

HB

126

<TARGET><BILL>HB 126</BILL><SUBJECT>HB
126</SUBJECT><COMM>SJUD29</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/14/16

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/16/16

Judiciary Committee considered CS FOR HOUSE BILL NO. 126(JUD) am

HB 126-CODE OF MILITARY JUSTICE; APPEALS

"An Act relating to the administration of military justice; relating to the adoption of regulations 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 supreme court over petitions from the Military Appeals Commission; relating to involuntary commitment for evaluation or treatment of a mental disease or defect before court-martial proceedings; relating to offenses subject to court-martial proceedings; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

and recommends:

- be replaced with SCS CSHB 126 (JUD) Same Title Technical Title Change New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change New Title/SCR No. _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
COR			✓	5
DHS			✓	6
AJS			✓	7
MVA			✓	8

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	COGHILL				
	COSTELLO	✓			
	Wilcznowski				✓
CHAIR:	MCGUIRE	✓			

ALASKA STATE LEGISLATURE

Representative Gabrielle LeDoux,
Chair

Representative Wes Keller,
Vice Chair



Representative Charisse Millett
Representative Neal Foster
Representative Bob Lynn
Representative Matt Claman
Representative Jonathan Kreiss-Tomkins

HOUSE JUDICIARY COMMITTEE

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

MEMORANDUM

To: Sen. Lesil McGuire, Chairman
Senate Judiciary

From: Rep. Gabrielle LeDoux, Chairman
House Judiciary Committee

GL

Date: April 14, 2016

RE: Hearing Request for HB 126

I respectfully request that House Bill 126 – Code of Military Justice; Appeals be scheduled for a hearing in Senate State Affairs at your earliest convenience.

House Bill 126 updates the Alaska Code of Military Justice, which provides the disciplinary structure for non-federalized members of the Alaska National Guard. The current code has not been significantly changed since before statehood. It is not regularly used because of its outdated nature and incomplete provision of disciplinary procedures. Passage of House Bill 126 would give National Guard leadership the tools to better foster good order and discipline in the State's militia without any fiscal impact. It passed the House unanimously.

Enclosed in this request packet:

1. Sponsor Statement
2. Sectional summary
3. Version L (SSTA)
4. Explanation of Changes
5. Version F.A (JUD) am
6. Version E (MLV)
7. Version W (Original)
8. Fiscal Notes
9. Supporting Documents

My aide Kalyssa Maile is assigned to this bill and may be reached directly at 465-2906 for additional information or questions.

Thank you kindly for your consideration of this request.

ALASKA STATE LEGISLATURE

Representative Gabrielle LeDoux,
Chair

Representative Wes Keller,
Vice Chair



Representative Charisse Millett
Representative Neal Foster
Representative Bob Lynn
Representative Matt Claman
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HOUSE JUDICIARY COMMITTEE

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House Bill 126 – Explanation of Changes

Version F.A (JUD) am to SCS Version L (STA)

Non-Judicial Punishment:

A provision was added in Section 26.05.380 to stipulate that regulations for nonjudicial punishment may not prohibit a member of the National Guard from declining nonjudicial punishment in favor of a court-martial.

Felony Classifications:

Under version F.A, an offense would be classified as a felony only if the actual sentence of confinement imposed was greater than one year. Section 26.05.513 was amended so that felony classifications are based on the maximum authorized confinement of a crime.

HB147 family pet -

pg 11 -

pg 12 - WSA

pg 13 - 5 - unarticulate -

The court may provide ...

"Joint ownership"

pg 30 -

-Practical sure -

For the ownership,

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

April 16, 2016

SUBJECT: Military Code of Justice
(SCS CSHB 126(JUD); Work Order 29-LS0473\Y)

TO: Senator Lesil McGuire
Chair of the Senate Judiciary Committee
Attn: Dianne Blumer

FROM: Megan A. Wallace 
Legislative Counsel

The attached bill changes classification of offenses based on the sentence "imposed" rather than "authorized." As previously advised in my January 14, 2016, memorandum on this issue, available on BASIS/documents, crimes are generally classified based on the sentence authorized, not the sentence actually imposed. The approach used in this bill makes it uncertain as to classification prior to conviction, and even after conviction, it is unclear how a court would interpret this classification system since it is so different from classification of AS 11 crimes.

