
A BILL FOR AN ACT

RELATING TO THE HAWAII CODE OF MILITARY JUSTICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to update the
2 procedures and punitive sections of military justice within the
3 state military forces. Chapter 124A of the Hawaii Revised
4 Statutes, relating to the Hawaii code of military justice, was
5 enacted in 1982. This was the first major update to the code of
6 military justice for the state military forces since 1894-1895.
7 The current Hawaii code of military justice lacks the necessary
8 disciplinary options to provide for effective and efficient good
9 order and discipline in the state military forces. This Act
10 will remedy those issues and bring the military justice process
11 in line with the Uniform Code of Military Justice.

12 The purpose of the proposed Hawaii code of military justice
13 is to provide a comprehensive law setting forth military
14 judicial procedures, which will apply to all members of the
15 State's military forces, primarily the National Guard units,
16 while they are not in federal service. The Hawaii code is based
17 on the Uniform Code of Military Justice as contained in title 10



1 United States Code sections 801 et. seq. and the Model State
2 Code of Military Justice that was proposed by the American Bar
3 Association in 2005. Authorization for states to enact their
4 codes of military justice is found in title 32 United States
5 Code sections 326-328, except for provisions not applicable to
6 or suitable for state military forces not in federal service.
7 The Hawaii code continues to include provisions relating to
8 apprehension, restraint and confinement of suspects, punishable
9 offenses, non-judicial punishment, state courts-martial
10 jurisdiction, composition, and trial procedures, and
11 confinement.

12 The code also provides for the right of appeal through a
13 civilian court process. This, and other features designed to
14 ensure better protection of the rights of the individual without
15 sacrificing command efficiency, are included in this version of
16 the Hawaii code of military justice.

17 SECTION 2. The Hawaii Revised Statutes is amended by
18 adding a new chapter to be appropriately designated and to read
19 as follows:

20 **"CHAPTER**

21 **HAWAII CODE OF MILITARY JUSTICE**



1 **PART I: GENERAL PROVISIONS**

2 § -1 **Definitions.** In this chapter, unless the context
3 otherwise requires:

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

8 "Adjutant general" means the adjutant general of the State
9 as defined in section 121-7.

10 "Apprehension" means the taking of a person into custody.

11 "Arrest" means the restraint of a person by an order, not
12 imposed as a punishment for an offense, directing the person to
13 remain within certain specified limits.

14 "Arrest in quarters" means the restraint involved is
15 enforced by a moral obligation rather than by physical means.
16 This punishment may be imposed only on officers. An officer
17 undergoing this punishment may be required to perform those
18 duties prescribed by the United States Secretary of the Armed
19 Service concerned. However, an officer so punished is required
20 to remain within that officer's quarters during the period of
21 punishment unless the limits of arrest are otherwise extended by



1 appropriate authority. The quarters of an officer may consist
2 of a military residence, whether a tent, stateroom, or other
3 quarters assigned, or a private residence when government
4 quarters have not been provided.

5 "Cadet," "candidate," or "midshipman" means any person who
6 is enrolled in or attending a state military academy, a regional
7 training institute, or any other formal education program for
8 the purpose of becoming a commissioned officer in the state
9 military forces.

10 "Code" means this Act.

11 "Commanding officer" includes only commissioned officers of
12 the state military forces and shall include officers in charge
13 only when administering nonjudicial punishment under section -
14 21. The term "commander" has the same meaning as "commanding
15 officer" unless the context otherwise requires.

16 "Commissioned officer" includes a commissioned warrant
17 officer.

18 "Confinement" is the physical restraint of a person.

19 "Contemptuous words" means words or speech manifesting, or
20 expressing, deep hatred or disapproval.



1 "Convening authority" includes, in addition to the person
2 who convened the court, a commissioned officer commanding for
3 the time being, or a successor in command to the convening
4 authority.

5 "Cowardly conduct" means conduct, committed by an accused,
6 while the accused was before or in the presence of the enemy,
7 that constitutes an act of cowardice that was the result of
8 fear.

9 "Day" means calendar day and is not synonymous with the
10 term "unit training assembly." Any punishment authorized by
11 this code, which is measured in terms of days shall, when served
12 in a status other than annual field training, be construed to
13 mean succeeding duty days.

14 "Disrespect" means behavior, which detracts from the
15 respect due the authority and person of a superior commissioned
16 officer or fellow soldier. It may consist of acts or language,
17 however expressed, and it is immaterial whether they refer to
18 the superior as an officer or as a private individual.
19 Disrespect by words may be conveyed by abusive epithets or other
20 contemptuous or denunciatory language. Truth is no defense.
21 Disrespect by acts includes neglecting the customary salute, or



1 showing a marked disdain, indifference, insolence, impertinence,
2 undue familiarity, or other rudeness in the presence of the
3 superior officer or fellow soldier.

4 "Duty status other than state active duty" includes any
5 time when members and units of the state military forces
6 assemble for drill or other equivalent training, instruction, or
7 duty or participate in field training, encampments, maneuvers,
8 schools, conferences, cruises, or other similar duties as may be
9 prescribed by the laws of the United States (including but not
10 limited to title 32 of the United States Code) or of the State
11 and any regulations issued thereunder, and includes travel to
12 and from such duty.

13 "Enlisted member" means a person in an enlisted grade.

14 "Governor" means the governor of the State.

15 "Grade" means a step or degree, in a graduated scale of
16 office or military rank, that is established and designated as a
17 grade by law or regulation.

18 "Judge advocate" means a commissioned officer of the
19 organized state military forces who is a member in good standing
20 of the bar of the highest court of a state, and is:



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

6 (2) Certified as a non-federally recognized judge
7 advocate, under regulations promulgated pursuant to
8 this provision, by the senior judge advocate of the
9 commander of the force in the state military forces of
10 which the accused is a member, as competent for
11 perform such military justice duties required by this
12 code. If there is no such judge advocate available,
13 then such certification may be made by such senior
14 judge advocate of the commander of another force in
15 the state military forces, as the convening authority
16 direct.

17 "Law specialist" means a commissioned officer of the
18 organized militia of the State designated for special duty.

19 "Legal officer" means any commissioned officer of the
20 organized militia of the State designated to perform legal
21 duties for a command.



1 "Military" refers to any or all of the armed forces.

2 "Military court" means a court-martial, or a court of
3 inquiry.

4 "Military judge" means an official of a general or special
5 court-martial detailed in accordance with part V of this
6 chapter.

7 "Military offenses" means those offenses that are
8 enumerated in part X of this chapter that do not have a
9 corresponding offense in the civilian penal code.

10 "Officer" means a commissioned or warrant officer.

11 "Officer in charge" means a member of the state military
12 forces designated by such appropriate authority.

13 "President" means the detailed member senior in rank of a
14 court-martial then serving unless the context otherwise
15 requires.

16 "Rank" means the order of precedence among members of the
17 state military forces.

18 "Record," when used in connection with the proceedings of a
19 court-martial, means:

20 (1) An official written transcript, written summary, or
21 other writing relating to the proceedings; or



1 (2) An official audiotape, videotape, digital image or
2 file, or similar material from which sound, or sound
3 and visual images, depicting the proceedings may be
4 reproduced.

5 "Restriction" is the least severe form of deprivation of
6 liberty. Restriction involves moral rather than physical
7 restraint. The severity of this type of restraint depends on
8 its duration and the geographical limits specified when the
9 punishment is imposed. A person undergoing restriction may be
10 required to report to a designated place at specified times if
11 reasonably necessary to ensure that the punishment is being
12 properly executed. Unless otherwise specified by the
13 nonjudicial punishment authority, a person in restriction may be
14 required to perform any military duty.

15 "Senior force commander" means the commander of the same
16 force of the state military forces as the accused.

17 "Senior force judge advocate" means the senior judge
18 advocate of the commander of the same force of the state
19 military forces as the accused and who is that commander's chief
20 legal advisor.



1 "State active duty" means full-time duty in the state
2 military forces under an order of the governor or otherwise
3 issued by authority of law, and paid by state funds, and
4 includes travel to and from such duty.

5 "State judge advocate" means the commissioned officer
6 responsible for supervising the administration of the military
7 justice in the state military forces.

8 "State military forces" means the National Guard of the
9 State, as defined in title 32 United States Code section 101(3),
10 the organized naval militia of the State, and any other military
11 force organized under the laws of the State.

12 "Superior commissioned officer" means a commissioned
13 officer superior in rank or command.

14 **§ -2 Persons subject to this chapter; jurisdiction.** (a)
15 This chapter applies to all members of the state military forces
16 at all times.

17 (b) Subject matter jurisdiction is established if a nexus
18 exists between an offense, either military or non-military, and
19 the state military force. Courts-martial have primary
20 jurisdiction of military offenses as defined in this chapter. A
21 proper civilian court has primary jurisdiction of a non-military



1 offense when an act or omission violates both this chapter and
2 local criminal law, foreign or domestic. In such a case, a
3 court-martial may be initiated only after the civilian authority
4 has declined to prosecute or dismissed the charge, provided
5 jeopardy has not attached. Jurisdiction over attempted crimes,
6 conspiracy crimes, solicitation, and accessory crimes shall be
7 determined by the underlying offense.

8 **§ -3 Jurisdiction to try certain personnel.** (a) Each
9 person discharged from the state military forces who is later
10 charged with having fraudulently obtained the person's discharge
11 is, subject to section -68, subject to trial by court-martial
12 on that charge and after apprehension is subject to this chapter
13 while in the custody of the military for that trial. Upon
14 conviction of that charge, the person is subject to trial by
15 court-martial for all offenses under this chapter committed
16 before the fraudulent discharge.

17 (b) No person who has deserted from the state military
18 forces shall be relieved from amenability to the jurisdiction of
19 this chapter by virtue of a separation from any later period of
20 service.



1 § -4 **Dismissal of commissioned officer.** (a) If any
2 commissioned officer, dismissed by order of the governor, makes
3 a written application for trial by court-martial, setting forth,
4 under oath or affirmation, that the officer has been wrongfully
5 dismissed, the governor, as soon as practicable, shall convene a
6 general court-martial to try that officer on the charges on
7 which the officer was dismissed. A court-martial so convened
8 has jurisdiction to try the dismissed officer on those charges,
9 and the officer shall be considered to have waived the right to
10 plead any statute of limitations applicable to any offense with
11 which the officer is charged. The court-martial may, as part of
12 its sentence, adjudge the affirmance of the dismissal, but if
13 the court-martial acquits the accused or if the sentence
14 adjudged, as finally approved, or affirmed, does not include
15 dismissal, the adjutant general shall substitute for the
16 dismissal ordered by the governor a form of discharge authorized
17 for administrative issue.

18 (b) If the governor fails to convene a general court-
19 martial within six months from the presentation of an
20 application for trial under this chapter, the adjutant general



1 shall substitute for the dismissal ordered by the governor a
2 form of discharge authorized for administrative issue.

3 (c) If a discharge is substituted for a dismissal under
4 this chapter, the governor alone may reappoint the officer of
5 the commissioned grade and with the rank as, in the opinion of
6 the governor, that former officer would have attained had the
7 former officer not been dismissed. The reappointment of the
8 former officer may be made only if a vacancy is available under
9 applicable tables of organization. All time between the
10 dismissal and the reappointment shall be considered as actual
11 service for all purposes.

12 (d) If an officer is discharged from the organized militia
13 by administrative action or by board proceedings under law or is
14 dropped from the rolls by order of the governor, the officer has
15 no right to trial under this section.

16 § -5 **Territorial applicability.** (a) This chapter has
17 applicability at all times and in all places, provided that
18 either the person subject to the chapter is in a duty status or,
19 if not in a duty status, that there is a nexus between the act
20 or omission constituting the offense and the efficient
21 functioning of the state military forces; however, this grant of



1 military jurisdiction shall neither preclude nor limit civilian
2 jurisdiction over an offense, which is limited only by the
3 prohibition of double jeopardy.

4 (b) Courts-martial and courts of inquiry may be convened
5 and held in units of the state military forces while those units
6 are serving outside the State with the same jurisdiction and
7 powers as to persons subject to this chapter as if the
8 proceedings were held inside the State, and offenses committed
9 outside the State may be tried and punished either inside or
10 outside the State.

11 § -6 Judge advocates. (a) The governor, on the
12 recommendation of the adjutant general, shall appoint an officer
13 of the state military forces as state judge advocate. To be
14 eligible for appointment, an officer shall be a member of the
15 bar of the highest court of the State and shall have been a
16 member of the bar of the State for at least five years.

17 (b) The adjutant general may appoint as many assistant
18 state judge advocates as the adjutant general considers
19 necessary. To be eligible for appointment, assistant state
20 judge advocates shall be officers of the state military forces
21 and members of the bar of the highest court of the State.



1 (c) The state judge advocate, the state judge advocate's
2 assistants, or senior force judge advocates in each of the
3 state's military forces or that judge advocate's delegates shall
4 make frequent inspections in the field in supervision of the
5 administration of military justice.

6 (d) Convening authorities shall at all times communicate
7 directly with their staff judge advocates or legal officer in
8 matters relating to the administration of military justice; and
9 the staff judge advocate or legal officer of any command may
10 communicate directly with the staff judge advocate or legal
11 officer of a superior or subordinate command, or with the state
12 judge advocate.

13 (e) No person who has acted as member, military judge,
14 trial counsel, assistant trial counsel, defense counsel,
15 assistant defense counsel, or investigating officer, or who has
16 been a witness for either the prosecution or defense, in any
17 case may later act as staff judge advocate or legal officer to
18 any reviewing authority upon the same case.

19 § -6a (Reserved).

20 § -6b Rights of the victim of an offense under this
21 chapter. A victim of an offense under this chapter has all



1 rights conferred by state law under chapter 801D. Nothing in
2 this chapter shall limit the rights of a victim of sexual
3 assault that qualifies for representation by a special victims'
4 counsel under title 10 United States Code section 1044e, as it
5 applies to the National Guard.

6 **PART II. APPREHENSION AND RESTRAINT**

7 **§ -11 Apprehension.** (a) Any person authorized by this
8 chapter, title 10 United States Code chapter 47, or by rules or
9 regulations issued under either, to apprehend persons subject to
10 this chapter, any marshal of a court-martial appointed pursuant
11 to this chapter, and any peace officer authorized to do so by
12 law, may do so upon probable cause that an offense has been
13 committed and that the person apprehended committed it.

14 (b) Commissioned officers, warrant officers, petty
15 officers, and noncommissioned officers may quell quarrels,
16 affrays, and disorders among persons subject to this chapter and
17 apprehend persons subject to this chapter who take part therein.

18 (c) If an alleged offender is apprehended outside the
19 State, the alleged offender's return to the area shall be in
20 accordance with normal extradition procedures or by reciprocal
21 agreement.



(d) No person authorized by this section to apprehend persons subject to this chapter or place where such alleged offenders are confined, restrained, held, or otherwise housed may require payment of any fee or charge for so receiving, apprehending, confining, restraining, holding, or otherwise housing the persons except as provided by law.

§ -12 **Apprehension of deserters.** Any civil officer having authority to apprehend alleged offenders under the laws of the United States or this State or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend an alleged deserter from the state military forces and deliver the alleged deserter into the custody of the state military forces. If an alleged offender is apprehended outside the State, the alleged offender's return to the area shall be in accordance with normal extradition procedures or reciprocal agreement.

§ -13 **Imposition of restraint.** (a) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter or through any person authorized by this chapter to apprehend persons. A



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

5 (b) A commissioned officer or a warrant officer may be
6 ordered apprehended or into arrest or confinement only by a
7 commanding officer to whose authority the commissioned officer
8 or warrant officer is subject, by an order, oral or written,
9 delivered in person or by another commissioned officer. The
10 authority to order such persons apprehended or into arrest or
11 confinement may not be delegated.

12 (c) No person may be ordered apprehended or into arrest or
13 confinement except for probable cause.

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

18 § -14 Restraint of persons charged with offenses. (a)
19 Subject to subsection (b), any person subject to this chapter
20 may be ordered into arrest or confinement as the circumstances
21 require.



1 (b) When a person subject to this chapter is charged only
2 with an offense that is normally tried by summary court-martial,
3 the person ordinarily may not be ordered into confinement.

4 (c) When any person subject to this chapter is placed in
5 arrest or confinement prior to trial, immediate steps shall be
6 taken:

7 (1) To inform the person of the specific charge or offense
8 of which the person is accused; and

9 (2) Diligent steps shall be taken to try the person or to
10 dismiss the charges and release the person.

11 (d) To facilitate compliance with subsection (c), the
12 governor shall prescribe rules setting forth procedures relating
13 to referral for trial, including procedures for prompt
14 forwarding of the charges and specifications and, if applicable,
15 the preliminary hearing report submitted under section -54.

16 § -15 **Place of confinement; reports and receiving of**
17 **prisoners.** (a) If a person subject to this chapter is confined
18 before, during, or after trial, confinement shall be in a state
19 correctional facility designated by the governor or by such
20 person as the governor may authorize to act or military
21 confinement facility.



1 (b) No person authorized to receive prisoners pursuant to
2 subsection (a) may refuse to receive or keep any prisoner
3 committed to the person's charge by a commissioned officer of
4 the state military forces, when the committing officer furnishes
5 a statement, signed by such officer, of the offense charged
6 against the prisoner, unless otherwise authorized by law.

7 (c) Every person authorized to receive prisoners pursuant
8 to subsection (a) to whose charge a prisoner is committed shall,
9 within twenty-four hours after that commitment or as soon as the
10 person is relieved from guard, report to the commanding officer
11 of the prisoner the name of the prisoner, the offense charged
12 against the prisoner, and the name of the person who ordered or
13 authorized the commitment.

14 (d) Civilian confinement facilities may not charge the
15 state military forces for the cost of receiving or detaining the
16 person.

17 § -16 (Reserved) .

