:	<u>Susan Colligan, Director</u>	Phone:	(907)428-6881
Division:	<u>Administrative Services</u>	Date:	03/20/2015 05:00 PM
Approved By:	<u>Bob Doehl, Deputy Commissioner</u>	Date:	03/20/15
Agency:	<u>Military and Veterans' Affairs</u>		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. HB 126

Analysis

This legislation instructs and authorizes the Department of Military and Veterans' Affairs and the Alaska National Guard to create a code of military justice, and attendant regulations and procedures. It supplements and replaces portions of the existing Alaska Military Code, which went into effect during Alaska's territorial days (AS 26.05).

This bill requires the Alaska National Guard to create specific military offenses and penalties. It lays out procedures for the administration of courts-martial, and requires that the Alaska National Guard create further regulations to fill procedural gaps. It sets up a three-panel Military Appeals Commission within the Department of Military and Veterans' Affairs to hear appeals from courts-martial. This law retains policy from the existing Alaska Military Code whereby all crimes existing under civilian law will be left to civilian authorities for prosecution.

If this bill is enacted, commanders will have a new disciplinary tool in the form of what's known as "non-judicial punishment." In severe cases, they will have the option to call a court-martial to punish soldiers. 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 evidence from National Guards in other states as well as active duty components, the Department of Military and Veterans' Affairs predicts that courts-martial will be used infrequently, averaging two courts-martial per year.

The provision of staff for courts-martial will be accomplished by placing members of the Alaska National Guard or Active Guard Reserve into State Active Duty status. The personnel required for each court-martial will 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. There are standard travel and per diem costs associated with the three-member Military Appeals Commission, as well as any out-of-town witnesses.

For the estimated two courts-martial per year, one case is anticipated to be appealed to the Military Appeals Commission and to the court of appeals. Personnel costs were established based on the 2015 State Active Duty pay scale, multiplied by the number of days estimated to be required of each position, multiplied by the number of staff required in each position. Witness costs include witness fees, travel and per diem costs as applicable.

Military judge	\$7.3
Attorneys	\$34.2
Paralegals	\$33.7
Bailiff	\$1.6
Escorts	\$2.8
Court Reporter	\$1.1
Witnesses	\$8.4
<u>Panel</u>	<u>\$10.3</u>
Total personnel costs	\$99.4

Witness fees and travel costs \$6.5

Military Appeals Commission costs are based on one meeting per year, with two of the three members traveling to the meeting location. Commission meetings are expected to last two days.

Total commission costs \$1.2

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version: HB 126
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB126-ACS-APP-03-20-15
Title: CODE OF MILITARY JUSTICE; APPEALS
Sponsor: JUDICIARY
Requester: House Military and Veterans' Affairs 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)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Personal Services	73.4		73.4	73.4	73.4	73.4	73.4
Travel							
Services	3.5		3.5	3.5	3.5	3.5	3.5
Commodities	6.5		2.0	2.0	2.0	2.0	2.0
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	83.4	0.0	78.9	78.9	78.9	78.9	78.9

Fund Source (Operating Only)

1004 Gen Fund	83.4		78.9	78.9	78.9	78.9	78.9
Total	83.4	0.0	78.9	78.9	78.9	78.9	78.9

Positions

Full-time	1.0		1.0	1.0	1.0	1.0	1.0
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2015) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) 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:

Initial version.

Prepared By:	Nancy Meade, General Counsel	Phone: (907)463-4736
Division:	Alaska Court System	Date: 03/20/2015 12:00 PM
Approved By:	Nancy Meade for Christine Johnson, Administrative Director	Date: 03/20/15
Agency:	Alaska Court System	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. HB126

Analysis

House Bill 126 (version W) would substantially revise and expand AS 26.05 by adding a new article, Alaska's Code of Military Justice. It provides substantive law and procedures for military courts martial and a new Military Appeals Commission within the Department of Military and Veterans' Affairs. AS 26.05.490.

HB 126 also provides that after a person has appealed a court martial to the Military Appeals Commission, the person (if a sentence of confinement was imposed) has the right to further appellate review in the Alaska Court of Appeals. AS 26.05.493. This new type of appeal from the military court to the state civilian court would expand the state Court of Appeals' jurisdiction. Section 1; AS 22.07.020.