MAW:dla
16-480.dla

Attachment

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

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

12 (f) The supreme court may, in its discretion, review a final decision of the

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

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
12 FOR THE PAYMENT OF COSTS. IF JUDGMENT IS FOR THE DEFENDANT,
13 TREBLE COSTS SHALL BE ASSESSED AGAINST THE PLAINTIFF. THE
14 DEFENDANT IN THE ACTION SHALL] be defended by the attorney general at the
15 expense of the state but the defendant may employ private counsel. **Nothing in this**
16 **subsection applies to a proceeding or action brought under this chapter or the**
17 **code of military justice.**

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

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

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

23 (2) a separate account for the Department of Military and Veterans'
24 Affairs' contribution to fund the system based on the actuarial requirements of the
25 system as established by the commissioner of administration under **AS 26.05.222 -**
26 **26.05.229** [THIS CHAPTER];

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

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

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

2 **Sec. 26.05.380. Regulations; adopting military justice procedures and**
 3 **nonjudicial punishment.** (a) The adjutant general shall adopt regulations consistent
 4 with this chapter for members of the militia. The regulations must be approved by the
 5 governor.

6 (b) The regulations adopted under this section must

7 (1) provide for nonjudicial punishment; the regulations for nonjudicial
 8 punishment may not provide for confinement or separation from military service or
 9 prohibit a member of the militia from declining the imposition of nonjudicial
 10 punishment in favor of a courts-martial;

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

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

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

20 (d) The legislature may annul regulations adopted under this section by law.

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

29 **Sec. 26.05.403. Persons subject to military courts; jurisdiction.** The code of
 30 military justice applies to a member of the militia at all times, except when a member
 31 of the militia is

- 1 (1) in active federal service under 10 U.S.C. (Armed Forces); or
- 2 (2) outside the state and not in active duty status.

3 **Sec. 26.05.405. Jurisdiction to try certain personnel.** (a) A person
4 discharged from the militia of the state who is later charged with having fraudulently
5 obtained a discharge is subject to trial by court-martial on that charge and is, after
6 apprehension, subject to the code of military justice while in custody under the
7 direction of the militia of the state for the trial. Upon conviction of the charge, the
8 person is subject to trial by court-martial for an offense under this chapter that is
9 committed before the fraudulent discharge.

10 (b) A person who has deserted from the militia of the state may not raise a
11 defense that the person is not subject to jurisdiction under the code of military justice
12 by virtue of a separation from a later period of service.

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

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

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

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

30 (c) A person who has acted as member, military judge, trial counsel, defense
31 counsel, or investigating officer, or who has been a witness in a case may not later act

1 as a judge advocate to an authority reviewing the same case.

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

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

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

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

25 (b) Commissioned officers, warrant officers, petty officers, and
26 noncommissioned officers have authority to suppress disorder or mutual combat
27 among members of the militia and to apprehend a person who participates in the
28 disorder or mutual combat.

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

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

4 **Sec. 26.05.423. Imposition of restraint.** (a) An enlisted member of the militia
5 may be arrested or confined by an oral or written order issued by a commissioned
6 officer or another member of the militia of the state acting at the commissioned
7 officer's direction. A commanding officer may authorize warrant officers, petty
8 officers, or noncommissioned officers to order enlisted members of the commanding
9 officer's command or subject to the commanding officer's authority into arrest or
10 confinement.

11 (b) A commissioned or warrant officer may be arrested or confined only by a
12 commanding officer who has authority over the commissioned or warrant officer. The
13 commanding officer shall deliver the order orally, in writing, in person, or by another
14 member of the militia. A commanding officer may not delegate the authority granted
15 in this subsection.

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

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

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

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

30 (c) When a person subject to the code of military justice is placed in
31 confinement before summary court-martial or nonjudicial punishment, the person shall

1 be conditionally released pending disposition of the charges.