18 § -17 **Punishment prohibited before trial.** Subject to
19 section -93, no person, while being held for trial or awaiting
20 a verdict, may be subjected to punishment or penalty other than
21 arrest or confinement upon the charge pending against the



1 person, nor shall the arrest or confinement imposed upon the
2 person be any more rigorous than the circumstances require to
3 insure the person's presence, but the person may be subjected to
4 minor punishment during that period for infractions of
5 discipline.

6 **§ -18 Delivery of alleged offenders to civil**
7 **authorities.** (a) A person subject to this chapter accused of
8 an offense against civil authority may be delivered, upon
9 request, to the civil authority for trial or confinement.

10 (b) When delivery under this section is made to any civil
11 authority of a person undergoing sentence of a court-martial,
12 the delivery, if followed by conviction in a civil tribunal,
13 interrupts the execution of the sentence of the court-martial,
14 and the offender after having answered to the civil authorities
15 for the offender's offense shall, upon the request of competent
16 military authority, be returned to military custody for the
17 completion of the offender's sentence.

18 **PART III. NON-JUDICIAL PUNISHMENT**

19 **§ -21 Commanding officer's non-judicial punishment.** (a)
20 Under such rules as the governor may prescribe, any commanding
21 officer (and for purposes of this section, officers-in-charge)



1 may impose disciplinary punishments for minor offenses without
2 the intervention of a court-martial pursuant to this section.
3 The governor, the adjutant general, or an officer of a general
4 or flag rank in command may delegate the powers under this
5 section to a principal assistant who is a member of the state
6 military forces.

7 (b) Any commanding officer may impose upon enlisted
8 members of the officer's command:

- 9 (1) An admonition;
- 10 (2) A reprimand;
- 11 (3) The withholding of privileges for not more than six
12 months that need not be consecutive;
- 13 (4) The forfeiture of pay of not more than seven days'
14 pay;
- 15 (5) A fine of not more than seven days' pay;
- 16 (6) A reduction to the next inferior pay grade, if the
17 grade from which demoted is within the promotion
18 authority of the officer imposing the reduction or any
19 officer subordinate to the one who imposes the
20 reduction;



1 (7) Extra duties for not more than fourteen days that need
2 not be consecutive; and

3 (8) Restriction to certain specified limits, with or
4 without suspension from duty, for not more than
5 fourteen days that need not be consecutive.

6 (c) Any commanding officer of the grade of O-4 or above
7 may impose upon enlisted members of the officer's command:

8 (1) Any punishment authorized in subsection (b)(1), (2),
9 and (3);

10 (2) The forfeiture of not more than one-half of one
11 month's pay per month for two months;

12 (3) A fine of not more than one month's pay;

13 (4) A reduction to the lowest or any intermediate pay
14 grade, if the soldier or airmen is in the grade of E-6
15 or below, but an enlisted member in a pay grade above
16 E-4 may not be reduced more than two pay grades;

17 (5) Extra duties for not more than fourteen days that need
18 not be consecutive; and

19 (6) Restriction to certain specified limits, with or
20 without suspension from duty, for not more than sixty
21 days that need not be consecutive.



1 (d) The governor, the adjutant general, an officer
2 exercising general-court martial convening authority, or an
3 officer of a general or flag rank in command may impose:

4 (1) Upon officers of the officer's command:

5 (A) Any punishment authorized in subsection (c)(1),
6 (2), (3), and (6); and

7 (B) Arrest in quarters for not more than thirty days
8 that need not be consecutive.

9 (2) Upon enlisted members of the officer's command, any
10 punishment authorized in subsection (c).

11 (e) Whenever any of those punishments are combined to run
12 consecutively, the total length of the combined punishment may
13 not exceed the authorized duration of the longest punishment in
14 the combination, and there shall be an apportionment of
15 punishments so that no single punishment in the combination
16 exceeds its authorized length under this section.

17 (f) Prior to the offer of non-judicial punishment, the
18 commanding officer shall determine whether arrest in quarters or
19 restriction shall be considered as punishments. Should the
20 commanding officer determine that the punishment options may
21 include arrest in quarters or restriction, the accused shall be



1 notified of the right to demand trial by court-martial. Should
2 the commanding officer determine that the punishment options may
3 not include arrest in quarters or restriction, the accused shall
4 be notified that there is no right to trial by courts-martial in
5 lieu of non-judicial punishment.

6 (g) The officer who imposes the punishment, or the
7 successor in command, may, at any time, suspend, set aside,
8 mitigate, or remit any part or amount of the punishment and
9 restore all rights, privileges, and property affected. The
10 officer also may:

- 11 (1) Mitigate reduction in grade to forfeiture of pay;
- 12 (2) Mitigate arrest in quarters to restriction; or
- 13 (3) Mitigate extra duties to restriction.

14 The mitigated punishment may not be for a greater period
15 than the punishment mitigated. When mitigating reduction in
16 grade to forfeiture of pay, the amount of the forfeiture may not
17 be greater than the amount that could have been imposed
18 initially under this section by the officer who imposed the
19 punishment mitigated. Reduction in grade may be mitigated to
20 forfeiture of pay only within four months after the date of
21 execution.



1 (h) A person punished under this section who considers the
2 punishment unjust or disproportionate to the offense may,
3 through the proper channel, appeal to the next superior
4 authority within fifteen days after the punishment is either
5 announced or sent to the accused, as the commander may
6 determine. The appeal shall be promptly forwarded and decided,
7 but the person punished may in the meantime be required to
8 undergo the punishment adjudged. The superior authority may
9 exercise the same powers with respect to the punishment imposed
10 as may be exercised under subsection (g) by the officer who
11 imposed the punishment. Before acting on an appeal from a
12 punishment, the authority that is to act on the appeal may refer
13 the case to a judge advocate for consideration and advice.

14 (i) The imposition and enforcement of disciplinary
15 punishment under this section for any act or omission is not a
16 bar to trial by court-martial or a civilian court of competent
17 jurisdiction for a serious crime or offense growing out of the
18 same act or omission and not properly punishable under this
19 section; but the fact that a disciplinary punishment has been
20 enforced may be shown by the accused upon trial and, when so



1 shown, it shall be considered in determining the measure of
2 punishment to be adjudged in the event of a finding of guilty.

3 (j) Whenever a punishment of forfeiture of pay is imposed
4 under this section, the forfeiture may apply to pay accruing
5 before, on, or after the date that punishment is imposed.

6 (k) Rules may prescribe the form of records to be kept of
7 proceedings under this section and may prescribe that certain
8 categories of those proceedings shall be in writing.

9 **PART IV. COURT-MARTIAL JURISDICTION**

10 **§ -31 Courts-martial classified; general courts-martial;**
11 **special courts-martial; summary courts-martial.** (a) The three
12 kinds of courts-martial in each of the state military forces are
13 the following:

14 (1) General courts-martial, as described in subsection

15 (b);

16 (2) Special courts-martial, as described in subsection

17 (c); and

18 (3) Summary courts-martial, as described in subsection

19 (d).

20 (b) General courts-martial consists of:

21 (1) A military judge and not less than eight members; or



(2) A military judge alone, if before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves the request.

(c) Special courts-martial consists of:

(1) A military judge and not less than four members; or

(2) A military judge alone:

(A) If the case is so referred by the convening authority, subject to section -34; or

(B) If the case is referred under paragraph (1) and, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally or on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(d) Summary courts-martial consists of one commissioned officer.



1 § **-32 Jurisdiction of courts-martial in general.** Each
2 component of the state military forces has court-martial
3 jurisdiction over all members of the particular component who
4 are subject to this chapter. Additionally, the Hawaii Army and
5 Hawaii Air National Guard have court-martial jurisdiction over
6 all members subject to this chapter.

7 § **-33 Jurisdiction of general courts-martial.** Subject
8 to section -32, general courts-martial have jurisdiction to
9 try persons subject to this chapter for any offense made
10 punishable by this chapter, and may, under such limitations as
11 the governor may prescribe, adjudge any punishment not forbidden
12 by this chapter.

13 § **-34 Jurisdiction of special courts-martial.** (a)
14 Subject to section -32, special courts-martial have
15 jurisdiction to try persons subject to this chapter for any
16 offense made punishable by this chapter, and may, under such
17 limitations as the governor may prescribe, adjudge any
18 punishment not forbidden by this chapter except dishonorable
19 discharge, dismissal, confinement for more than one year,
20 forfeiture of pay exceeding two-thirds pay per month, or
21 forfeiture of pay for more than one year.



1 (b) Neither a bad-conduct discharge, nor confinement for
2 more than six months, nor forfeiture of pay for more than six
3 months may be adjudged if charges and specifications are
4 referred to a special court-martial consisting of a military
5 judge alone under section -31.

6 § -35 Jurisdiction of summary courts-martial. (a)

7 Subject to section -32, summary courts-martial have
8 jurisdiction to try persons subject to this chapter, except
9 officers, cadets, candidates, and midshipmen, for any offense
10 made punishable by this chapter under such limitations as the
11 governor may prescribe.

12 (b) No person with respect to whom summary courts-martial
13 have jurisdiction may be brought to trial before a summary
14 court-martial if that person objects thereto. If objection to
15 trial by summary court-martial is made by an accused, trial by
16 special or general court-martial may be ordered, as may be
17 appropriate. Summary courts-martial may, under such limitations
18 as the governor may prescribe, adjudge any punishment not
19 forbidden by this chapter except dismissal, dishonorable or bad-
20 conduct discharge, confinement for more than one month,



1 restriction to specified limits for more than two months, or
2 forfeiture of more than two-thirds of one month's pay.

3 (c) A summary court-martial is a non-criminal forum. A
4 finding of guilty at a summary court-martial does not constitute
5 a criminal conviction.

6 § -36 (Reserved).

7 **PART V. COMPOSITION OF COURTS-MARTIAL**

8 § -41 **Who may convene general courts-martial.** (a)

9 General courts-martial may be convened by:

- 10 (1) The governor;
11 (2) The adjutant general;
12 (3) The commanding officer of a force of the state
13 military forces;
14 (4) The commanding officer of a division or a separate
15 brigade; or
16 (5) The commanding officer of a separate wing.

17 (b) If any commanding officer authorized under subsection
18 (a) is an accuser, the court shall be convened by superior
19 competent authority and may in any case be convened by the
20 superior authority if considered desirable by such authority.



1 § **-42 Who may convene special courts-martial.** (a)

2 Special courts-martial may be convened by:

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

12 (b) If any officer authorized under subsection (a) is an

13 accuser, the court shall be convened by superior competent

14 authority and may, in any case, be convened by the superior

15 authority if considered desirable by such authority.

16 § **-43 Who may convene summary courts-martial.** (a)

17 Summary courts-martial may be convened by:

- 18 (1) Any person who may convene a general or special court-
- 19 martial;
- 20 (2) The commanding officer of a detached company or other
- 21 detachment, or corresponding unit of the Army;



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

3 (4) The commanding officer or officer in charge of any
4 other command when empowered by the adjutant general.

5 (b) When only one commissioned officer is present with a
6 command or detachment that officer shall be the summary court-
7 martial of that command or detachment and shall hear and
8 determine all summary court-martial cases. Summary courts-
9 martial may, however, be convened in any case by superior
10 competent authority if considered desirable by such authority.

11 § -44 Who may serve on courts-martial. (a) Any
12 commissioned officer of the state military forces is eligible to
13 serve on all courts-martial for the trial of any person subject
14 to this chapter.

15 (b) Any warrant officer of the state military forces is
16 eligible to serve on general and special courts-martial for the
17 trial of any person subject to this chapter, other than a
18 commissioned officer.

19 (c) Any enlisted member of the state military forces who
20 is not a member of the same unit as the accused is eligible to
21 serve on general and special courts-martial for the trial of any



1 enlisted member subject to this chapter, but that member shall
2 serve as a member of a court only if, before the conclusion of a
3 session called by the military judge under section -64 prior
4 to trial or, in the absence of such a session, before the court
5 is assembled for the trial of the accused, the accused
6 personally has requested orally on the record or in writing that
7 enlisted members serve on it. After such a request, the accused
8 may not be tried by a general or special court-martial the
9 membership of which does not include enlisted members in a
10 number comprising at least one-third of the total membership of
11 the court, unless eligible enlisted members cannot be obtained
12 on account of physical conditions or military exigencies. If
13 the eligible enlisted members cannot be obtained, the court may
14 be assembled and the trial held without them, but the convening
15 authority shall make a detailed written statement, to be
16 appended to the record, stating why they could not be obtained.

17 (d) The accused in a court-martial with a military judge
18 and members may, after the findings are announced and before any
19 matter is presented in the sentencing phase, request, orally on
20 the record or in writing, sentencing by members.



1 (e) When it can be avoided, no person subject to this
2 chapter may be tried by a court-martial of which any member is
3 junior to the accused in rank or grade.

4 (f) When convening a court-martial, the convening
5 authority shall detail as members thereof such members of the
6 state military forces as, in the convening authority's opinion,
7 are best qualified for the duty by reason of age, education,
8 training, experience, length of service, and judicial
9 temperament. No member of the state military forces is eligible
10 to serve as a member of a general or special court-martial when
11 that member is the accuser, a witness, or has acted as
12 investigating officer or as counsel in the same case.

13 (g) The convening authority shall detail not less than the
14 number of members necessary to impanel the court-martial under
15 section -50.

16 (h) Before a court-martial is assembled for the trial of a
17 case, the convening authority may excuse a member of the court
18 from participating in the case. The convening authority may
19 delegate the authority under this subsection to a judge advocate
20 or to any other principal assistant judge advocate.



(i) In this section, "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

§ -45 (Reserved) .

§ -46 **Military judge of a general or special court-martial.** (a) A military judge shall be detailed to each general and special court-martial. The military judge shall preside over each open session of the court-martial to which the military judge has been detailed.

(b) A military judge shall be:

- (1) An active or retired commissioned officer of an organized state military force;
- (2) A member in good standing of the bar of the highest court of the State or a member of the bar of a federal court for at least five years; and
- (3) Certified as qualified for duty as a military judge by the senior force judge advocate that is in the same force as the accused.

(c) In the instance when a military judge is not a member of the bar of the highest court of the State, the military judge



1 shall be deemed admitted pro hac vice, subject to filing a
2 certificate with the senior force judge advocate that is in the
3 same force as the accused, setting forth such certifications
4 provided in subsection (b)(3).

5 (d) The military judge of a general or special court-
6 martial shall be designated by the senior force judge advocate
7 that is in the same force as the accused, or a designee, for
8 detail by the convening authority. Neither the convening
9 authority nor any staff member of the convening authority shall
10 prepare or review any report concerning the effectiveness,
11 fitness, or efficiency of the military judge so detailed, which
12 relates to performance of duty as a military judge.

13 (e) No person is eligible to act as military judge in a
14 case if that person is the accuser or a witness or has acted as
15 investigating officer or a counsel in the same case.

16 (f) The military judge of a court-martial may not consult
17 with the members of the court except in the presence of the
18 accused, trial counsel, and defense counsel nor vote with the
19 members of the court.



1 § **-47 Military magistrates.** (a) A military magistrate
2 shall be a commissioned officer of the state military forces
3 who:

4 (1) Is a member of the bar of the highest court of this
5 State; and

6 (2) Is certified to be qualified, by reason of education,
7 training, experience, and judicial temperament, for
8 duty as a military magistrate by the senior force
9 judge advocate of the force that the officer is a
10 member.

11 (b) In accordance with rules prescribed by the governor or
12 the adjutant general, in addition to duties when designated
13 under section -52, a military magistrate may be assigned to
14 perform other duties of a nonjudicial nature.

15 § **-48 Detail of trial counsel and defense counsel.** (a)
16 For each general and special court-martial, the authority
17 convening the court shall detail trial counsel and defense
18 counsel, and their assistants as the convening authority
19 considers appropriate.

20 (b) No person who has acted as investigating officer,
21 military judge, or court member in any case may act later as



1 trial counsel, assistant trial counsel, or, unless expressly
2 requested by the accused, as defense counsel, or assistant
3 defense counsel in the same case. No person who has acted for
4 the prosecution may act later in the same case for the defense,
5 nor may any person who has acted for the defense act later in
6 the same case for the prosecution.

7 (c) Except as otherwise provided in subsection (d), trial
8 counsel or defense counsel detailed for a general or special
9 court-martial shall be:

10 (1) A judge advocate as defined in section -1; and

11 (2) In the case of trial counsel, a member in good
12 standing of the bar of the highest court of the state
13 where the court-martial is held.

14 (d) In the instance when a defense counsel is not a member
15 of the highest court of the State, the defense counsel shall be
16 deemed admitted pro hac vice, subject to filing a certificate
17 with the military judge setting forth the qualifications that
18 counsel is:

19 (1) A commissioned officer of the armed forces of the
20 United States or a component thereof;



(2) A member in good standing of the bar of the highest court of a state; and

(A) Certified as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, or the Marine Corps; or

(B) Certified as a judge advocate as defined in section -1.

§ -49 Detail or employment of reports and interpreters.

Under such rules as the governor may adopt, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of, and testimony taken before that court. Under like rules the convening authority of a military court may detail or employ interpreters who shall interpret for the court.

§ -50 Assembly and impaneling of members; detail of new members and military judges. (a) The military judge shall announce the assembly of a general or special court-martial with members. After such a court-martial is assembled, no member may be absent, unless the member is excused:

(1) As a result of a challenge;



1 (2) Under subsection (b) (2); or

2 (3) By order of the military judge or the convening
3 authority for disability or other good cause.

4 (b) Under rules prescribed by the governor or the adjutant
5 general, the military judge of a general or special court-
6 martial with members shall:

7 (1) After determination of challenges, impanel the court-
8 martial; and

9 (2) Excuse the members who, having been assembled, are not
10 impaneled.

11 (c) In a general court-martial, the military judge shall
12 impanel eight members. In a special court-martial, the military
13 judge shall impanel four members.