The Court of Appeals currently has jurisdiction over all state criminal appeals from the lower state trial courts. The bill would require the Court to accept appeals from cases involving violations of military law, rather than state law. The state Court of Appeals does not currently have familiarity with either substantive or procedural aspects of courts martial, since the court has not previously handled those case types.

The Court of Appeals judges will hear and decide this new category of cases, but the court system does not have verifiable information about the number of state court cases this new law may lead to, and each of these cases will necessarily involve the new, unfamiliar body of law. To effectively research the new substantive laws, learn about procedures and due process owed to persons accused in a court martial, and resolve these new case types fairly, the court system anticipates that it would need an additional law clerk, particularly if the number of new military cases appealed to the Court of Appeals under HB 126 is more than a very small number.

This one new law clerk position carries a personal services expense of \$73,400 annually. (Law clerks do not participate in PERS and have lower costs for benefits than regular full-time employees; this position is therefore more economical than, for example, a staff attorney.) The Services amount on the note of \$3,500 per year covers software licenses for products such as Microsoft Office, WordPerfect, and the costs of the court's case management system software. The Commodities amount is \$6,500 for the first year; this amount is for a desk, computer, printer, books, and general office supplies for the new law clerk position. After the initial year of equipping the office, the Commodities cost becomes \$2,000 per year to cover ongoing consumable general office supplies, legal resources such as subscription costs, and other miscellaneous supplies.

In sum, this fiscal note reflects the total costs to the Alaska Court System of hiring and retaining one new law clerk on the Court of Appeals to process the cases that would come to it under the Code of Military Justice established in HB 126.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 25, 2015

SUBJECT: Amendment to CSHB 126()
(Work Order No. 29-LS0473(H.1))

TO: Representative Bob Herron
Attn: Rob Earl

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the amendment you requested broadening the pool of people available to serve as military judges, judge advocates, and members of the military appeals commission. You requested that the pool of persons available to serve as judge advocates or military judges include the active or federal reserve component of the "military or other uniformed service." As I understand it, from Mr. Earl, assuring the availability of the Coast Guard officers was of particular concern.¹

With respect to employing the term "uniformed services," you may want to consider whether it is broader than you intended. 10 U.S.C. 101(a)(4) defines "armed forces" as the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. 101(a)(5) defines "uniformed services" as follows:

- (A) the armed forces;
- (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and
- (C) the commissioned corps of the Public Health Service.

Coast Guard personnel are expressly authorized to serve as judge advocates under the Uniform Code of Military Justice (UCMJ). 10 U.S.C. 806. The UCMJ applies to National Oceanic and Atmospheric Administration (NOAA) and Public Health Service (PHS) staff when they are in service to the armed forces (10 U.S.C. 802), but they are not mentioned as eligible to serve as judges or judge advocates. Did you intend to include NOAA and PHS officers, and will they have military court experience?

With respect to broadening the pool of qualified legal officers, you did not request that AS 26.05.410(d), 26.05.453(b)(3), or 26.05.590(21) be amended to allow a military judge

¹ The Coast Guard is in the United States Department of Homeland Security rather than the Department of Defense.

Representative Bob Herron
March 25, 2015
Page 2

or judge advocate from another force to be detailed to preside over a court-martial or be appointed as counsel.² Was that your intention?

Finally, it appears to me to be possible that all judges and attorneys connected with a court-martial except for the appeals commission may be from out-of-state. Is it your intention to allow for that?

If I may be of further assistance, please advise.

KJS:lem
15-196.lem

Enclosure

² AS 26.05.410(d) does allow certification of a judge advocate from another force, but only under certain circumstances.

#1

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 126(), Draft Version "H"

1 Page 5, line 16:

2 Delete "the state"

3 Insert "a state or of an active or reserve component of the armed forces or another
4 uniformed service of the United States"

5

6 Page 11, line 6:

7 Delete "the state"

8 Insert "a state or of an active or reserve component of the armed forces or another
9 uniformed service of the United States"

10

11 Page 30, line 16:

12 Delete the third occurrence of "the"

13 Insert "a"

#2

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE TUCK

TO: CSHB 126(), Draft Version "H"

1 Page 10, following line 30:

2 Insert a new section to read:

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

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

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

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

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

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

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

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

3

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE TUCK

TO: CSHB 126(), Draft Version "H"

- 1 Page 37, line 31:
- 2 Delete "may"
- 3 Insert "shall"