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

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

5 (b) Unless otherwise authorized by law, a person authorized to receive a
6 prisoner under (a) of this section may not refuse to receive or keep the prisoner
7 committed to the person's charge by a commissioned officer of the militia of the state
8 if the officer furnishes the person with a statement signed by the officer identifying the
9 offense for which the prisoner was convicted.

10 (c) A person authorized to receive a prisoner under (a) of this section shall,
11 within 24 hours after receiving the statement of commitment under (b) of this section,
12 or as soon as the person is relieved from guard, report to the commanding officer of
13 the prisoner the name of the prisoner, the offense for which the prisoner was
14 convicted, and the name of the person who ordered or authorized the commitment.

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

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

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

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

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

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

31 (B) only a military judge, if, before the court is assembled, the

1 accused, knowing the identity of the military judge and after consultation with
2 defense counsel, requests orally on the record or in writing a court composed
3 of only a military judge and the military judge approves;

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

5 (A) a military judge, not fewer than three members, and not
6 fewer than one alternate member; or

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

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

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

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

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

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

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

30 (c) If a person accused of an offense under this chapter objects to a summary
31 court-martial under (b) of this section, the person may be ordered tried by special or

1 general court-martial, as appropriate.

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

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

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

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

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

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

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

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

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

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

4 (2) the commanding officer of a garrison, fort, post, camp, station, Air
5 National Guard base, or naval base or station;

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

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

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

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

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

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

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

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

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

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

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

1 matter, the court hearing the matter shall be convened by a superior competent
2 authority, if practicable.

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

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

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

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

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

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

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

1 investigating officer or as counsel in the same case.

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

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

11 (b) A military judge must be

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

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

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

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

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

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

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

31 (b) A person who has acted as investigating officer, military judge, witness, or

1 court member in a case may not act as trial counsel, assistant trial counsel, or, unless
2 expressly requested by the accused, defense counsel or assistant or associate defense
3 counsel in the case.

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

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

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

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

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

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

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

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

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

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

1 (c) If a special court-martial, other than a special court-martial composed of
2 only a military judge, is reduced below three members, the military judge shall assign
3 an alternate member to the special court-martial to restore the court to three members.
4 The trial may not proceed if a special court-martial, other than a special court-martial
5 composed of only a military judge, is reduced below three members and no alternate is
6 available for assignment.

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

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

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

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

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

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

29 (b) A member of the militia may not interrogate or request a statement from a
30 person suspected of an offense under this chapter without first informing the person of
31 the nature of the accusation and advising the person that the person does not have to

1 make any statement regarding the offense of which the person is accused or suspected
2 and that any statement made by the person may be used as evidence against the person
3 in a trial by court-martial.

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

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

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

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

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

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

25 (2) give the accused the opportunity to cross-examine witnesses
26 against the accused, if the witnesses are available; a victim of an offense under
27 AS 26.05.593, 26.05.620, 26.05.621, or 26.05.622 may not be required to testify at a
28 preliminary hearing; a victim of an offense under AS 26.05.593, 26.05.620, 26.05.621,
29 or 26.05.622 who declines to testify is considered unavailable for the purposes of the
30 preliminary hearing;

31 (3) give the accused the opportunity to present evidence on the

1 accused's own behalf, either in defense or mitigation relevant to the limited purposes
2 of the hearing; the investigating officer shall examine available witnesses requested by
3 the accused.

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

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

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

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

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

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

30 **Sec. 26.05.470. Forwarding of charges.** (a) When a person is held for trial by
31 general court-martial, the commanding officer shall, within eight days after the

1 accused is ordered into arrest or confinement, if practicable, forward the charges,
2 together with the investigation and associated records, to the person exercising general
3 court-martial jurisdiction.

4 (b) If it is not practicable to forward the charges and investigation and
5 associated records under (a) of this section, the commanding officer shall provide the
6 person with a written explanation for the delay as soon as possible.

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

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

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

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

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

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

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

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

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

1 after the service of charges on the person.