14 (d) In addition to members under subsection (c), the
15 military judge shall impanel alternate members, if the convening
16 authority authorizes alternate members.

17 (e) If, after members are impaneled, the membership of the
18 court-martial is reduced to:

19 (1) Fewer than six members with respect to a general
20 court-martial; or



1 (2) Fewer than four members with respect to a special
2 court-martial,
3 the trial may not proceed unless the convening authority details
4 new members and, from among the members so detailed, the
5 military judge impanels new members sufficient in number to
6 provide the membership specified in subsection (f).

7 (f) The membership referred to in subsection (e) is as
8 follows:

9 (1) At least six but not more than eight members with
10 respect to a general court-martial; or

11 (2) Four members with respect to a special court-martial.

12 (g) If the military judge is unable to proceed with the
13 trial because of disability or otherwise, a new military judge
14 shall be detailed to the court-martial.

15 (h) In the case of new members under subsection (e), the
16 trial may proceed with new members present after the evidence
17 previously introduced is read or, in the case of audiotape,
18 videotape, or similar recording, is played, in the presence of
19 the new members, the military judge, the accused, and counsel
20 for both sides.



(i) In the case of a new military judge under subsection (g), the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.

PART VI. PRE-TRIAL PROCEDURE

§ -51 Charges and specifications. (a) Charges and specifications:

(1) May be referred only by a person subject to this chapter; and

(2) Shall be referred by presentment in writing, signed under oath or affirmation before a commissioned officer of the armed forces who is authorized to administer oaths or affirmations.

(b) The writing under subsection (a) shall state that:

(1) The signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and



(2) The matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.

(c) When charges and specifications are referred under subsection (a), the proper authority shall, as soon as practicable:

(1) Inform the person accused of the charges and specifications; and

(2) Determine what disposition should be made of the charges and specifications in the interest of justice and discipline.

§ -52 Certain proceedings conducted before referral.

(a) Proceedings may be conducted to review, or otherwise act on the following matters before referral of charges and specifications to court-martial for trial in accordance with rules prescribed by the governor or the adjutant general:

(1) Pre-referral investigative subpoenas;

(2) Pre-referral warrants or orders for electronic communications;

(3) Pre-referral matters referred by an appellate court; and



(4) Pre-referral matters subject to section -6b for victims of sexual assault qualifying for a special victims' counsel under title 10 United States Code section 1044e as it applies to the National Guard.

(b) The rules prescribed under subsection (a) shall:

(1) Include procedures for the review of such rulings that may be ordered under this section as the governor, or the adjutant general considers appropriate; and

(2) Provide such limitations on the relief that may be ordered under this section as the governor, or the adjutant general considers appropriate.

(c) If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter shall be transferred to the military judge detailed to the court-martial.

(d) The governor or the adjutant general shall prescribe rules providing for the manner in which military judges are detailed to proceedings under subsection (a).

(e) In accordance with rules prescribed by the governor or the adjutant general, a military judge detailed to a proceeding



1 under subsection (a), other than a proceeding described in
2 paragraph (2) of that subsection, may designate a military
3 magistrate to preside over the proceeding.

4 § -53 **Compulsory self-incrimination prohibited.** (a) No
5 person subject to this chapter may compel any person to
6 incriminate the person's self or to answer any question the
7 answer to which may tend to incriminate the person.

8 (b) No person subject to this chapter may interrogate, or
9 request any statement from, an accused or a person suspected of
10 an offense without first informing the person of the nature of
11 the accusation and advising the person that the person does not
12 have to make any statement regarding the offense of which the
13 person is accused or suspected and that any statement made by
14 the person may be used as evidence against the person in a trial
15 by court-martial.

16 (c) No person subject to this chapter may compel any
17 person to make a statement or produce evidence before any
18 military tribunal if the statement or evidence is not material
19 to the issue and may tend to degrade the person.

20 (d) No statement obtained from any person in violation of
21 this section, or through the use of coercion, unlawful



1 influence, or unlawful inducement may be received in evidence
2 against the person in a trial by court-martial.

3 § -54 Preliminary hearing required before referral to
4 general court-martial. (a) Except as provided in subsection
5 (b), a preliminary hearing shall be held before referral of
6 charges and specifications for trial by general court-martial.
7 The preliminary hearing shall be conducted by an impartial
8 hearing officer, detailed by the convening authority in
9 accordance with subsection (d).

10 (b) Under rules prescribed by the governor or the adjutant
11 general, a preliminary hearing need not be held if the accused
12 submits a written waiver to the convening authority and the
13 convening authority determines that a hearing is not required.

14 (c) The purpose of the preliminary hearing shall be
15 limited to determining the following:

16 (1) Whether or not the specification alleges an offense
17 under this chapter;

18 (2) Whether or not there is probable cause to believe that
19 the accused committed the offense charged;



1 (3) Whether or not the convening authority has court-
2 martial jurisdiction over the accused and over the
3 offense; and

4 (4) A recommendation as to the disposition that should be
5 made of the case.

6 (d) A preliminary hearing under this section shall be
7 conducted by an impartial hearing officer, who:

8 (1) Whenever practicable, shall be a judge advocate who is
9 certified under section -48; or

10 (2) Is not a judge advocate so certified, when it is not
11 practicable to appoint a judge advocate because of
12 exceptional circumstances. In the case of a hearing
13 officer under this paragraph, a judge advocate who is
14 certified under section -48 shall be available to
15 provide legal advice to the hearing officer.

16 Whenever practicable, the hearing officer shall be equal in
17 grade or senior in grade to military counsel who are detailed to
18 represent the accused or the Government at the preliminary
19 hearing.

20 (e) After a preliminary hearing under this section, the
21 hearing officer shall submit to the convening authority a



1 written report (accompanied by a recording of the preliminary
2 hearing under subsection (i)) that includes the following:

3 (1) For each specification, a statement of the reasoning
4 and conclusions of the hearing officer with respect to
5 determinations under subsection (c), including a
6 summary of relevant witness testimony and documentary
7 evidence presented at the hearing and any observations
8 of the hearing officer concerning the testimony of
9 witnesses and the availability and admissibility of
10 evidence at trial;

11 (2) Recommendations for any necessary modifications to the
12 form of the charges or specifications;

13 (3) An analysis of any additional information submitted
14 after the hearing by the parties or by a victim of an
15 offense, that under such rules as the governor or the
16 adjutant general may prescribe, is relevant to
17 disposition under sections -51 and -56; and

18 (4) A statement of action taken on evidence adduced with
19 respect to uncharged offenses, as described in
20 subsection (j).



1 (f) The accused shall be advised of the charges against
2 the accused and of the accused's right to be represented by
3 counsel at the preliminary hearing under this section. The
4 accused has the right to be represented at the preliminary
5 hearing as provided in section -63 and in rules prescribed
6 under that section. The accused may cross-examine witnesses who
7 testify at the preliminary hearing and present additional
8 evidence that is relevant to the issues for determination under
9 subsection (c);

10 (g) A victim may not be required to testify at the
11 preliminary hearing. A victim who declines to testify shall be
12 deemed to not be available for purposes of the preliminary
13 hearing. A declination under this subsection may not serve as
14 the sole basis for ordering a deposition under section -74.

15 (h) The presentation of evidence and examination
16 (including cross-examination) of witnesses at a preliminary
17 hearing shall be limited to the matters relevant to
18 determinations under subsection (c).

19 (i) A preliminary hearing under subsection (a) shall be
20 recorded by a suitable recording device. The victim may request



1 the recording and shall have access to the recording under such
2 rules as the governor or the adjutant general may prescribe.

3 (j) If evidence adduced in a preliminary hearing under
4 subsection (a) indicates that the accused committed an uncharged
5 offense, the hearing officer may consider the subject matter of
6 that offense without the accused having first been charged with
7 the offense if the accused:

8 (1) Is present at the preliminary hearing;

9 (2) Is informed of the nature of each uncharged offense
10 considered; and

11 (3) Is afforded the opportunities for representation,
12 cross-examination, and presentation consistent with
13 subsection (f).

14 (k) The requirements of this section are binding on all
15 persons administering this chapter, but failure to follow the
16 requirements does not constitute jurisdictional error. A defect
17 in a report under subsection (e) is not a basis for relief if
18 the report is in substantial compliance with that subsection.

19 (l) In this section, the term "victim" means a person who:

20 (1) Is alleged to have suffered a direct physical,
21 emotional, or pecuniary harm as a result of the



1 matters set forth in a charge or specification being
2 considered; and

3 (2) Is named in one of the specifications.

4 (m) Under rules prescribed by subsection (b), a
5 preliminary hearing need not be held if the accused submits a
6 written waiver to the convening authority and the convening
7 authority determines that a hearing is not required.

8 § -55 (Reserved) .

9 § -56 **Advice to convening authority before referral to**
10 **trial.** (a) Before referral of charges and specifications to a
11 general court-martial for trial, the convening authority shall
12 submit the matter to the staff judge advocate for advice, which
13 the staff judge advocate shall provide to the convening
14 authority in writing. The convening authority may not refer a
15 specification under a charge to a general court-martial unless
16 the staff judge advocate advises the convening authority in
17 writing that:

18 (1) The specification alleges an offense under this
19 chapter;

20 (2) There is probable cause to believe that the accused
21 committed the offense charged; and



1 (3) A court-martial would have jurisdiction over the
2 accused and the offense.

3 (b) Together with the written advice provided under
4 subsection (a), the staff judge advocate shall provide a written
5 recommendation to the convening authority as to the disposition
6 that should be made of the specification in the interest of
7 justice and discipline.

8 (c) When a convening authority makes a referral for trial
9 by general court-martial, the written advice of the staff judge
10 advocate under subsection (a) and the written recommendation of
11 the staff judge advocate under subsection (b) with respect to
12 each specification shall accompany the referral.

13 (d) Before referral of charges and specifications to a
14 special court-martial for trial, the convening authority shall
15 consult a judge advocate on relevant legal issues.

16 (e) Before referral for trial by general court-martial or
17 special court martial, changes may be made to charges and
18 specifications:

19 (1) To correct errors in form; and

20 (2) When applicable, to conform to the substance of the
21 evidence contained in a report under section -54.



(f) In this section, the term "referral" means the order of a convening authority that charges and specifications against an accused be tried by a specified court-martial.

§ -57 Service of charges; commencement of trial. (a)

In general, trial counsel detailed for a court-martial under section -48 shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

(b) Subject to subsection (c), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section -64) may be held over the objection of the accused:

(1) With respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(2) With respect to a special court-martial, from the time of service through the third day after the date of service.

(c) An objection under subsection (b) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under subsection (b). If the first session occurs before



1 the end of the applicable period, the military judge shall, at
2 that session, inquire as to whether the defense objects under
3 this subsection.

4 **PART VII. TRIAL PROCEDURE**

5 **§ -61 Governor or the adjutant general may prescribe**
6 **rules.** Additional pretrial, trial, and post-trial procedures,
7 including modes of proof, for cases arising under this chapter
8 triable in courts-martial and other military tribunals, and
9 procedures for courts of inquiry, shall be prescribed by the
10 governor or the adjutant general by rules, or as otherwise
11 provided by law, which shall apply the principles of law and the
12 rules of evidence generally recognized in military criminal
13 cases in the courts of the armed forces, but which may not be
14 contrary to or inconsistent with this chapter.

15 **§ -62 Unlawfully influencing action of court.** (a) No
16 authority convening a general, special, or summary court-
17 martial, nor any other commanding officer, or officer serving on
18 the staff thereof, may censure, reprimand, or admonish the court
19 or any member, military judge, or counsel thereof, with respect
20 to the findings or sentence adjudged by the court, or with
21 respect to any other exercise of its or their functions in the



1 conduct of the proceeding. No person subject to this chapter
2 may attempt to coerce or, by any unauthorized means, influence
3 the action of a court-martial or any other military tribunal or
4 any member thereof, in reaching the findings or sentence in any
5 case, or the action of any convening, approving, or reviewing
6 authority with respect to their judicial acts. The foregoing
7 provisions of the subsection may not apply with respect to:

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

13 (2) Statements and instructions given in open court by the
14 military judge, president of a special court-martial,
15 or counsel.

16 (b) In the preparation of an effectiveness, fitness, or
17 efficiency report, or any other report or document used in whole
18 or in part for the purpose of determining whether a member of
19 the armed forces is qualified to be advanced in grade, in
20 determining the assignment or transfer of a member of the armed
21 forces, or in determining whether a member of the armed forces



1 should be retained on active duty, no person subject to this
2 chapter may, in preparing any such report:

3 (1) Consider or evaluate the performance of duty of any
4 such member as a member of a court-martial or witness
5 therein; or

6 (2) Give a less favorable rating or evaluation of any
7 member of the armed forces because of the zeal with
8 which such member, as counsel, represented any accused
9 before a court-martial.

10 § -63 Duties of trial counsel and defense counsel. (a)

11 The trial counsel of a general or special court-martial shall
12 prosecute in the name of the State, and shall, under the
13 direction of the court, prepare the record of the proceedings.

14 (b) The accused has the right to be represented in the
15 accused's defense before a general or special court-martial or
16 at a preliminary hearing under section -54 as provided in this
17 section.

18 (c) The accused may be represented:

19 (1) By military counsel detailed under section -48;



1 (2) By military counsel of the accused's own selection if
2 that counsel is reasonably available as determined
3 under subsection (f); or

4 (3) By civilian counsel if provided by the accused.

5 If the accused is represented by civilian counsel, military
6 counsel detailed or selected under paragraph (1) or (2) shall
7 act as associate counsel unless excused at the request of the
8 accused.

9 (d) Except as provided under subsection (e), if the
10 accused is represented by military counsel of his own selection
11 under subsection (c)(2), any military counsel detailed under
12 subsection (c)(1) shall be excused.

13 (e) The accused is not entitled to be represented by more
14 than one military counsel. However, the person authorized under
15 section -48 to detail counsel, in their own discretion:

16 (1) May detail additional military counsel as assistant
17 defense counsel; and

18 (2) If the accused is represented by military counsel of
19 the accused's own selection under subsection (c)(2),
20 may approve a request from the accused that military



1 counsel detailed under subsection (c)(1) act as
2 assistant defense counsel.

3 (f) The senior force judge advocate of the same force of
4 which the accused is a member, shall determine whether the
5 military counsel selected by an accused is reasonably available.

6 (g) In any court-martial proceeding resulting in a
7 conviction, the defense counsel:

8 (1) May forward for attachment to the record of
9 proceedings a brief of such matters as the defense
10 counsel determines should be considered in behalf of
11 the accused on review (including any objection to the
12 contents of the record that the defense counsel
13 considers appropriate);

14 (2) May assist the accused in the submission of any matter
15 under part IX; and

16 (3) May take other actions authorized by this chapter.

17 (h) An assistant trial counsel of a general court-martial
18 may, under the direction of the trial counsel or when the
19 assistant trial counsel is qualified to be a trial counsel as
20 required by section -48, perform any duty imposed by law,
21 rule, or the custom of the service upon the trial counsel of the



1 court. An assistant trial counsel of a special court-martial
2 may perform any duty of the trial counsel.

3 (i) An assistant defense counsel of a general or special
4 court-martial may perform any duty imposed by law, rule, or the
5 custom of the service upon counsel for the accused.

6 § -64 Sessions. (a) At any time after the service of
7 charges that have been referred for trial to a court-martial
8 composed of a military judge and members, the military judge
9 may, subject to section -57, call the court into session
10 without the presence of the members for the purpose of:

11 (1) Hearing and determining motions raising defenses or
12 objections that are capable of determination without
13 trial of the issues raised by a plea of not guilty;

14 (2) Hearing and ruling upon any matter that may be ruled
15 upon by the military judge under this chapter, whether
16 or not the matter is appropriate for later
17 consideration or decision by the members of the court;

18 (3) Holding the arraignment and receiving the pleas of the
19 accused;

20 (4) Conducting a sentencing proceeding and sentencing the
21 accused under section -79; and



1 (5) Performing any other procedural function that may be
2 performed by the military judge under this chapter or
3 under rules prescribed pursuant to section -61 and
4 that does not require the presence of the members of
5 the court.

6 (b) Proceedings under subsection (a) shall be conducted in
7 the presence of the accused, the defense counsel, and the trial
8 counsel and shall be made a part of the record. These
9 proceedings may be conducted notwithstanding the number of
10 members of the court and without regard to section -50. If
11 authorized by rule, and if at least one defense counsel is
12 physically in the presence of the accused, the presence required
13 by this subsection may otherwise be established by audiovisual
14 technology (such as video teleconferencing technology).

15 (c) When the members of a court-martial deliberate or
16 vote, only the members may be present. All other proceedings,
17 including any other consultation of the members of the court
18 with counsel or the military judge, shall be made a part of the
19 record and shall be in the presence of the accused, the defense
20 counsel, the trial counsel, and the military judge.



1 § **-65 Continuances.** The military judge or a summary
2 court-martial may, for reasonable cause, grant a continuance to
3 any party for such time, and as often, as may appear to be just.

4 § **-66 Challenges.** (a) The military judge and members
5 of a general or special court-martial may be challenged by the
6 accused or the trial counsel for cause stated to the court. The
7 military judge shall determine the relevancy and validity of
8 challenges for cause and may not receive a challenge to more
9 than one person at a time. Challenges by the trial counsel
10 shall ordinarily be presented and decided before those by the
11 accused are offered. Notwithstanding section -31, if
12 exercises of a challenge for cause reduces the court below the
13 number of members required by section -50, all parties shall
14 either exercise or waive any challenge for cause then apparent
15 against the remaining members of the court before additional
16 members are detailed to the court. However, preemptory
17 challenges may not be exercised at that time.

18 (b) Each accused and the trial counsel are entitled
19 initially to one preemptory challenge of members of the court.
20 The military judge may not be challenged except for cause.
21 Notwithstanding section -31, if exercise of a preemptory



1 challenge reduces the court below the number of members required
2 by section -50, the parties shall either exercise or waive any
3 remaining peremptory challenge not previously waived against the
4 remaining members of the court before additional members are
5 detailed to the court.

6 (c) Whenever additional members are detailed to the court,
7 and after any challenges for cause against such members are
8 presented and decided, each accused and the trial counsel are
9 entitled to one peremptory challenge against members not
10 previously subject to peremptory challenge.

11 § -67 Oaths or affirmations. (a) Before performing
12 their respective duties, military judges, members of general and
13 special courts-martial, trial counsel, assistant trial counsel,
14 defense counsel, assistant defense counsel, reporters, and
15 interpreters shall take an oath or affirmation in the presence
16 of the accused to perform their duties faithfully. The form of
17 the oath or affirmation, the time and place of the taking
18 thereof, the manner of recording the same, and whether the oath
19 or affirmation shall be taken for all cases in which these
20 duties are to be performed or for a particular case, shall be as
21 prescribed by rule or as provided by law. These rules may



1 provide that an oath or affirmation to perform faithfully duties
2 as a military judge, trial counsel, assistant trial counsel,
3 defense counsel, or assistant or associate defense counsel may
4 be taken at any time by any judge advocate or other person
5 certified to be qualified or competent for the duty, and if such
6 an oath or affirmation is taken it need not again be taken at
7 the time the judge advocate or other person is detailed to that
8 duty.

9 (b) Each witness before a court-martial shall be examined
10 on oath or affirmation.

11 § -68 Statute of limitations. (a) A person charged
12 with desertion or absence without leave in time of war, or with
13 aiding the enemy or with mutiny, may be tried and punished at
14 any time without limitation.

15 (b) Except as otherwise provided in this section, a person
16 charged with desertion in time of peace or with the offense
17 punishable under section -139 is not liable to be tried by
18 court-martial if the offense was committed more than three years
19 before the receipt of sworn charges and specifications by an
20 officer exercising summary court-martial jurisdiction over the
21 command.



1 (c) Except as otherwise provided in this section, a person
2 charged with any offense is not liable to be tried by court-
3 martial or punished under section -21 if the offense was
4 committed more than two years before the receipt of sworn
5 charges and specifications by an officer exercising summary
6 court-martial jurisdiction over the command or before the
7 imposition of punishment under section -21.

8 (d) Periods in which the accused was absent from territory
9 in which the State has the authority to apprehend the accused,
10 or in the custody of civil authorities, or in the hands of the
11 enemy, shall be excluded in computing the period of limitation
12 prescribed in this section.

13 (e) Periods in which the accused is absent without
14 authority or fleeing from justice shall be excluded in computing
15 the period of limitation prescribed in this section.

16 (f) When the United States is at war, the running of any
17 statute of limitations applicable to any offense under this
18 chapter:

- 19 (1) Involving fraud or attempted fraud against the United
20 States, any state or territory, or any agency of
21 either in any manner, whether by conspiracy or not;



1 (2) Committed in connection with the acquisition, care,
2 handling, custody, control, or disposition of any real
3 or personal property of the United States or any state
4 or territory; or

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

13 is suspended until two years after the termination of
14 hostilities as proclaimed by the President of the United States
15 or by a joint resolution of Congress.

16 (g) If charges or specifications are dismissed as
17 defective or insufficient for any cause and the period
18 prescribed by the applicable statute of limitations:

19 (1) Has expired; or

20 (2) Will expire within one hundred eighty days after the
21 date of dismissal of the charges and specifications,



1 trial and punishment under new charges and specifications are
2 not barred by the statute of limitations if the conditions
3 specified in subsection (h) are met.

4 (h) The conditions referred to in subsection (g) are that
5 new charges and specifications shall:

6 (1) Be received by an officer exercising summary court-
7 martial jurisdiction over the command within one
8 hundred eighty days after the dismissal of the charges
9 or specifications; and

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

14 § -69 **Former jeopardy.** (a) No person may, without the
15 person's consent, be tried a second time in any military court
16 of the State for the same offense.

17 (b) No proceeding in which an accused has been found
18 guilty by a court-martial upon any charge or specification is a
19 trial in the sense of this section until the finding of guilty
20 has become final after review of the case has been fully
21 completed.



1 (c) A court-martial with a military judge alone is a trial
2 in the sense of this section if, without fault of the accused:

3 (1) After introduction of evidence; and

4 (2) Before announcement of findings under section -79,
5 the case is dismissed or terminated by the convening authority
6 or on motion of the prosecution for failure of available
7 evidence or witnesses.

8 (d) A court-martial with a military judge and members is a
9 trial in the sense of this section if, without fault of the
10 accused:

11 (1) After the members, having taken an oath or affirmation
12 as members under section -67 and after completion of
13 challenges under section -66, are impaneled; and

14 (2) Before announcement of findings under section -79,
15 the case is dismissed or terminated by the convening authority
16 or on motion of the prosecution for failure of available
17 evidence or witnesses.

18 § -70 **Pleas of the accused.** (a) If an accused after
19 arraignment makes an irregular pleading, or after a plea of
20 guilty sets up matter inconsistent with the plea, or if it
21 appears that the accused has entered the plea of guilty



1 improvidently or through a lack of understanding of its meaning
2 and effect, or if the accused fails or refuses to plead, a plea
3 of not guilty shall be entered in the record, and the court
4 shall proceed as though the accused had pleaded not guilty.

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

13 (c) A variance from the requirements of this section is
14 harmless error if the variance does not materially prejudice the
15 substantial rights of the accused.

16 § -71 **Opportunity to obtain witnesses and other**
17 **evidence.** (a) In a case referred for trial by court-martial,
18 the trial counsel, the defense counsel, and the court-martial
19 shall have equal opportunity to obtain witnesses and other
20 evidence in accordance with such rules as the governor or the
21 adjutant general may prescribe or as provided by law.



(b) Any subpoena or other process issued under this section:

(1) Shall, except as otherwise permitted by the court for good cause, be in a form similar to the one that courts of the State of Hawaii having criminal jurisdiction may issue or properly accept;

(2) Shall be executed in accordance with rules as the governor or the adjutant general may prescribe or as provided by law; and

(3) Shall run to any part of the State and shall be executed by civil officers as prescribed by the laws of the State.

(c) A subpoena or other process may be issued to compel a witness to appear and testify:

(1) Before a court-martial or court of inquiry;

(2) At a deposition under section -74; or

(3) As otherwise authorized under this chapter.

(d) A subpoena or other process may be issued to compel the production of evidence:

(1) For a court-martial or court of inquiry;

(2) For a deposition under section -74;



1 (3) For an investigation of an offense under this chapter;

2 or

3 (4) As otherwise authorized under this chapter.

4 (e) An investigative subpoena under subsection (d)(3) may
5 be issued before referral of charges to a court-martial only if
6 a general court-martial convening authority has authorized
7 counsel for the government to issue such a subpoena or a
8 military judge issues such a subpoena pursuant to section -51.

9 (f) With respect to an investigation of an offense under
10 this chapter, a military judge detailed in accordance with
11 sections -41, -42, or -74 may issue warrants or court
12 orders for contents of, and records concerning, wire or
13 electronic communications in the same manner as such warrants
14 and orders may be issued by courts of the State under chapter
15 803, subject to such limitations as the governor or the adjutant
16 general may prescribe by rule, or as prescribed by law.

17 (g) If a person requests relief from a subpoena or other
18 process under this section on grounds that compliance is
19 unreasonable or oppressive or is prohibited by law, a military
20 judge detailed in accordance with sections -41, -42,
21 or -74 shall review the request and shall:



1 (1) Order that the subpoena or other process be modified
2 or withdrawn, as appropriate; or

3 (2) Order the person to comply with the subpoena or other
4 process.

5 § -72 Refusal of person not subject to chapter to
6 appear, testify, or produce evidence. Any person not subject to
7 this chapter who:

8 (1) Has been duly subpoenaed to appear as a witness or to
9 produce records before a military court or before any
10 military or civil officer designated to take a
11 deposition to be read in evidence before such a court;

12 (2) Has been duly paid or tendered the fees and mileage of
13 a witness at the rates allowed to witnesses attending
14 the circuit court; and

15 (3) Willfully neglects or refuses to appear, or refuses to
16 qualify as a witness or to testify or to produce any
17 evidence that the person may have been legally
18 subpoenaed to produce,

19 is guilty of an offense against the State and a military court
20 may punish the person in the same manner as the civil courts of
21 the State.



1 § -73 **Contempts; authority to punish; punishment.** (a)

2 With respect to any proceeding under this chapter:

3 (1) A military judge detailed to a court-martial or any
4 other proceeding under this chapter;

5 (2) Any military magistrate designated to preside under
6 section -47; or

7 (3) The president of a court of inquiry,
8 may punish for contempt any person who conducts themselves in
9 violation of section 710-1077.

10 (b) The punishment for contempt under subsection (a) shall
11 be the same as the punishments permitted under civilian criminal
12 contempt of court laws and rules.

13 (c) A punishment imposed under this section:

14 (1) If imposed by a military judge or military magistrate,
15 may be reviewed in the same manner as such review from
16 the circuit courts of the State; and

17 (2) If imposed by a court of inquiry, shall be subject to
18 review by the convening authority in accordance with
19 rules prescribed by the governor or the adjutant
20 general, or as provided by law.



1 § **-74 Depositions.** (a) At any time after charges have
2 been signed, as provided in section -51, any party may take
3 oral or written depositions unless an authority competent to
4 convene a court-martial for the trial of those charges forbids
5 it for good cause. If a deposition is to be taken before
6 charges are referred for trial, such an authority may designate
7 commissioned officers to represent the prosecution and the
8 defense and may authorize those officers to take the deposition
9 of any witness.

10 (b) The party at whose instance a deposition is to be
11 taken shall give to every other party reasonable written notice
12 of the time and place for taking the deposition.

13 (c) Depositions may be taken before and authenticated by
14 any military or civil officer authorized by the laws of the
15 State or by the laws of the place where the deposition is taken
16 to administer oaths or affirmations.

17 (d) A duly authenticated deposition taken upon reasonable
18 notice to the other parties, so far as otherwise admissible
19 under the rules of evidence, may be read in evidence before any
20 court-martial or in any proceeding before a court of inquiry, if
21 it appears:



1 (1) That the witness resides or is beyond the county in
2 which the court-martial or court of inquiry is ordered
3 to sit;

4 (2) That the witness by reason of death, age, sickness,
5 bodily infirmity, imprisonment, military necessity,
6 non-amenability to process, or other reasonable cause,
7 is unable or refuses to appear and testify in person
8 at the place of trial or hearing; or

9 (3) That the present whereabouts of the witness is
10 unknown.

11 (e) Representation of the parties with respect to a
12 deposition shall be by counsel detailed in the same manner as
13 trial counsel and defense counsel are detailed under section -
14 48. In addition, the accused shall have the right to be
15 represented by civilian or military counsel in the same manner
16 as such counsel are provided for in section -63.

17 **§ -75 Admissibility of sworn testimony from records of**
18 **courts of inquiry.** (a) In any case not extending to the
19 dismissal of a commissioned officer, the sworn testimony,
20 contained in the duly authenticated record of proceedings of a
21 court of inquiry, of a person whose oral testimony cannot be



1 obtained, may, if otherwise admissible under the rules of
2 evidence, be read in evidence by any party before a court-
3 martial if the accused was a party before the court of inquiry
4 and if the same issue was involved or if the accused consents to
5 the introduction of the evidence.

6 (b) The sworn testimony admissible under subsection (a)
7 may be read in evidence only by the defense in cases extending
8 to the dismissal of a commissioned officer.

9 (c) The sworn testimony admissible under subsection (a)
10 may be read in evidence before a court of inquiry or a military
11 board.

12 (d) Sworn testimony that:

13 (1) Is recorded by audiotape, videotape, or similar
14 method; and

15 (2) Is contained in the duly authenticated record of
16 proceeding of a court of inquiry,

17 is admissible before a court-martial, court of inquiry, or
18 military board, to the same extent as sworn testimony may be
19 read in evidence before any such body under subsections (a),
20 (b), or (c).



1 § -76 Defense of lack of physical or mental

2 **responsibility.** (a) It is an affirmative defense in a trial by
3 court-martial that, at the time of the commission of the acts
4 constituting the offense, the accused, as a result of a severe
5 physical or mental disease or defect, was unable to appreciate
6 the nature and quality or the wrongfulness of the acts. Mental
7 disease or defect does not otherwise constitute a defense.

8 (b) The accused has the burden of proving the defense of
9 lack of physical or mental responsibility by clear and
10 convincing evidence.

11 (c) Whenever lack of physical or mental responsibility of
12 the accused with respect to an offense is properly at issue, the
13 military judge shall follow the forms and procedures of chapter
14 704.

15 (d) Notwithstanding the provisions of section -78 and
16 subsection (c), the accused shall be found not guilty by reason
17 of lack of physical or mental responsibility if:

18 (1) A majority of the members of the court-martial present
19 at the time the vote is taken determines that the
20 defense of lack of physical or mental responsibility



1 has been established by clear and convincing evidence;

2 or

3 (2) In the case of a court-martial composed of a military
4 judge only, the military judge determines that the
5 defense of lack of physical or mental responsibility
6 has been established by clear and convincing evidence.

7 § -77 **Voting and rulings.** (a) Voting by members of a
8 general or special court-martial upon questions of challenge, on
9 the findings, and on the sentence shall be by secret written
10 ballot. The junior member of the court shall in each case count
11 the votes. The count shall be checked by the president, who
12 shall forthwith announce the result of the ballot to the members
13 of the court.

14 (b) The military judge of a general or special court-
15 martial shall rule upon all questions of law and all
16 interlocutory questions arising during the proceedings. Any
17 such ruling made by the military judge upon any question of law
18 or any interlocutory question other than the factual issue of
19 mental responsibility of the accused is final and constitutes
20 the ruling of the court, except that the military judge may
21 change a ruling at any time during trial.



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

5 (1) That the accused must be presumed to be innocent until
6 the accused's guilt is established by legal and
7 competent evidence beyond reasonable doubt;

8 (2) That in the case being considered, if there is a
9 reasonable doubt as to the guilt of the accused, the
10 doubt must be resolved in favor of the accused and the
11 accused must be acquitted;

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

15 (4) That the burden of proof of establishing the guilt of
16 the accused beyond reasonable doubt is upon the State.

17 (d) Subsections (a), (b), and (c) do not apply to a court-
18 martial composed of a military judge only. The military judge
19 of such a court-martial shall determine all questions of law and
20 fact arising during the proceedings and, if the accused is
21 convicted, adjudge an appropriate sentence. The military judge



1 of such a court-martial shall make a general finding and shall
2 in addition on request find the facts specially. If an opinion
3 or memorandum of decision is filed, it will be sufficient if the
4 findings of fact appear therein.

5 **§ -78 Votes required for conviction, sentencing, and**
6 **other matters.** (a) No person may be convicted of an offense in
7 a general or special court-martial, other than:

8 (1) After a plea of guilty under section -70;

9 (2) By a military judge in a court-martial with a military
10 judge alone under section -31; or

11 (3) In a court-martial with members under section -31,
12 by the concurrence of at least three-fourths of the
13 members present when the vote is taken.

14 (b) Except as provided in subsections (a) and (c), all
15 matters to be decided by members of a general or special court-
16 martial shall be determined by a majority vote, but a
17 reconsideration of a finding of guilty or reconsideration of a
18 sentence, with a view toward decreasing the sentence, may be
19 made by any lesser vote that indicates that the reconsideration
20 is not opposed by the number of votes required for that finding
21 or sentence.



1 (c) Sentences imposed by members shall be determined by
2 the concurrence of at least three-fourths of the members present
3 when the vote is taken.

4 (d) A tie vote on a challenge disqualifies the member
5 challenged. A tie vote on a motion for a finding of not guilty
6 or on a motion relating to the question of the accused's sanity
7 is a determination against the accused. A tie vote on any other
8 question is a determination in favor of the accused.

9 § -79 Findings and sentencing. (a) A court-martial
10 shall announce its findings and sentence to the parties as soon
11 as determined.

12 (b) Except as provided in subsection (c), if the accused
13 is convicted of an offense in a trial, the military judge shall
14 sentence the accused.

15 (c) If the accused is convicted of an offense by general
16 or special court-martial consisting of a military judge and
17 members and the accused elects sentencing by members under
18 section -44, the members shall sentence the accused.

19 (d) If the accused is found guilty of an offense in a
20 trial by summary court-martial, the court-martial shall sentence
21 the accused.



1 § **-80 Plea agreements.** (a) At any time before the
2 announcement of findings under section -79, the convening
3 authority and the accused may enter into a plea agreement with
4 respect to such matters as:

- 5 (1) The manner in which the convening authority will
6 dispose of one or more charges and specifications; and
7 (2) Limitations on the sentence that may be adjudged for
8 one or more charges and specifications.

9 (b) The military judge of a general or special court-
10 martial may not participate in discussions between the parties
11 concerning prospective terms and conditions of a plea agreement.

12 (c) The military judge of a general or special court-
13 martial shall reject a plea agreement that:

- 14 (1) Contains a provision that has not been accepted by
15 both parties;
16 (2) Contains a provision that is not understood by the
17 accused;
18 (3) Contains a provision for a sentence that is less than
19 the mandatory minimum sentence applicable to an
20 offense prescribed by this chapter;
21 (4) Is prohibited by law; or



1 (5) Is contrary to, or is inconsistent with, rules
2 prescribed by the governor, the adjutant general, or
3 the Hawaii rules of penal procedures with respect to
4 terms, conditions, or other aspects of plea
5 agreements.

6 (d) Upon acceptance by the military judge of a general or
7 special court-martial, a plea agreement shall bind the parties
8 and the court-martial.