2 **Sec. 26.05.478. Unlawfully influencing the action of a court.** (a) An
3 authority convening a general, special, or summary court-martial, a commanding
4 officer, or an officer serving on the staff of a convening authority or commanding
5 officer may not censure, reprimand, or admonish the court, a member of the court, the
6 military judge, or counsel appearing before the court, with respect to the findings of or
7 sentence imposed by the court, or with respect to another exercise of the respective
8 functions of the court, a member of the court, the military judge, or counsel appearing
9 before the court in the conduct of the proceedings.

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

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

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

19 (c) A member of the militia may not, in the preparation of an effectiveness,
20 fitness, or efficiency report, or any other report or document used, in whole or in part,
21 for the purpose of determining whether a member of the militia of the state is qualified
22 to be advanced in grade, in determining the assignment or transfer of a member of the
23 militia of the state, or in determining whether a member of the militia of the state
24 should be retained on active status,

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

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

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

31 **Sec. 26.05.480. Continuances.** The military judge of a general, special, or

1 summary court-martial may, for reasonable cause, grant a continuance to a party for
2 the time, and as often, as justice requires.

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

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

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

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

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

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

27 (d) When the United States is at war declared by the United States Congress or
28 engaged in contingency operations ordered by the President of the United States, and
29 those operations actually prevented the discovery of the offending behavior or the
30 timely bringing of charges, as determined by a military judge at court-martial, the
31 running of a period of limitation for an offense under this chapter is suspended until

1 two years after the termination of hostilities as proclaimed by the President of the
2 United States or by a joint resolution of the United States Congress if the offense

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

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

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

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

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

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

24 **Sec. 26.05.488. Former jeopardy.** Former jeopardy protections provided to a
25 member of the militia are equivalent to those provided under art. 1, sec. 9,
26 Constitution of the State of Alaska, and under the Double Jeopardy Clause of the Fifth
27 Amendment to the United States Constitution.

28 **Sec. 26.05.490. Pleas of the accused.** (a) If, after arraignment, an accused
29 makes an irregular pleading or, after a plea of guilty, initiates an action inconsistent
30 with the plea, or if the accused appears to have entered the plea of guilty
31 improvidently or through lack of understanding of its meaning and effect, or if the

1 accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and
2 the court shall proceed as though the accused had pleaded not guilty.

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

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

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

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

30 **Sec. 26.05.495. Contempt.** (a) A military judge or summary court-martial
31 officer may punish for contempt a person who uses a menacing word, sign, or gesture

1 in its presence, or who disturbs its proceedings by any riot or disorder.

2 (b) A military judge or summary court-martial officer may punish a member
3 of the militia for contempt as provided in AS 09.50.020 for civil contempt.

4 (c) A military judge or summary court-martial officer may punish a person
5 who is not a member of the militia for direct contempt as provided in AS 09.50.020
6 for civil contempt.

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

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

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

- 16 (1) guilty;
17 (2) not guilty; or
18 (3) not guilty by reason of insanity.

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

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

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

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

- 30 (1) guilty;
31 (2) not guilty; or

1 (3) not guilty by reason of insanity.

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

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

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

25 (c) If the military court determines that the accused is incompetent to stand
26 trial and the accused is not otherwise subject to commitment under AS 47.30.700 -
27 47.30.915, the military judge shall order the convening authority to seek the assistance
28 of the attorney general in seeking a commitment under AS 12.47.110.

29 (d) If, at the end of a period of commitment under (b) and (c) of this section, it
30 is determined that the accused's mental condition has not improved so as to permit the
31 trial to proceed, the charges shall be dismissed without prejudice, and continued

1 commitment proceedings shall be governed by the provisions relating to civil
2 commitment under AS 47.30.700 - 47.30.915. If the accused remains incompetent for
3 five years after the charges have been dismissed under this subsection, the accused
4 may not be charged again for an offense under this chapter arising out of the facts
5 alleged in the original charges.

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

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

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

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

20 (i) If, during a period of commitment under this section, the accused is no
21 longer a member of the militia, the convening authority shall promptly notify the
22 custodian and the attorney general; the custodian and the attorney general may take
23 further action that is legally permissible.

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

30 (b) The military judge shall rule on all questions of law and all interlocutory
31 questions arising during the proceedings. A ruling made by the military judge on a

1 question of law or an interlocutory question, other than the factual issue of mental
2 responsibility of the accused, is final and constitutes the ruling of the court. However,
3 the military judge may change the ruling at any time during the trial before a vote is
4 taken on the findings. Unless the ruling is final, if a member objects to a ruling, the
5 court shall be cleared and closed, and the question shall be decided by a voice vote as
6 provided in AS 26.05.505, beginning with the junior in rank.

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

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

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

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

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

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

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

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

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

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

29 (b) All other questions to be decided by the members of a general or special
30 court-martial shall be determined by a majority vote, but a determination to reconsider
31 a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may

1 be made by any lesser vote that indicates that the reconsideration is not opposed by the
2 number of votes required for that finding or sentence. A tie vote on a challenge
3 disqualifies the member challenged. A tie vote on any other question is a
4 determination in favor of the accused.

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

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

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

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

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

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

1 of confinement for a term of more than one year is imposed is a felony offense. Except
2 for convictions by a summary court-martial and except as otherwise specifically
3 provided in the code of military justice, all other offenses under this chapter for which
4 a sentence of confinement for a term of one year or less is imposed are misdemeanors.
5 A conviction by a summary court-martial is a violation.

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

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

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

21 (1) that had custody of the accused;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 military justice.

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

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

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

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

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

28 **Sec. 26.05.535. Leave required to be taken pending review of court-**
29 **martial convictions.** In accordance with rules adopted under AS 26.05.380, an
30 accused who has been sentenced by a court-martial may be required to take leave
31 pending completion of action under this section if the sentence includes an

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

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

9 (b) The commission has

10 (1) jurisdiction to hear appeals from courts-martial by the

11 (A) state in accordance with AS 26.05.525; and

12 (B) accused regarding sentences, punishments, clearly
13 erroneous findings, and matters of law; and

14 (2) the discretion to remand those cases to a competent court martial.

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

18 (1) be licensed to practice law

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

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

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

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

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

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

30 (d) Except as provided in AS 39.05.080(4), an appointee selected to fill a
31 vacancy shall hold office for the unexpired term of the member whose vacancy is

1 filled. A vacancy in the commission does not impair the authority of a quorum of
2 members to exercise the powers and perform the duties of the commission.

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

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

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

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

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

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

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

1 and

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

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

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

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

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

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

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

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

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

29 (1) a judge advocate;

30 (2) a summary court-martial;

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

1 (4) a commanding officer of the militia;

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

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

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

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

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

11 (4) a recruiting officer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 26.05.577. Principals.** A member of the militia who commits an offense

1 under this chapter, or aids, abets, counsels, commands, solicits, or procures the
2 commission of the offense, or causes an act to be done that, if directly performed by
3 the member, would be punishable under this chapter, is a principal.

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

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

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

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

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

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

30 **Sec. 26.05.582. Solicitation.** (a) A member of the militia who solicits or
31 advises another or others to desert in violation of AS 26.05.585 or to mutiny in

1 violation of AS 26.05.594 may, if the offense solicited or advised is attempted or
2 committed, be punished with the punishment provided for the commission of the
3 offense, but, if the offense solicited or advised is not attempted or committed, the
4 member may be punished by up to one year of confinement, by separation with
5 characterization up to dishonorable discharge, and by such other punishment as a
6 court-martial may direct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 26.05.590. Assaulting or wilfully disobeying superior commissioned**
24 **officer.** A member of the militia who (1) strikes the member's superior commissioned
25 officer or draws or lifts up any weapon or offers any violence against the superior
26 officer while the superior officer is in the execution of the superior officer's office, or
27 (2) wilfully disobeys a lawful command of the member's superior commissioned
28 officer may be punished by up to five years of confinement, by separation with
29 characterization up to dishonorable discharge, and by such other punishment as a
30 court-martial may direct.