9 § **-81 Record of trial.** (a) Each general or special
10 court-martial shall keep a separate record of the proceedings in
11 each case brought before it. The record shall be certified by a
12 recorder of the proceedings and authenticated by the signatures
13 of the military judge and the senior officer of the panel or
14 military judge alone if presided by a judge alone. If the
15 record cannot be authenticated by either the military judge or
16 senior officer of the panel, by reason of death, disability, or
17 absence, it shall be signed by the next senior member of the
18 panel in lieu of the military judge or senior officer. If both
19 the military judge and the senior member of the panel are
20 unavailable, the record shall be authenticated by two members of
21 the panel.



1 (b) Each summary court-martial shall keep a separate
2 record of the proceedings in each case, and the record shall be
3 certified in the manner required by such rules as the governor
4 or the adjutant general may prescribe or as required by this
5 chapter.

6 (c) Except as provided in subsection (d), the record shall
7 contain such matters as the governor or the adjutant general may
8 prescribe by rules.

9 (d) In accordance with rules prescribed by the governor or
10 the adjutant general, a complete record of proceedings and
11 testimony shall be prepared in any case of a sentence of
12 dismissal, discharge, confinement for more than six months, or
13 forfeiture of pay for more than six months.

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

17 (f) In the case of a general or special court-martial,
18 upon request, a copy of all prepared records of the proceedings
19 of the court-martial shall be given to the victim of the offense
20 if the victim testified during the proceedings. The records of
21 the proceedings shall be provided without charge and as soon as



1 the records are certified. The victim shall be notified of the
2 opportunity to receive the records of the proceedings.

3 **PART VIII. SENTENCES**

4 **§ -91 Cruel and unusual punishments prohibited.**

5 Punishment by flogging, or by branding, marking, or tattooing on
6 the body, or any other cruel or unusual punishment may not be
7 adjudged by any court-martial or inflicted upon any person
8 subject to this chapter. The use of irons, single or double,
9 except for the purpose of safe custody, is prohibited.

10 **§ -92 Sentencing.** (a) The punishment that a court-
11 martial may direct for an offense may not exceed such limits as
12 the governor or the adjutant general may prescribe for that
13 offense, but in no instance may a sentence exceed more than ten
14 years confinement. A conviction by general court-martial of any
15 offense for which an accused may receive a sentence of
16 confinement for more than one year is a felony offense. Except
17 for convictions by a summary court-martial, all other offenses
18 are misdemeanors. Any conviction by a summary-court martial is
19 not a criminal conviction.



1 (b) Except as provided in subsection (a) of section -80,
2 punishment for the following offense shall include dismissal or
3 dishonorable discharge, as applicable:

4 (1) Sexual assault in the first degree under section 707-
5 730;

6 (2) Continuous sexual assault of a minor under the age of
7 fourteen years under section 707-733.6;

8 (3) An attempt to commit an offense specified in paragraph
9 (1) or (2) that is punishable under section -134; or

10 (4) Conspiracy to commit an offense specified in paragraph
11 (1) or (2) that is punishable under section -135.

12 (c) In sentencing an accused under section -79, a court-
13 martial shall impose punishment that is sufficient, but not
14 greater than necessary, to promote justice and to maintain good
15 order and discipline in the state military forces, taking into
16 consideration:

17 (1) The nature and circumstances of the offense and the
18 history and characteristics of the accused;

19 (2) The impact of the offense on:

20 (A) The financial, social, psychological, or medical
21 well-being of any victim of the offense; and



(B) The mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(3) The need for the sentence:

(A) To reflect the seriousness of the offense;

(B) To promote respect for the law;

(C) To provide just punishment for the offense;

(D) To promote adequate deterrence of misconduct;

(E) To protect others from further crimes by the accused;

(F) To rehabilitate the accused; and

(G) To provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and

(4) The sentences available under this chapter.

(d) In announcing the sentence in a general or special court-martial in which the accused is sentenced by military judge alone under section -79, the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of fine, if any. If the accused is sentenced to confinement for more



1 than one offense, the military judge shall specify whether the
2 terms of confinement are to run consecutively or concurrently.

3 (e) In a general or special court-martial in which the
4 accused has elected sentencing by members, the court-martial
5 shall announce a single sentence for all of the offenses of
6 which the accused was found guilty.

7 (f) With the approval of the senior judge advocate
8 concerned, and consistent with standards and procedures set
9 forth in rules prescribed by the governor or the adjutant
10 general, the State may appeal a sentence to the intermediate
11 court of appeals of the State, on the grounds that:

12 (1) The sentence violates the law; or

13 (2) The sentence is plainly unreasonable as determined in
14 accordance with standards and procedures prescribed by
15 the governor or the adjutant general.

16 (g) An appeal under subsection (f) shall be filed within
17 sixty days after the date on which the judgment of a court-
18 martial is entered into the record under section -105.

19 § -93 **Effective date of sentences.** (a) A court-martial
20 sentence shall be executed and take effect as follows:



1 (1) A forfeiture of pay or allowances shall be applicable
2 to pay and allowances accruing on and after the date
3 on which the sentence takes effect. Any forfeiture of
4 pay or allowances or reduction in grade that is
5 included in a sentence of a court-martial takes effect
6 on the earlier of:

7 (A) The date that is fourteen days after the date on
8 which the sentence is adjudged; or

9 (B) In the case of a summary court-martial, the date
10 on which the sentence is approved by the
11 convening authority;

12 (2) Any period of confinement included in a sentence of a
13 court-martial begins to run from the date the sentence
14 is adjudged by the court-martial, but periods during
15 which the sentence to confinement is suspended or
16 deferred shall be excluded in computing the service of
17 the term of confinement;

18 (3) If in the case of a commissioned officer, cadet, or
19 midshipman, the sentence of a court-martial extends to
20 dismissal or in the case of an enlisted member, the
21 sentence of a court-martial extends to a dishonorable



1 discharge, that part of the sentence providing for
2 dismissal may not be executed until approved by the
3 governor. In such a case, the governor may commute,
4 remit, or suspend the sentence, or any part of the
5 sentence as the governor sees fit. In the time of war
6 or state of emergency the governor may commute a
7 sentence of dismissal or dishonorable discharge to
8 reduction to any enlisted grade. A person so reduced
9 may be required to serve for the duration of the war
10 or emergency and six months thereafter; and

11 (4) Except as otherwise provided in this subsection, a
12 general or special court-martial sentence is effective
13 upon entry of judgment and a summary court-martial
14 sentence is effective when the convening authority
15 acts on the sentence.

16 (b) On application by an accused, the convening authority
17 or, if the accused is no longer under that convening authority's
18 jurisdiction, the officer exercising general court-martial
19 jurisdiction over the command to which the accused is currently
20 assigned, may, in their sole discretion, defer the effective
21 date of a sentence of confinement, reduction, or forfeiture.



1 The deferment shall terminate upon entry of judgment or, in the
2 case of a summary court-martial, when the convening authority
3 acts on the sentence. The deferment may be rescinded at any
4 time by the officer who granted it or, if the accused is no
5 longer under that officer's jurisdiction, by the officer
6 exercising general court-martial jurisdiction over the command
7 to which the accused is currently assigned.

8 (c) In any case in which a court-martial sentences a
9 person to confinement, but in which review of the case under
10 section -113 is pending, the governor may defer further
11 service of the sentence to confinement while that review is
12 pending.

13 (d) Appellate review is complete under this section when:

14 (1) The time for the accused to file a petition for review
15 by the Hawaii intermediate court of appeals under
16 section -113 has expired and the accused has not
17 filed a timely petition for such review and the case
18 is not otherwise under review by that court; or

19 (2) A review under section -113 is completed by the
20 Hawaii intermediate court of appeals and:



1 (A) The time for the accused to file a petition for
2 review by the Hawaii supreme court has expired
3 and the accused has not filed a timely petition
4 for the review and the case is not otherwise
5 under review by that court;

6 (B) The petition by the accused is rejected by the
7 Hawaii supreme court; or

8 (C) Review is completed in accordance with the
9 judgment of the intermediate court of appeals and
10 review is completed in accordance with the
11 judgment of the Hawaii supreme court.

12 (e) The completion of appellate review shall constitute a
13 final judgment as to the legality of the proceedings.

14 § -94 **Execution of confinement.** (a) A sentence of
15 confinement adjudged by a military court, whether or not the
16 sentence includes discharge or dismissal, and whether or not the
17 discharge or dismissal has been executed, may be carried into
18 execution by confinement in any place of confinement under the
19 control of any of the forces of the state military forces or in
20 any state correctional facility designated for that purpose.
21 Persons so confined in a state correctional facility are subject



1 to the same discipline and treatment as persons confined or
2 committed to a state correctional facility by the courts of the
3 State.

4 (b) The omission of the words "hard labor" from any
5 sentence or punishment of a court-martial adjudging confinement
6 does not deprive the authority executing that sentence or
7 punishment of the power to require hard labor as a part of the
8 punishment.

9 (c) The keepers, officers, and wardens of state
10 correctional facilities designated by the governor, or by such
11 person as the governor may authorize to act under part II of
12 this chapter, shall receive persons ordered into confinement
13 before trial and persons committed to confinement by a military
14 court and shall confine them according to law. No such keeper,
15 officer, or warden may require payment of any fee or charge for
16 so receiving or confining a person.

17 § -95 Sentences; reduction in enlisted grade upon
18 approval. (a) A court-martial sentence of an enlisted member
19 in a pay grade above E-1, as set forth in the judgment of the
20 court-martial entered into the record under section -105, that
21 includes:



1 (1) A dishonorable or bad-conduct discharge; or

2 (2) Confinement,

3 reduces that member to pay grade E-1, if such reduction is
4 authorized by rule prescribed by the governor or the adjutant
5 general. The reduction in pay grade shall take effect on the
6 date on which the judgment is so entered.

7 (b) If the sentence of a member who is reduced in pay
8 grade under subsection (a) is set aside or reduced, or, as
9 finally affirmed, does not include any punishment named in
10 subsection (a)(1) or (2), the rights and privileges of which the
11 member was deprived because of that reduction shall be restored
12 to the member and the member is entitled to the pay and
13 allowances to which the member would have been entitled, for the
14 period the reduction was in effect, had the member not been so
15 reduced.

16 § -96 Sentences; forfeiture of pay and allowances during
17 confinement. (a) A court-martial sentence described in
18 subsection (b) shall result in the forfeiture of pay, or of pay
19 and allowances, due that member during any period of confinement
20 or parole. The forfeiture pursuant to this section shall take
21 effect on the date determined under section -93 and may be



1 deferred as provided in that section. The pay and allowances
2 forfeited, in the case of a general court-martial, shall be all
3 pay and allowances due that member during such period and, in
4 the case of a special court-martial, shall be two-thirds of all
5 pay due that member during such period.

6 (b) A sentence covered by this section is any sentence
7 that includes:

8 (1) Confinement for more than six months; or

9 (2) Confinement for six months or less and a dishonorable
10 or bad-conduct discharge or dismissal.

11 (c) In a case involving an accused who has dependents, the
12 convening authority or other person acting under part IX of this
13 chapter may waive any or all of the forfeitures of pay and
14 allowances required by subsection (a) for a period not to exceed
15 six months. Any amount of pay or allowances that, except for a
16 waiver under this subsection, would be forfeited shall be paid,
17 as the convening authority or other person taking action
18 directs, to the dependents of the accused.

19 (d) If the sentence of a member who forfeits pay and
20 allowances under subsection (a) is set aside or disapproved or
21 as finally approved, does not provide for a punishment referred



1 to in subsection (b), the member shall be paid the pay and
2 allowances that the member would have been paid, except for the
3 forfeiture, for the period during which the forfeiture was in
4 effect.

5 **Part IX. POST-TRIAL PROCEDURES AND REVIEW OF COURTS-MARTIAL**

6 **§ -101 Error of law; lesser included offense.** (a) A
7 finding or sentence of a court-martial may not be held incorrect
8 on the ground of an error of law unless the error materially
9 prejudices the substantial rights of the accused.

10 (b) Any reviewing authority with the power to approve or
11 affirm a finding of guilty may approve or affirm, instead, so
12 much of the finding as includes a lesser included offense.

13 **§ -102 Post-trial processing in general and special**
14 **courts-martial.** (a) The military judge of a general or special
15 court-martial shall enter into the record of trial a document
16 entitled "statement of trial results" that shall set forth:

- 17 (1) Each plea and finding;
18 (2) The sentence, if any; and
19 (3) Such other information as the governor or the adjutant
20 general may prescribe by rule.



1 (b) Copies of the statement of trial results shall be
2 provided promptly to the convening authority, the accused, and
3 any victim of the offense.

4 (c) In accordance with rules prescribed by the governor or
5 the adjutant general, the military judge in a general or special
6 court-martial shall address all post-trial motions and other
7 post-trial matters that:

8 (1) May affect a plea, a finding, the sentence, the
9 statement of trial results, the record of trial, or
10 any post-trial action by the convening authority; and

11 (2) Are subject to resolution by the military judge before
12 entry of judgment.

13 § -103 **Limited authority to act on sentence in specified**
14 **post-trial circumstances.** (a) The convening authority of a
15 general or special court-martial described in subsection (b):

16 (1) May act on the sentence of the court-martial only as
17 provided in subsection (f), (g), (i), or (j); and

18 (2) May not act on the findings of the court-martial.

19 (b) The courts-martial referred to subsection (a) are the
20 following:



1 (1) A general or special court-martial in which the
2 maximum sentence of confinement for any offense of
3 which the accused is found guilty is more than two
4 years;

5 (2) A general or special court-martial in which the total
6 of the sentences of confinement imposed, running
7 consecutively, is more than six months;

8 (3) A general or special court-martial in which the
9 sentence imposed includes a dismissal, dishonorable
10 discharge, or bad-conduct discharge; and

11 (4) A general or special court-martial in which the
12 accused is found guilty of sexual assault in the first
13 degree or continuous sexual assault of a minor under
14 fourteen years of age or such other offense as the
15 governor or the adjutant general may specify by rule.

16 (c) Except as provided in subsection (j), the convening
17 authority shall act under this section only before entry of
18 judgment.

19 (d) Under rules prescribed by the governor or the adjutant
20 general, a commissioned officer commanding for the time being, a
21 successor in command, or any person exercising general court-



1 martial jurisdiction may act under this section in place of the
2 convening authority.

3 (e) Except as provided in subsection (g), (i), or (j), the
4 convening authority may not reduce, commute, or suspend any of
5 the following sentences:

6 (1) A sentence of confinement, if the total period of
7 confinement imposed for all offenses involved, running
8 consecutively, is greater than six months; or

9 (2) A sentence of dismissal, dishonorable discharge, or
10 bad-conduct discharge.

11 (f) The convening authority may reduce, commute, or
12 suspend any sentence not specified in subsection (e).

13 (g) Upon recommendation of the military judge, as included
14 in the statement of trial results, together with an explanation
15 of the facts supporting the recommendation, the convening
16 authority may suspend:

17 (1) A sentence of confinement, in whole or in part; or

18 (2) A sentence of dismissal, dishonorable discharge, or
19 bad-conduct discharge.

20 (h) Except as provided in subsection (i) or (j), the
21 convening authority may not, under subsection (g):



1 (1) Suspend a mandatory minimum sentence; or

2 (2) Suspend a sentence to an extent in excess of the
3 suspension recommended by the military judge.

4 (i) Upon recommendation by the trial counsel, if the
5 accused, after sentencing and before entry of judgment, provides
6 substantial assistance in the investigation or prosecution of
7 another person, the convening authority may reduce, commute, or
8 suspend a sentence, in whole or in part, including any mandatory
9 minimum sentence.

10 (j) Upon a recommendation by a trial counsel, designated
11 in accordance with rules prescribed by the governor or the
12 adjutant general, if the accused, after entry of judgment,
13 provides substantial assistance in the investigation or
14 prosecution of another person, a convening authority, designated
15 under such rules, may reduce, commute, or suspend a sentence, in
16 whole or in part, including any mandatory minimum sentence.

17 (k) In evaluating whether the accused has provided
18 substantial assistance under this section, the convening
19 authority may consider the pre-sentence assistance of the
20 accused.



1 (1) In accordance with rules prescribed by the governor or
2 the adjutant general, in determining whether to act under this
3 section, the convening authority shall consider matters
4 submitted in writing by the accused or any victim of an offense.

5 Such rules shall include:

6 (1) Procedures for notice of the opportunity to make such
7 submissions;

8 (2) The deadlines for such submissions; and

9 (3) Procedures for providing the accused and any victim of
10 an offense with a copy of the recording of any open
11 sessions of the court-martial and copies of, or access
12 to, any admitted, unsealed exhibits.

13 (m) The convening authority may not consider under this
14 section any submitted matters that relate to the character of a
15 victim unless such matters were presented as evidence at trial
16 and not excluded at trial.

17 (n) The decision of the convening authority under this
18 section shall be forwarded to the military judge, with copies
19 provided to the accused and to any victim of the offense.

20 (o) If, under this section, the convening authority
21 reduces, commutes, or suspends the sentence, the decision of the



1 convening authority shall include a written explanation of the
2 reasons for such action.

3 (p) If, under subsection (j), the convening authority
4 reduces, commutes, or suspends the sentence, the decision of the
5 convening authority shall be forwarded to the military judge for
6 appropriate modification of the entry of judgment, which shall
7 be transmitted to the senior force judge advocate for
8 appropriate action.

9 § -104 Post-trial actions in summary courts-martial and
10 certain general and special courts-martial. (a) In a court-
11 martial not specified in subsection (b) of section -103, the
12 convening authority may:

13 (1) Dismiss any charge or specification by setting aside
14 the finding of guilty;

15 (2) Change a finding of guilty to a charge or
16 specification to a finding of guilty to a lesser
17 included offense;

18 (3) Disapprove the findings and the sentence and dismiss
19 the charges and specifications;

20 (4) Disapprove the findings and the sentence and order a
21 rehearing as to the findings and the sentence;



1 (5) Disapprove, commute, or suspend the sentence, in whole
2 or in part; or

3 (6) Disapprove the sentence and order a rehearing as to
4 the sentence.