31 **Sec. 26.05.591. Insubordinate conduct toward warrant officer,**

1 **noncommissioned officer, or petty officer.** A warrant officer or enlisted member of
2 the militia who (1) strikes or assaults a warrant officer, noncommissioned officer, or
3 petty officer, while the officer is in the execution of the officer's office, (2) wilfully
4 disobeys the lawful order of a warrant officer, noncommissioned officer, or petty
5 officer, or (3) treats with contempt or is disrespectful in language or deportment
6 toward a warrant officer, noncommissioned officer, or petty officer while the officer is
7 in the execution of the officer's office may be punished by up to two years of
8 confinement, by separation with characterization up to dishonorable discharge, and by
9 such other punishment as a court-martial may direct.

10 **Sec. 26.05.592. Failure to obey order or regulation.** Any member of the
11 militia who (1) violates or fails to obey a lawful general order or regulation, (2) having
12 knowledge of any other lawful order issued by a member of the militia of the state that
13 the member has a duty to obey, fails to obey the order, or (3) is derelict in the
14 performance of the member's duties may be punished by up to one year of
15 confinement, by separation with characterization up to dishonorable discharge, and by
16 such other punishment as a court-martial may direct.

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

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

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

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

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

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

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

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

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

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

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

4 (1) runs away;

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

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

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

10 (5) engages in cowardly conduct;

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

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

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

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

20 (b) A member found guilty of misbehavior before the enemy under this
21 section may be punished by up to 10 years of confinement, by separation with
22 characterization up to dishonorable discharge, and by such other punishment as a
23 court-martial may direct.

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

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

9 **Sec. 26.05.602. Forcing a safeguard.** A member of the militia who forces a
10 safeguard may be punished by up to 10 years of confinement, by separation with
11 characterization up to dishonorable discharge, and by such other punishment as a
12 court-martial may direct.

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

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

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

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

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

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

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

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

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

7 (b) A member of the militia who negligently hazards or suffers to be hazarded
8 a vehicle, aircraft, or vessel of the armed forces of the United States or the militia of
9 the state may be punished by up to one year of confinement, by separation with
10 characterization up to dishonorable discharge, and by such other punishment as a
11 court-martial may direct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **Sec. 26.05.613. Misbehavior of sentinel.** A sentinel or lookout who is found
20 under the influence of alcohol or sleeping on the sentinel's or lookout's post or leaves
21 the post before being regularly relieved may be punished, if the offense is committed
22 in time of war or emergency as described in AS 26.05.070, by confinement of not
23 more than 10 years, by separation with characterization up to dishonorable discharge,
24 or by such other punishment as a court-martial may direct, but if the offense is
25 committed at any other time, by up to one year of confinement, by separation with
26 characterization up to dishonorable discharge, and by such other punishment as a
27 court-martial may direct.

28 **Sec. 26.05.614. Wrongful use or possession of controlled substances.** (a) A
29 member of the militia who wrongfully uses, possesses, manufactures, distributes, or
30 imports a controlled substance into the customs territory of the United States, exports
31 from the United States in violation of the laws of the United States or the state, or who

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

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

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

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

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

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

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

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

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

30 **Sec. 26.05.616. Riot or breach of peace.** A member of the militia who
31 intentionally causes or wilfully participates in a riot or breach of the peace may be

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

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

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

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

12 (1) a sexual act on another person by

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

14 (B) causing bodily harm to another person;

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

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

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

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

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

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

29 (b) A member of the militia who commits or causes sexual contact on or by
30 another person, and in doing so would have violated (a) of this section had the sexual
31 contact been a sexual act, is guilty of abusive sexual contact and may be punished by

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

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

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

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

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

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

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

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

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

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

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

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

8 (5) "sexual act" means

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

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

16 (6) "sexual contact" means

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

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

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

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

30 **Sec. 26.05.621. Stalking.** (a) A member of the militia is guilty of stalking and
31 may be punished by up to three years of confinement, by separation with

1 characterization up to dishonorable discharge, and by such other punishment as a
2 court-martial may direct if the member

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

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

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

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

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

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

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

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

31 (1) knowingly and wrongfully views the private area of another

1 person, without the other person's consent and under circumstances in which the other
2 person has a reasonable expectation of privacy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) knowing it to be false or fraudulent

31 (A) makes a claim against the United States, the state, or an

1 officer of the United States or the state; or

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

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

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

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

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

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

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

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

29 **Sec. 26.05.633. Conduct unbecoming an officer.** (a) A commissioned officer,
30 warrant officer, cadet, candidate, or midshipman of the militia who is convicted of
31 conduct unbecoming an officer may be punished by separation with characterization

1 up to dishonorable discharge and by such other punishment as a court-martial may
2 direct.