5 (b) In a summary court-martial, the convening authority
6 shall approve the sentence or take other action on the sentence
7 under subsection (a).

8 (c) Except as provided in subsection (d), the convening
9 authority may act under this section only before entry of
10 judgment.

11 (d) The convening authority may act under this section
12 after entry of judgment in a general or special court-martial in
13 the same manner as the convening authority may act under
14 subsection (j) of section -103. Such action shall be
15 forwarded to the trial judge, who shall ensure appropriate
16 modification of the entry of judgment and shall transmit the
17 entry of judgment to the senior force judge advocate for
18 appropriate action.

19 (e) Under rules prescribed by the governor or the adjutant
20 general, a commissioned officer commanding for the time being, a
21 successor in command, or any person exercising general court-



1 martial jurisdiction may act under this section in place of the
2 convening authority.

3 (f) The convening authority may not order a rehearing
4 under this section:

5 (1) As to the findings if there is insufficient evidence
6 in the record to support the findings;

7 (2) To reconsider a finding of not guilty of any
8 specification or a ruling that amounts to a finding of
9 not guilty; or

10 (3) To reconsider a finding of not guilty of any charge,
11 unless there has been a finding of guilty under a
12 specification laid under that charge that sufficiently
13 alleges a violation of a section.

14 (g) In accordance with rules prescribed by the governor or
15 the adjutant general, in determining whether to act under this
16 section, the convening authority shall consider matters
17 submitted in writing by the accused or any victim of the
18 offense. Such rules shall include the matter required by
19 subsection (1) of section -103.

20 (h) In a general or special court-martial, the decision of
21 the convening authority under this section shall be forwarded to



1 the military judge, with copies provided to the accused and to
2 any victim of the offense.

3 (i) If the convening authority acts on the findings or the
4 sentence under subsection (a), the decision of the convening
5 authority shall include a written explanation of the reasons for
6 such action.

7 § -105 **Entry of judgment.** (a) In accordance with rules
8 prescribed by the governor or the adjutant general, in a general
9 or special court-martial, the military judge shall enter into
10 the record of trial the judgment of the court. The judgment of
11 the court shall consist of the following:

12 (1) The statement of trial results under section -102.

13 (2) Any modifications of, or supplements to, the statement
14 of trial results by reason of:

15 (A) Any post-trial action by the convening authority;
16 or

17 (B) Any ruling, order, or other determination of the
18 military judge that affects a plea, a finding, or
19 the sentence.

20 (b) Under rules prescribed by the governor or the adjutant
21 general, the judgment under subsection (a) shall be:



(1) Provided to the accused and to any victim of the offense; and

(2) Made available to the public.

(c) The findings and sentence of a summary court-martial, as modified by any post-trial action by the convening authority under section -104, constitutes the judgment of the court-martial and shall be recorded and distributed under rules prescribed by the governor or the adjutant general.

§ -106 Waiver of right to appeal; withdrawal of appeal.

(a) After entry of judgment in a general or special court-martial, under rules prescribed by the governor or the adjutant general, the accused may waive the right to appeal. Such a waiver shall be:

(1) Signed by the accused and by defense counsel; and

(2) Attached to the record of trial.

(b) In a general or special court-martial, the accused may voluntarily request dismissal of an appeal at any time in accordance with the Hawaii rules of appellate procedure.

(c) A waiver or voluntary dismissal under this section bars review under section -113.



1 § -107 **Appeal by the state.** (a) In a trial by general
2 or special court-martial or in a pretrial proceeding under
3 section -52, the State may appeal the following:

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

7 (2) An order or ruling that excludes evidence that is
8 substantial proof of a fact material in the
9 proceeding;

10 (3) An order or ruling that directs the disclosure of
11 classified information;

12 (4) An order or ruling that imposes sanctions for
13 nondisclosure of classified information;

14 (5) A refusal of the military judge to issue a protective
15 order sought by the State to prevent the disclosure of
16 classified information;

17 (6) A refusal by the military judge to enforce an order
18 described in paragraph (5) that has previously been
19 issued by appropriate authority; or

20 (7) An order or ruling of the military judge entering a
21 finding of not guilty with respect to a charge or



1 specification following the return of a finding of
2 guilty by the members.

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

12 (c) An appeal of an order or ruling may not be taken when
13 prohibited by section -69.

14 (d) An appeal under this section shall be diligently
15 prosecuted by appellate government counsel.

16 (e) An appeal under this section shall be forwarded to the
17 court prescribed in section -113.

18 (f) Any period of delay resulting from an appeal under
19 this section shall be excluded in deciding any issue regarding
20 denial of a speedy trial unless an appropriate authority
21 determines that the appeal was filed solely for the purpose of



1 delay with the knowledge that it was totally frivolous and
2 without merit.

3 (g) The State may appeal a ruling or order of a military
4 magistrate in the same manner as had the ruling or order been
5 made by a military judge, except that the issue shall first be
6 presented to the military judge who designated the military
7 magistrate or to a military judge detailed to hear the issue.

8 (h) The provisions of this section shall be liberally
9 construed to affect its purposes.

10 § -108 Rehearings. (a) Each rehearing under this
11 chapter shall take place before a court-martial composed of
12 members that are not members of the court-martial that first
13 heard the case. Upon a rehearing the accused may not be tried
14 for any offense of which he was found not guilty by the first
15 court-martial, and no sentence in excess of, or more severe
16 than, the original sentence may be adjudged, unless the sentence
17 is based upon a finding of guilty of an offense not considered
18 upon the merits in the original proceedings, or unless the
19 sentence prescribed for the offense is mandatory.

20 (b) If the sentence adjudged by the first court-martial
21 was in accordance with a plea agreement under section -80 and



1 the accused at the rehearing does not comply with the agreement,
2 or if a plea of guilty was entered for an offense at the first
3 court-martial and a plea of not guilty was entered at the
4 rehearing, the sentence as to those charges or specifications
5 may include any punishment not in excess of the punishment that
6 could have been adjudged at the first court-martial, subject to
7 limitations as the governor or the adjutant general may
8 prescribe by rules.

9 (c) If, after appeal by the government under section -
10 107, the sentence adjudged is set aside and a rehearing on
11 sentence is ordered by the intermediate court of appeals, the
12 court-martial may impose any adjudged sentence, subject to such
13 limitations as the governor or the adjutant general may
14 prescribe by rules.

15 § -109 Senior force judge advocate review of finding of
16 guilty in summary court-martial. (a) Under rules prescribed by
17 the governor or the adjutant general, each summary court-martial
18 in which there is a finding of guilty shall be reviewed by the
19 senior force judge advocate or a judge advocate designated by
20 the senior force judge advocate. A judge advocate may not
21 review a case under this subsection if the judge advocate has



1 acted in the same case as an accuser, preliminary hearing
2 officer, member of the court, military judge, or counsel or has
3 otherwise acted on behalf of the prosecution or defense. The
4 judge advocate's review shall be in writing and shall contain
5 the following:

6 (1) Conclusions as to whether:

7 (A) The court had jurisdiction over the accused and
8 the offense;

9 (B) The charge and specification stated an offense;
10 and

11 (C) The sentence was within the limits prescribed by
12 law or by rule;

13 (2) A response to each allegation of error made in writing
14 by the accused; and

15 (3) If the case is sent for action under subsection (b), a
16 recommendation as to the appropriate action to be
17 taken and an opinion as to whether corrective action
18 is required as a matter of law.

19 (b) The record of trial and related documents in each case
20 reviewed under subsection (a) shall be sent for action to the
21 person exercising general court-martial jurisdiction over the



1 accused at the time the court was convened or to that person's
2 successor in command if:

3 (1) The judge advocate who reviewed the case recommends
4 corrective action; or

5 (2) Such action is otherwise required by rules adopted by
6 the governor or the adjutant general.

7 (c) The person to whom the record of trial and related
8 documents are sent under subsection (b) may:

9 (1) Disapprove or approve the findings or sentence, in
10 whole or in part;

11 (2) Remit, commute, or suspend the sentence in whole or in
12 part;

13 (3) Except where the evidence was insufficient at the
14 trial to support the findings, order a rehearing on
15 the findings, on the sentence, or on both; or

16 (4) Dismiss the charges.

17 (d) If a rehearing is ordered but the convening authority
18 finds a rehearing impracticable, charges shall be dismissed.

19 (e) If the opinion of the judge advocate in the judge
20 advocate's review under subsection (a) is that corrective action
21 is required as a matter of law and if the person required to



1 take action under subsection (b) does not take action that is at
2 least as favorable to the accused as that recommended by the
3 judge advocate, the record of trial and action thereon shall be
4 sent to the state judge advocate for review under this section.

5 **§ -110 Transmittal and review of records.** (a) If the
6 judgment of a general or special court-martial entered under
7 section -105 includes a finding of guilty, the record shall be
8 transmitted to the state judge advocate.

9 (b) In all other cases not covered under subsection (a),
10 records of trial by court-martial and related documents shall be
11 transmitted and disposed of as the governor or the adjutant
12 general prescribe by rule or as required by law.

13 (c) The state judge advocate shall provide notice to the
14 accused of the right to file an appeal under section -113 by
15 means of depositing in the United States mails for delivery by
16 first class certified mail to the accused at an address provided
17 by the accused or, if no such address has been provided by the
18 accused, at the latest address listed for the accused in the
19 official service record of the accused.

20 (d) Subsection (c) may not apply if the accused waives the
21 right to appeal under section -106.



1 (e) A review conducted under this section may be conducted
2 by an attorney within the office of the judge advocate for the
3 state military forces or by another attorney designated under
4 rules prescribed by the governor or the adjutant general.

5 (f) A review referred to in subsection (g) shall be
6 completed in each general and special court-martial appealed to
7 the State's intermediate court of appeals by the accused.

8 (g) A review referred to in subsection (f) shall include a
9 written decision providing each of the following:

10 (1) A conclusion as to whether the court had jurisdiction
11 over the accused and the offense;

12 (2) A conclusion as to whether the charge and
13 specification stated an offense;

14 (3) A conclusion as to whether the sentence was within the
15 limits prescribed as a matter of law; and

16 (4) A response to each allegation of error made in writing
17 by the accused.

18 (h) A review under subsection (i) shall be completed in
19 each general and special court-martial if:

20 (1) The accused waives the right to appeal or voluntarily
21 requests dismissal of appeal under section -106; or



1 (2) The accused does not file a timely appeal in a case
2 eligible for appeal.

3 (i) A review referred to in subsection (h) shall include a
4 written decision limited to providing conclusions on the matters
5 specified in paragraphs (1), (2), and (3) of subsection (g).

6 (j) If after a review of record under subsection (e), the
7 attorney conducting the review believes corrective action may be
8 required, the record shall be forwarded to the state judge
9 advocate, who may set aside the findings or sentence, in whole
10 or in part.

11 (k) In setting aside findings or sentence, the state judge
12 advocate may order a rehearing, except that a rehearing may not
13 be ordered in violation of section -69.

14 (l) If the state judge advocate sets aside findings and
15 sentence and does not order a rehearing, the state judge
16 advocate shall dismiss the charges.

17 (m) If the state judge advocate sets aside findings and
18 orders a rehearing and the convening authority determines that a
19 rehearing would be impractical, the convening authority shall
20 dismiss the charges.

21 § -111 (Reserved) .



1 § -112 **(Reserved)** .

2 § -113 **Review by state appellate authority.** (a) An
3 accused, who was tried by a special or general court-martial and
4 who deems the accused is self aggrieved after the accused has
5 exhausted all of the accused's rights of review under this part,
6 shall be entitled to appeal the judgment or sentence of the
7 special or general court-martial, as may have been modified on
8 review under this part prior to judicial review under this
9 section, subject to chapter 602, in the manner provided for
10 civil appeals from the circuit courts, and within the time
11 provided by the rules of court.

12 (b) The filing of an appeal pursuant to subsection (a) may
13 not of itself stay the execution of the judgment or sentence
14 appealed from, but the appellate court may stay the same upon
15 motion upon such conditions as it may deem proper,
16 notwithstanding any conflicting or contrary provision in this
17 chapter relating to the effective date or execution of sentences
18 or any other contrary provision of law.

19 (c) In reviewing the judgment or sentence of a special or
20 general court-martial, as may have been modified on review prior
21 to judicial review, the appellate court may take any of the



1 actions, and exercise any of the powers specified in section
2 641-16 as the court may deem appropriate in reviewing a judgment
3 or sentence of a military court-martial, and the court shall
4 follow as appropriate or applicable the standards and
5 requirements in section 641-16.

6 (d) Upon the request of the accused, the state judge
7 advocate shall appoint a lawyer in accordance with
8 section -116, who is a member of the bar of the highest court
9 of the State and who has been qualified as a judge advocate, as
10 defined in section -1 and section -48, to represent the
11 accused in the accused's appeal of the court-martial judgment or
12 sentence. If the accused wishes to be represented by civilian
13 counsel, rather than by appointed military counsel, the accused
14 may do so at the accused's own expense.

15 § -114 (Reserved) .

16 § -115 (Reserved) .

17 § -116 **Appellate counsel.** (a) The senior force judge
18 advocate shall detail one or more judge advocates as appellate
19 government counsel, and one or more judge advocates as appellate
20 defense counsel, who are qualified under section -48.



(b) Appellate government counsel shall represent the State before the state intermediate court of appeals or the state supreme court when directed to do so by the senior force judge advocate. Appellate government counsel may represent the State before federal courts in cases arising under this chapter when requested to do so by the state attorney general.

(c) Appellate defense counsel shall represent the accused before the state intermediate court of appeals or the state supreme court:

(1) When requested by the accused;

(2) When the State is represented by counsel; or

(3) When the state judge advocate has sent the case for appeal under section -107.

(d) The accused has the right to be represented by civilian counsel if provided by the accused at no cost to the government.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court-martial cases as the senior force judge advocate directs.

§ -117 (Reserved) .



1 § -118 **Vacation of suspension.** (a) Before the vacation
2 of the suspension of a special court-martial sentence, which as
3 approved includes a bad-conduct discharge, or of any general
4 court-martial sentence, the officer having special court-martial
5 jurisdiction over the probationer shall hold a hearing on the
6 alleged violation of probation. The court-martial convening
7 authority may detail a judge advocate, who is qualified under
8 section -48, to conduct the hearing. The probationer shall be
9 represented at the hearing by counsel if the probationer so
10 desires.

11 (b) The record of the hearing and the recommendation of
12 the officer having special court-martial jurisdiction shall be
13 sent for action to the governor in cases involving a general
14 court-martial sentence and to the commanding officer of the
15 force of the state military forces of which the probationer is a
16 member in all other cases covered by subsection (a). If the
17 governor or commanding officer vacates the suspension, any
18 unexecuted part of the sentence except a dismissal shall be
19 executed.

20 (c) The suspension of any other sentence may be vacated by
21 any authority competent to convene, for the command in which the



1 accused is serving or assigned, a court of the kind that imposed
2 the sentence.

3 § **-119 Petition for a new trial.** At any time within two
4 years after approval by the convening authority of a court-
5 martial sentence that extends to dismissal, dishonorable or bad-
6 conduct discharge, the accused may petition the governor for a
7 new trial on ground of newly discovered evidence or fraud on the
8 court-martial. If the accused's case is pending before the
9 state intermediate court of appeals or state supreme court, the
10 state judge advocate shall refer the petition to the appropriate
11 court for action. Otherwise, the state judge advocate shall act
12 upon the petition.

13 § **-120 Remission and suspension.** (a) The governor, the
14 adjutant general, or a convening authority may remit or suspend
15 any part or amount of the unexecuted part of any sentence,
16 including all uncollected forfeitures.

17 (b) The governor may, for good cause, substitute an
18 administrative form of discharge for a discharge or dismissal
19 executed in accordance with the sentence of a court-martial.

20 § **-121 Restoration.** (a) Under the rules as the
21 governor may adopt, all rights, privileges, and property



1 affected by an executed part of a court-martial sentence that
2 has been set aside or disapproved, except an executed dismissal
3 or discharge, shall be restored unless a new trial or rehearing
4 is ordered, and such executed part is included in a sentence
5 imposed upon the new trial or rehearing.

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

11 (c) If a previously executed sentence of dismissal is not
12 imposed on a new trial, the governor shall substitute therefor a
13 form of discharge authorized for administrative issue, and the
14 commissioned officer dismissed by that sentence may be
15 reappointed by the governor alone to such commissioned grade and
16 with such rank as in the opinion of the governor that former
17 officer would have attained had the former officer not been
18 dismissed. The reappointment of such a former officer shall be
19 without regard to the existence of a vacancy and shall affect
20 the promotion status of other officers only insofar as the
21 governor may direct. All time between the dismissal and



1 reappointment shall be considered as service for all purposes,
2 including the right to pay and allowances.

3 (d) The governor or the adjutant general shall prescribe
4 rules, with such limitations as the governor or the adjutant
5 general considers appropriate, governing eligibility for pay and
6 allowances for the period after the date on which an executed
7 part of a court-martial is sentence is set aside.

8 § -122 **Finality of proceedings, findings, and sentences.**

9 The appellate review of records of trial provided under this
10 chapter, the proceedings, findings, and sentences of courts-
11 martial as reviewed and approved, as required by this chapter,
12 and all dismissals and discharges carried into execution under
13 sentences by courts-martial following review and approval, as
14 required by this chapter, are final and conclusive. Orders
15 publishing the proceedings of courts-martial and all actions
16 taken pursuant to those proceedings are binding upon all
17 departments, courts, agencies, and officers of the State,
18 subject only to action upon a petition for a new trial as
19 provided in section -119 and to action taken under section -
20 120.



1 § -123 Leave required to be taken pending review of
2 **certain court-martial convictions.** Under rules prescribed by
3 the governor or the adjutant general, an accused who has been
4 sentenced by a court-martial may be required to take leave
5 pending completion of action under part IX if the sentence
6 includes an unsuspended dismissal or an unsuspended dishonorable
7 or bad-conduct discharge. The accused may be required to begin
8 such leave on the date of the entry of judgment under section
9 -105 at any time after such date, and such leave may be
10 continued until the date on which action under part IX is
11 completed or may be terminated at any earlier time.

12 § -124 Lack of physical or mental capacity or
13 **responsibility; commitment of accused for examination and**
14 **treatment.** (a) Whenever there is reason to doubt the accused's
15 fitness to proceed, the court may immediately suspend all
16 further proceedings in the trial and conduct an examination in
17 accordance with section 704-404.

18 (b) Any general or special court-martial where a person
19 may be found guilty by reason of lack of mental or physical
20 responsibility shall follow the same substance and procedures
21 found in sections 704-410.5 through 704-417.



1 **PART X. PUNITIVE SECTIONS**

2 **§ -131 Principals.** Any person punishable under this
3 chapter who:

4 (1) Commits an offense punishable by this chapter, or
5 aids, abets, counsels, commands, or procures its
6 commission; or

7 (2) Causes an act to be done that, if directly performed
8 by that person, would be punishable by this chapter,
9 is a principal.

10 **§ -132 Accessory after the fact.** Any person subject to
11 this chapter who, knowing that an offense punishable by this
12 chapter has been committed, receives, comforts, or assists the
13 offender in order to hinder or prevent the offender's
14 apprehension, trial, or punishment shall be punished as a court-
15 martial may direct.

16 **§ -133 Conviction of offense charged, lesser included**
17 **offenses, and attempts.** (a) An accused may be found guilty of
18 any of the following:

19 (1) The offense charged;

20 (2) A lesser included offense;

21 (3) An attempt to commit the offense charged; and



1 (4) An attempt to commit a lesser included offense if the
2 attempt is an offense in its own right.

3 (b) In this section, the term "lesser included offense"
4 means:

5 (1) An offense that is necessarily included in the offense
6 charged; and

7 (2) Any lesser included offense so designated by rules
8 prescribed by the governor or the adjutant general.

9 (c) Any designation of a lesser included offense in a rule
10 referred to in subsection (b) shall be reasonably included in
11 the greater offense.

12 § -134 Attempts. (a) An act, done with specific intent
13 to commit an offense under this chapter, amounting to more than
14 mere preparation and tending, even though failing, to affect its
15 commission, is an attempt to commit that offense.

16 (b) Any person subject to this chapter who attempts to
17 commit any offense punishable by this chapter shall be punished
18 as a court-martial may direct, unless otherwise specifically
19 prescribed in this chapter.



1 (c) Any person subject to this chapter may be convicted of
2 an attempt to commit an offense although it appears on the trial
3 that the offense was consummated.

4 § -135 **Conspiracy.** Any person subject to this chapter
5 who conspires with any other person to commit an offense under
6 this chapter shall, if one or more of the conspirators does an
7 act to affect the object of the conspiracy, be punished as a
8 court-martial may direct.

9 § -136 **Soliciting commission of offenses.** (a) Any
10 person subject to this chapter who solicits or advises another
11 to commit an offense under this chapter, other than an offense
12 specified in subsection (b) shall be punished as a court-martial
13 may direct.

14 (b) Any person subject to this chapter who solicits or
15 advises another to violate section -139, -151, or -157:

16 (1) If the offense solicited or advised is attempted or is
17 committed, shall be punished with the punishment
18 provided for the commission of the offense; and

19 (2) If the offense solicited or advised is not attempted
20 or committed, shall be punished as a court martial may
21 direct.



1 § **-137 Malingering.** Any person subject to this chapter
2 who, with the intent to avoid work, duty, or service:

3 (1) Feigns illness, physical disability, mental lapse, or
4 mental derangement; or

5 (2) Intentionally inflicts self-injury,
6 shall be punished as a court-martial may direct.

7 § **-138 Breach of medical quarantine.** Any person subject
8 to this chapter:

9 (1) Who is ordered into medical quarantine by a person
10 authorized to issue such order; and

11 (2) Who, with knowledge of the quarantine and the limits
12 of the quarantine, goes beyond those limits before
13 being released from the quarantine by proper
14 authority,

15 shall be punished as a court-martial may direct.

16 § **-139 Desertion.** (a) Any member of the state military
17 forces who:

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



1 (2) Quits the member's unit, organization, or place of
2 duty with intent to avoid hazardous duty or to shirk
3 important service; or
4 (3) Without being regularly separated from one of the
5 state military forces enlists or accepts an
6 appointment in the same or another one of the state
7 military forces or in one of the armed forces of the
8 United States without fully disclosing the fact that
9 the member has not been regularly separated, or enters
10 any foreign armed service except when authorized by
11 the United States,
12 is guilty of desertion.

13 (b) Any commissioned officer of the state military forces
14 who, after tender of the officer's resignation and before notice
15 of its acceptance, quits the officer's post or proper duties
16 without leave and with intent to remain away therefrom
17 permanently is guilty of desertion.

18 (c) Any person found guilty of desertion or attempt to
19 desert shall be punished, if the offense is committed in a time
20 of war, by confinement of not more than ten years or such other
21 punishment as a court-martial may direct, but if the desertion



1 or attempt to desert occurs at any other time, by such
2 punishment as a court-martial may direct.

3 § **-140 Absence without leave.** Any member of the state
4 military forces who, without authority:

5 (1) Fails to go to the member's appointed place of duty at
6 the time prescribed;

7 (2) Goes from that place; or

8 (3) Absents the member's self or remains absent from the
9 member's unit, organization, or place of duty at which
10 the member is required to be at the time prescribed,
11 shall be punished as a court-martial may direct.

12 § **-141 Missing movement; jumping from vessel.** (a) Any
13 person subject to this chapter who, through neglect or design,
14 misses the movement of a ship, aircraft, or unit with which the
15 person is required in the course of duty move shall be punished
16 as a court-martial may direct.

17 (b) Any person subject to this chapter who wrongfully and
18 intentionally jumps into the water from a vessel in use by the
19 state military forces shall be punished as a court-martial may
20 direct.



1 § **-142 Resistance, flight, breach of arrest, and escape.**

2 Any person subject to this chapter who:

3 (1) Resists apprehension;

4 (2) Flees from apprehension;

5 (3) Breaks arrest; or

6 (4) Escapes from custody or confinement,

7 shall be punished as a court-martial may direct.

8 § **-143 Offenses against correctional custody and**

9 **restriction.** (a) Any person subject to this chapter who:

10 (1) Is placed in correctional custody by a person

11 authorized to do so;

12 (2) While in correctional custody, is under physical

13 restraint; and

14 (3) Escapes from the physical restraint before being

15 released from the physical restraint by proper

16 authority,

17 shall be punished as a court-martial may direct.

18 (b) Any person subject to this chapter who:

19 (1) Is placed in correctional custody by a person

20 authorized to do so;



1 (2) While in correctional custody, is under restraint
2 other than physical restraint; and
3 (3) Goes beyond the limits of the restraint before being
4 released from the correctional custody or relieved of
5 the restraint by proper authority,
6 shall be punished as a court-martial may direct.

7 (c) Any person subject to this chapter who:

8 (1) Is ordered to be restricted to certain limits by a
9 person authorized to do so; and
10 (2) With knowledge of the limits of the restriction, goes
11 beyond those limits before being released by proper
12 authority,
13 shall be punished as a court-martial may direct.

14 § **-144 Contempt toward officials.** Any commissioned
15 officer who uses contemptuous words against the President, the
16 Vice President, Congress, the Secretary of Defense, the
17 secretary of a military department, the Secretary of Homeland
18 Security, or the governor or legislature of the State shall be
19 punished as a court-martial may direct.

20 § **-145 Disrespect toward superior commissioned officer;**
21 **assault of superior commissioned officer.** (a) Any person



1 subject to this chapter who behaves with disrespect toward that
2 person's superior commissioned officer shall be punished as a
3 court-martial may direct.

4 (b) Any person subject to this chapter who strikes that
5 person's superior commissioned officer or draws or lifts up any
6 weapon or offers any violence against that officer while the
7 officer is in the execution of the officer's office shall be
8 punished:

9 (1) If the offense is committed in time of war, by
10 confinement of not more than ten years or such other
11 punishment as a court-martial may direct; and

12 (2) If the offense is committed at any other time, by such
13 punishment as a court-martial may direct.

14 § -146 **Willfully disobeying superior commissioned**
15 **officer.** Any person subject to this chapter who willfully
16 disobeys a lawful command of that person's superior commissioned
17 officer shall be punished:

18 (1) If the offense is committed in time of war, by
19 confinement of not more than ten years or such other
20 punishment as a court-martial may direct; and



(2) If the offense is committed at any other time, by such punishment as a court-martial may direct.

§ -147 **Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.** Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of that officer's office;

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of that officer's office,

shall be punished as a court-martial may direct.

§ -148 **Failure to obey order, regulation, or rule.** Any person subject to this chapter who:

(1) Violates or fails to obey any lawful general order, regulation, or rule;



(2) Having knowledge of any other lawful order issued by a member of the state military forces, that it is that person's duty to obey, fails to obey the order; or

(3) Is derelict in the performance of that person's duties,

shall be punished as a court-martial may direct.

§ -149 Cruelty and maltreatment. Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to that person's orders shall be punished as a court-martial may direct.

§ -150 Prohibited activities with military recruit or trainee by person in position of special trust. (a) Any person subject to this chapter who:

(1) Is an officer, a noncommissioned officer, or a petty officer;

(2) Is in a training leadership position with respect to a specially protected junior member of the state military forces; and

(3) Engages in prohibited sexual activity with the specially protected junior member of the state military forces,



1 shall be punished as a court-martial may direct.

2 (b) Any person subject to this chapter who:

3 (1) Is a military recruiter and engages in prohibited
4 sexual activity with an applicant for military
5 service; or

6 (2) Is a military recruiter and engages in prohibited
7 sexual activity with a specially protected junior
8 member of the state military forces who is enlisted
9 under a delayed entry program,

10 shall be punished as a court-martial may direct.

11 (c) Consent is not a defense for any conduct at issue in a
12 prosecution under this section.

13 (d) In this section:

14 (1) The term "specially protected junior member of the
15 state military forces" means:

16 (A) A member of the state military forces who is
17 assigned to, or is awaiting assignment to, basic
18 training or other initial active duty for
19 training, including a member who is enlisted
20 under a delayed entry program;



1 (B) A member of the state military forces who is a
2 cadet, a midshipman, an officer candidate, or a
3 student in any other officer qualification
4 program; or

5 (C) A member of the state military forces in any
6 program that by regulation or rule prescribed by
7 the Secretary concerned or the governor or the
8 adjutant general, is identified as a training
9 program for initial career qualification.

10 (2) The term "training leadership position" means, with
11 respect to a specially protected junior member of the
12 state military forces, any drill instructor position
13 or other leadership position in a basic training
14 program, an officer candidate school, a reserve
15 officers' training corps unit, a training program for
16 entry into the state military forces, or any program
17 that, by regulation or rule prescribed by the
18 Secretary concerned or the governor or the adjutant
19 general, is identified as a training program for
20 initial career qualification.



1 (3) The term "applicant for military service" means a
2 person who, under regulations or rules prescribed by
3 the Secretary of concerned or the governor or the
4 adjutant general, is an applicant for original
5 enlistment or appointment in the state military
6 forces.

7 (4) The term "military recruiter" means, a person who,
8 under regulations or rules prescribed by the Secretary
9 of concerned or the governor or the adjutant general,
10 has the primary duty to recruit persons for military
11 service.

12 (5) The term "prohibited sexual activity" means, as
13 specified in regulations or rules prescribed by the
14 Secretary of concerned or the governor or the adjutant
15 general, inappropriate physical intimacy under
16 circumstances described in the regulations or rules.

17 § **-151 Mutiny or sedition.** (a) Any person subject to
18 this chapter who:

19 (1) With intent to usurp or override lawful military
20 authority, refuses, in concert with any other person,
21 to obey orders or otherwise do that person's duty or



1 creates any violence or disturbance is guilty of
2 mutiny;

3 (2) With intent to cause the overthrow or destruction of
4 lawful civil authority, creates, in concert with any
5 other person, revolt, violence, or other disturbance
6 against that authority is guilty of sedition; or

7 (3) Fails to do that person's utmost to prevent and
8 suppress a mutiny or sedition being committed in the
9 person's presence or fails to take all reasonable
10 means to inform the person's superior commissioned
11 officer or commanding officer of a mutiny or sedition
12 that the person knows or has reason to believe is
13 taking place is guilty of a failure to suppress or
14 report a mutiny or sedition.

15 (b) A person who is found guilty of attempted mutiny,
16 mutiny, sedition, or failure to suppress or report a mutiny or
17 sedition shall be punished as a court-martial may direct.

18 § -152 Offenses by sentinel or lookout. (a) Any
19 sentinel or lookout who is drunk on post, who sleeps on post, or
20 who leaves post before being regularly relieved, shall be
21 punished:



(1) If the offense is committed in time of war, by confinement of not more than ten years or other punishment as a court-martial may direct; and

(2) If the offense is committed other than in time of war, by such punishment as a court-martial may direct.

(b) Any sentinel or lookout who loiters or wrongfully sits down on post shall be punished as a court-martial may direct.

§ -153 Disrespect toward sentinel or lookout. (a) Any person subject to this chapter who, knowing that another person is a sentinel or lookout, uses wrongful and disrespectful language that is directed toward and within the hearing of the sentinel or lookout, who is in the execution of duties as sentinel or lookout, shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, knowing that another person is a sentinel or lookout, behaves in a wrongful and disrespectful manner that is directed toward and within the sight of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.



1 § **-154 Release of prisoner without authority; drinking**
2 **with prisoner.** (a) Any person subject to this chapter:

3 (1) Who, without authority to do so, releases a prisoner;
4 or

5 (2) Who, through neglect or designs, allows a prisoner to
6 escape,

7 shall be punished as a court-martial may direct, whether or not
8 the prisoner was committed in strict compliance with the law.

9 (b) Any person subject to this chapter who unlawfully
10 drinks any alcoholic beverage with a prisoner shall be punished
11 as a court-martial may direct.

12 § **-155 Unlawful detention.** Any person subject to this
13 chapter who, except as provided by law, apprehends, arrests, or
14 confines any person shall be punished as a court-martial may
15 direct.

16 § **-156 Misconduct as prisoner.** Any person subject to
17 this chapter who, while in the hands of the enemy in time of
18 war:

19 (1) For the purpose of securing favorable treatment by the
20 person's captors acts without proper authority in a
21 manner contrary to law, custom, regulation, or rule to



1 the detriment of others of whatever nationality held
2 by the enemy as civilian or military prisoners; or

3 (2) While in a position of authority over such persons
4 maltreats them without justifiable cause,

5 shall be punished as a court-martial may direct.

6 § -157 **Misbehavior before the enemy.** Any member of the
7 state military forces who before the presence of the enemy:

8 (1) Runs away;

9 (2) Shamefully abandons, surrenders, or delivers up any
10 command, unit, place, or military property that it is
11 that person's duty to defend;

12 (3) Through disobedience, neglect, or intentional
13 misconduct endangers the safety of any such command,
14 unit, place, or military property;

15 (4) Casts away the person's arms or ammunition;

16 (5) Is guilty of cowardly conduct;

17 (6) Quits the person's place of duty to plunder or
18 pillage;

19 (7) Causes false alarms in any command, unit, or place
20 under control of the state military forces;



1 (8) Willfully fails to do the person's utmost to
2 encounter, engage, capture, or destroy any enemy
3 troops, combatants, vessels, aircraft, or any other
4 thing that it is the person's duty so to encounter,
5 engage, capture, or destroy; or

6 (9) Does not afford all practicable relief and assistance
7 to any troops, combatants, vessels, or aircraft of the
8 state military forces or the armed forces belonging to
9 the State, the United States or their allies, or any
10 other state, commonwealth, or territory when engaged
11 in battle,

12 shall be punished as a court-martial may direct.

13 § -158 **Subordinate compelling surrender.** Any person
14 subject to this chapter who compels or attempts to compel the
15 commander of any place, vessel, aircraft, or other military
16 property, or of any body of members of the state military forces
17 or the armed forces of the United States to give it up to an
18 enemy or to abandon it, or who strikes the color or flag to an
19 enemy without proper authority, shall be punished as a court-
20 martial may direct.



1 § **-159 Improper use of countersign.** Any person subject
2 to this chapter who in time of war discloses the parole or
3 countersign to any person not entitled to receive it or who
4 gives to another who is entitled to receive and use the parole
5 or countersign a different parole or countersign from that
6 which, to that person's knowledge, the person was authorized and
7 required to give, shall be punished as a court-martial may
8 direct.

9 § **-160 Forcing a safeguard.** Any person subject to this
10 chapter who forces a safeguard shall be punished as a court-
11 martial may direct.

12 § **-161 Spies.** Any person who in time of war is found
13 lurking as a spy or acting as a spy in or about any place,
14 vessel, or aircraft, within the control or jurisdiction of the
15 state military forces or of the United States armed forces, or
16 in or about any shipyard, any manufacturing or industrial plant,
17 or any other place or institution engaged in work in aid of the
18 prosecution of the war by the United States, or elsewhere, shall
19 be tried by a general court-martial and on conviction shall be
20 punished as a court-martial may direct.