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

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

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

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

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

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

22 (2) "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 (3) "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 (4) "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 (5) "code of military justice" means the provisions of this chapter and
6 the regulations adopted by the adjutant general to implement this chapter;

7 (6) "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 (7) "confinement" means the physical restraint of a person;

11 (8) "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 (9) "day" means calendar day and is not synonymous with the term
15 "unit training assembly";

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

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

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

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

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

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

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

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

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

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

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

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

8 (20) "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 (21) "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.

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

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

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

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

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

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

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

31 (2) cooperate with the federal government in matters of mutual

1 concern pertaining to the welfare of Alaska [ALASKAN] veterans, including
 2 establishing, extending, or strengthening services for veterans in the state;

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

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

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

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

14 INDIRECT COURT RULE AMENDMENT. The provisions of AS 26.05.444 and
 15 26.05.445, enacted by sec. 4 of this Act, have the effect of changing Rule 6, Alaska Rules of
 16 Criminal Procedure, by changing the procedure for grand jury proceedings conducted before
 17 courts-martial.

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

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

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

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

- 28 (1) one member shall be appointed for two years;
- 29 (2) one member shall be appointed for four years;
- 30 (3) one member shall be appointed for six years; and
- 31 (4) one alternate member may be appointed for six years.

1

* **Sec. 13.** This Act takes effect July 1, 2016.

AMENDMENT

#1

offered by Sen. W

OFFERED IN THE SENATE

TO: SCS CSHB 126(STA)

Carried

1 Page 9, line 8:

2 Delete "confinement of more than one year is sought"

3 Insert "the member of the militia is accused of committing an offense that is
4 punishable by confinement of more than one year"

5

6 Page 27, line 1:

7 Delete "authorized"

8 Insert "imposed"

9

10 Page 27, line 5:

11 Delete "authorized"

12 Insert "imposed"

(Felony issue -
v. Misdemeanor
issue.)

restore the way that
the bill came over to
us

AMENDMENT

#2
fauls

OFFERED IN THE SENATE
TO: SCS CSHB 126(STA)

- 1 Page 3, lines 8 - 10:
- 2 Delete "or prohibit a member of the militia from declining the imposition of
- 3 nonjudicial punishment in favor of a courts-martial"

national guard beauru
recommends -
NO Turndown -

Excerpt – 24 Hour Rule
Rule 23. Committee Meetings.

(a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the Thursday preceding the week of the meeting, except that, during the first week of the first regular session, not less than 24 hours notice must be given. The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing. However, this requirement may be waived by motion of the person who chairs the committee to which a bill or resolution is first referred if concurred in by majority vote of the full membership of the house. The chief clerk or secretary shall publish and distribute copies of the weekly schedule of committee meetings and of the five-day notice of hearing.

(b) The person who chairs a standing, special, or joint committee shall provide the chief clerk or secretary written notice of the change in the time, place or subject matter of a meeting. At the next daily legislative session, notice of the schedule change shall be announced by the chief clerk or secretary and published as a notice in the journal of the house.

(c) A scheduled meeting of a standing, special, or joint committee may be cancelled at any time. If possible, notice of the cancellation shall be given in the same manner as provided for notice of change in (b) of this rule.

(d) The provisions of (a) and (b) of this rule do not apply to a standing, special, or joint committee meeting scheduled after the date a conference committee has been chosen to consider amendments to or differences between versions of the general appropriation act. However, a person who chairs a standing, special, or joint committee **shall post written notice of the time, place and subject matter of a meeting at least 24 hours before the meeting.**

(e) The provisions of (a) - (d) of this rule do not apply to meetings of

(1) the Rules Committee when it meets for the purpose of preparing the daily calendar;

(2) the Committee on Committees referred to in Rule 1(e); or

(3) standing, special, or joint committees when the committee meets during the interim between sessions.