1 § -162 **Espionage.** (a) Any person subject to this
2 chapter who, with intent or reason to believe that it is to be
3 used to the injury of the State or the United States, or to
4 another state, commonwealth, or territory of the United States,
5 or to the advantage of a foreign nation, communicates, delivers,
6 or transmits, or attempts to communicate, deliver, or transmit,
7 to any entity described in subsection (b), either directly or
8 indirectly, anything described in subsection (c) shall be
9 punished as a court-martial may direct.

10 (b) An entity referred to in subsection (a) is:

11 (1) A foreign government;

12 (2) A faction or party or military or naval force within a
13 foreign country, whether recognized or unrecognized by
14 the United States; or

15 (3) A representative, officer, agent, employee, subject,
16 or citizen of such government, faction, party, or
17 force.

18 (c) A thing referred to in subsection (a) is a document,
19 writing, code book, signal book, sketch, photograph,
20 photographic negative, blueprint, plan, map, model, note,



1 instrument, appliance, or information relating to the State or
2 national defense.

3 § **-163 Aiding the enemy.** Any person who:

4 (1) Aids, or attempts to aid, the enemy with arms,
5 ammunition, supplies, money, or other things; or

6 (2) Without proper authority, knowingly harbors or
7 protects or gives intelligence to, or communicates or
8 corresponds with or holds any intercourse with the
9 enemy, either directly or indirectly,

10 shall be punished as a court-martial may direct.

11 § **-164 Public record offenses.** Any person subject to
12 this chapter who, willfully and unlawfully:

13 (1) Alters, conceals, removes, mutilates, obliterates, or
14 destroys a public record; or

15 (2) Takes a public record with the intent to alter,
16 conceal, remove, mutilate, obliterate, or destroy the
17 public record,

18 shall be punished as a court-martial may direct.

19 § **-165 Fraudulent enlistment, appointment, or**
20 **separation.** Any person who:



(1) Procures for that person's own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to that person's qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures for that person's own separation from the state military forces by knowingly false representation or deliberate concealment as to that person's eligibility for that separation,

shall be punished as a court-martial may direct.

§ -166 Unlawful enlistment, appointment, or separation.

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to that person to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, rule, or order shall be punished as a court-martial may direct.

§ -167 Forgery. Any person subject to this chapter who, with intent to defraud:



(1) Falsely makes or alters any signature to, or any part of, any writing that would, if genuine, impose a legal liability on another or change the person's legal right or liability to the person's prejudice; or

(2) Utters, offers, issues, or transfers the writing, known by the person to be falsely made or altered, is guilty of forgery and shall be punished as a court-martial may direct.

§ -168 **False or unauthorized pass offenses.** (a) Any person subject to this chapter who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(c) Any person subject to this chapter who wrongfully uses or possesses a false or unauthorized military or official pass,



1 permit, discharge certificate, or identification card, knowing
2 that the pass, permit, discharge certificate, or identification
3 card is false or unauthorized, shall be punished as a court-
4 martial may direct.

5 § -169 **Impersonation of officer, noncommissioned or**
6 **petty officer, or agent or official.** (a) Any person subject to
7 this chapter who, wrongfully and willfully, impersonates:

8 (1) An officer, a noncommissioned officer, or a petty
9 officer;

10 (2) An agent of superior authority of one of the armed
11 forces; or

12 (3) An official of a government,
13 shall be punished as a court-martial may direct.

14 (b) Any person subject to this chapter who, wrongfully and
15 willfully, and with intent to defraud, impersonates any person
16 referred to in paragraph (1), (2), or (3) of subsection (a)
17 shall be punished as a court-martial may direct.

18 (c) Any person subject to this chapter who wrongfully and
19 willfully, and without intent to defraud, impersonates an
20 official of a government by committing an act that exercises or



1 asserts the authority of the office that the person claims to
2 have shall be punished as a court-martial may direct.

3 § -170 **Wearing unauthorized insignia, decoration, badge,**
4 **ribbon, device, or lapel button.** Any person subject to this
5 chapter who:

6 (1) is not authorized to wear an insignia, decoration,
7 badge, ribbon, device, or lapel button; and

8 (2) wrongfully wears such insignia, decoration, badge,
9 ribbon, device, or lapel button upon the person's
10 uniform or civilian clothing,

11 shall be punished as a court-martial may direct.

12 § -171 **False official statements; false swearing.** (a)

13 Any person subject to this chapter who, with intent to deceive:

14 (1) Signs any false record, return, regulation, order, or
15 other official document, knowing it to be false; or

16 (2) Makes any other false official statement knowing it to
17 be false,

18 shall be punished as a court-martial may direct.

19 (b) Any person subject to this chapter:

20 (1) Who takes an oath or affirmation that:



1 (A) Is administered in a matter in which the oath or
2 affirmation is required or authorized by law; and

3 (B) Is administered by a person with authority to do
4 so; and

5 (2) Who, upon the oath or affirmation, makes or subscribes
6 to a statement,

7 if the statement is false and at the time of taking the oath
8 affirmation, the person does not believe the statement to be
9 true, shall be punished as a court-martial may direct.

10 § -172 (Reserved) .

11 § -173 **Military property; loss, damage, destruction, or**
12 **wrongful disposition.** Any person subject to this chapter who,
13 without proper authority::

14 (1) Sells or otherwise disposes of;

15 (2) Willfully or through neglect damages, destroys, or
16 loses; or

17 (3) Willfully or through neglect suffers to be lost,
18 damaged, destroyed, sold, or wrongfully disposed of,
19 any military property of the State, the United States, or any of
20 its states, territories, or commonwealths, shall be punished as
21 a court-martial may direct.



1 § **-174 Captured or abandoned property.** (a) All persons
2 subject to this chapter shall secure all public property taken
3 from the enemy for the service of the United States or the State
4 and shall give notice and turn over to the proper authority
5 without delay all captured or abandoned property in their
6 possession, custody, or control.

7 (b) Any person subject to this chapter who:

8 (1) Fails to carry out the duties prescribed in subsection

9 (a);

10 (2) Buys, sells, trades, or in any way deals in or
11 disposes of captured or abandoned property, whereby
12 the person receives or expects any profit, benefit, or
13 advantage to the person's self, or another directly or
14 indirectly connected with the person's self; or

15 (3) Engages in looting or pillaging,

16 shall be punished as a court-martial may direct.

17 § **-175 Property other than military property - waste,**
18 **spoilage, or destruction.** Any person subject to this chapter
19 who willfully or recklessly wastes, spoils, or otherwise
20 willfully and wrongfully destroys or damages any property other



1 than military property of the United States or of the State
2 shall be punished as a court-martial may direct.

3 **§ -176 Mail matter; wrongful taking; opening.** (a) Any
4 person subject to this chapter who, with the intent to obstruct
5 the correspondence of, or to pry into the business or secrets
6 of, any person or organization, wrongfully takes mail matter
7 before the mail matter is delivered to or received by the
8 addressee shall be punished as a court-martial may direct.

9 (b) Any person subject to this chapter who wrongfully
10 opens, secrets, destroys, or steals mail matter before the
11 matter is delivered to or received by the addressee shall be
12 punished as a court-martial may direct.

13 **§ -177 Improper hazarding of vessel or aircraft.** (a)
14 Any person subject to this chapter who, willfully and
15 wrongfully, hazards or suffers to be hazarded any vessel or
16 aircraft of the armed forces of the United States or any state
17 military force shall be punished as a court-martial may direct.

18 (b) Any person subject to this chapter who negligently
19 hazards or suffers to be hazarded any vessel or aircraft of the
20 armed forces of the United States or any state military force
21 shall be punished as a court-martial may direct.



1 § -178 (Reserved) .

2 § -179 **Drunkenness and other incapacitation offenses.**

3 (a) Any person subject to this chapter who is drunk on duty
4 shall be punished as a court-martial may direct.

5 (b) Any person subject to this chapter who, as a result of
6 indulgence in any alcoholic beverage or any drug, is
7 incapacitated for the proper performance of duty shall be
8 punished as a court-martial may direct.

9 (c) Any person subject to this chapter who is a prisoner
10 and, while in such status, is drunk shall be punished as a
11 court-martial may direct.

12 § -180 **Wrongful use, possession, etc., of controlled**
13 **substances.** (a) Any person subject to this chapter who
14 wrongfully uses, possesses, manufactures, distributes, imports
15 into the customs territory of the United States, exports from
16 the United States, or introduces into an installation, vessel,
17 vehicle, or aircraft used by or under the control of the armed
18 forces or any state military force a substance described in
19 subsection (b) shall be punished as a court-martial may direct.

20 (b) The substances referred to in subsection (a) are the
21 following:



(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance;

(2) Any substance not specified in paragraph (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States as provided in title 10 United States Code sections 801 et. seq.; and

(3) Any other substance not specified in paragraph (1) or contained on a list prescribed by the President under paragraph (2) that is listed in schedules I through V of article 202 of the Controlled Substances Act as contained in title 21 United States Code section 812).

§ -181 **Drunken or reckless operation of a vehicle, aircraft, or vessel.** (a) Any person subject to this chapter who:

(1) Operates or physically controls a vehicle, aircraft, or vessel in a reckless or wanton manner or while



1 impaired by a substance described in section -180;

2 or

3 (2) Operates or is in actual physical control of any
4 vehicle, aircraft, or vessel while drunk or when the
5 alcohol concentration in the person's blood or breath
6 is equal to or exceeds the applicable limit under
7 subsection (b),

8 shall be punished as a court martial may direct.

9 (b) For purposes of subsection (a), the applicable limit
10 on the alcohol concentration in a person's blood or breath is
11 the lesser of:

12 (1) The blood alcohol content limit under the law of the
13 State, district, territory, or commonwealth of the
14 United States in which the conduct occurred; except as
15 may be provided under paragraph (3) for conduct on a
16 military installation that is in more than one state,
17 district, territory, or commonwealth;

18 (2) The blood alcohol content limit specified in
19 subsection (c); or

20 (3) In the case of a military installation that is in more
21 than one state, district, territory, or commonwealth,



1 if those states, districts, territories, or
2 commonwealths have different blood alcohol content
3 limits under their respective state laws, the limit
4 specified for the installation.

5 (c) For purposes of subsection (b), the blood alcohol
6 content limit with respect to alcohol concentration in a
7 person's blood is 0.08 grams of alcohol per 100 milliliters of
8 blood and with respect to alcohol concentration in a person's
9 breath is 0.08 grams of alcohol per 210 liters of breath, as
10 shown by chemical analysis.

11 § -182 **Endangerment offenses.** (a) Any person subject
12 to this chapter who engages in conduct that:

13 (1) Is wrongful and reckless or is wanton; and.

14 (2) Is likely to produce death or grievous bodily harm to
15 another person,

16 shall be punished as a court-martial may direct.

17 (b) Any person subject to this chapter who:

18 (1) Fights or promotes a fight, or is concerned in or
19 connives a fight; or



1 (2) Having knowledge of a challenge sent or about to be
2 sent, fails to report the facts promptly to the proper
3 authority,
4 shall be punished as a court-martial may direct.

5 (c) Any person subject to this chapter who, willfully and
6 wrongly, discharges a firearm, under circumstances such as to
7 endanger human life shall be punished as a court-martial may
8 direct.

9 (d) Any person subject to this chapter who unlawfully
10 carries a dangerous weapon concealed on or about his person
11 shall be punished as a court-martial may direct.

12 § -183 **Communicating threats.** (a) Any person subject
13 to this chapter who wrongfully communicates a threat to injure
14 the person, property, or reputation of another shall be punished
15 as a court-martial may direct.

16 (b) Any person subject to this chapter who wrongfully
17 communicates a threat to injure the person or property of
18 another by use of:

19 (1) An explosive;

20 (2) A weapon of mass destruction;



1 (3) A biological or chemical agent, substance, or weapon;

2 or

3 (4) A hazardous material,

4 shall be punished as a court-martial may direct.

5 (c) Any person subject to this chapter who maliciously
6 communicates a false threat concerning injury to the person or
7 property of another by use of:

8 (1) An explosive;

9 (2) A weapon of mass destruction;

10 (3) a biological or chemical agent, substance, or weapon;

11 or

12 (4) A hazardous material,

13 shall be punished as a court-martial may direct.

14 (d) As used in this section, the term "false threat" means
15 a threat that, at the time the threat is communicated, is known
16 to be false by the person communicating the threat.

17 § -184 **Riot or breach of peace.** Any person subject to
18 this chapter who causes or participates in any riot or breach of
19 the peace shall be punished as a court-martial may direct.

20 § -185 **Provoking speeches or gestures.** Any person
21 subject to this chapter who uses provoking or reproachful words



1 or gestures towards any other person subject to this chapter
2 shall be punished as a court-martial may direct.

3 § -186 (Reserved) .

4 § -187 (Reserved) .

5 § -188 (Reserved) .

6 § -189 (Reserved) .

7 § -190 (Reserved) .

8 § -191 (Reserved) .

9 § -192 (Reserved) .

10 § -193 (Reserved) .

11 § -194 (Reserved) .

12 § -195 (Reserved) .

13 § -196 (Reserved) .

14 § -197 (Reserved) .

15 § -198 (Reserved) .

16 § -199 (Reserved) .

17 § -200 Offenses concerning government computers. (a)

18 Any person subject to this chapter who:

19 (1) Knowingly accesses a government computer, with an
20 unauthorized purpose, and by doing so obtains
21 classified information, with reason to believe such



1 information could be used to the injury of the United
2 States, or to the advantage of any foreign nation, and
3 intentionally communicates, delivers, transmits, or
4 causes to be communicated, delivered, or transmitted
5 such information to any person not entitled to receive
6 it;

7 (2) Intentionally accesses a government computer, with an
8 unauthorized purpose, and thereby obtains classified
9 or other protected information from any such
10 government computer; or

11 (3) Knowingly causes the transmission of a program,
12 information, code, or command, and as a result of such
13 conduct, intentionally causes damage without
14 authorization, to a government computer,
15 shall be punished as a court-martial may direct.

16 (b) In this section:

17 (1) The term "computer" has the meaning given that term as
18 provided in title 18 United States Code section 1030.

19 (2) The term "government computer" means a computer owned
20 or operated by or on behalf of the United States
21 Government, including the state military forces.



(3) The term "damage" has the meaning given that term as provided in title 18 United States Code section 1030.

§ -201 (Reserved) .

§ -202 **Frauds against the government.** Any person subject to this chapter:

(1) Who, knowing it to be false or fraudulent:

(A) Makes any claim against the United States, the State, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the State, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the State, or any officer thereof:

(A) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) Makes any oath or affirmation to any fact or to any writing or other paper knowing the oath or affirmation to be false; or



1 (C) Forges or counterfeits any signature upon any
2 writing or other paper, or uses any such
3 signature knowing it to be forged or
4 counterfeited;

5 (3) Who, having charge, possession, custody or control of
6 any money, or other property of the United States or
7 the State, furnished or intended for the armed forces
8 of the United States or the state military forces,
9 knowingly delivers to any person having authority to
10 receive it, an amount thereof less than that for which
11 a certificate or receipt is received; or

12 (4) Who, being authorized to make or deliver any paper
13 certifying the receipt of any property of the United
14 States furnished or intended for the armed forces
15 thereof, makes or delivers to any person such writing
16 without having full knowledge of the truth of the
17 statements therein contained and with intent to
18 defraud the United States or the State,

19 shall, upon conviction, be punished as a court-martial may
20 direct.

21 § -203 (Reserved) .



1 § -204 (Reserved) .

2 § -205 (Reserved) .

3 § -206 (Reserved) .

4 § -207 (Reserved) .

5 § -208 (Reserved) .

6 § -209 (Reserved) .

7 § -210 (Reserved) .

8 § -211 (Reserved) .

9 § -212 (Reserved) .

10 § -213 **Perjury.** Any person subject to this chapter who
11 in a judicial proceeding or in a course of justice conducted
12 under this chapter willfully and corruptly:

13 (1) Upon a lawful oath or affirmation, or in any form
14 allowed by law to be substituted for an oath or
15 affirmation, gives any false testimony material to the
16 issue or matter of inquiry; or

17 (2) In any declaration, certificate, verification, or
18 statement under penalty of perjury as permitted under
19 title 28 United States Code section 1746, subscribes
20 any false statement material to the issue or matter of
21 inquiry,



1 is guilty of perjury and shall be punished as a court-martial
2 may direct.

3 § -214 **Subornation of perjury.** (a) Any person subject
4 to this chapter who induces and procures another person:

5 (1) To take an oath or affirmation; and

6 (2) Falsely testify, depose, or state upon the oath or
7 affirmation,

8 shall, if the conditions specified in subsection (b) are
9 satisfied, be punished as a court-martial may direct.

10 (b) The conditions referred to in subsection (a) are the
11 following:

12 (1) The oath or affirmation is administered with respect
13 to a matter for which such oath or affirmation is
14 required or authorized by law;

15 (2) The oath or affirmation is administered by a person
16 having authority to do so;

17 (3) Upon the oath or affirmation, the other person
18 willfully makes or subscribes a statement;

19 (4) The statement is material;

20 (5) The statement is false; and



1 (6) When the statement is made or subscribed, the person
2 subject to this chapter and the other person do not
3 believe that the statement is true.

4 § **-215 Obstructing justice.** Any person subject to this
5 chapter who engages in conduct in the case of a certain person
6 against whom the accused had reason to believe there were or
7 would be criminal or disciplinary proceedings pending, with
8 intent to influence, impede, or otherwise obstruct due
9 administration of justice shall be punished as a court-martial
10 may direct.

11 § **-216 Misprision of serious offense.** Any person
12 subject to this chapter:

13 (1) Who knows that another person has committed a serious
14 offense; and

15 (2) Wrongfully conceals the commission of the offense and
16 fails to make the commission of the offense known to
17 civilian or military authorities as soon as possible,
18 shall be punished as a court-martial may direct.

19 § **-217 Wrongful refusal to testify.** Any person subject
20 to this chapter who, in the presence of a court-martial, a board
21 of officers, a court of inquiry, preliminary hearing, or an



1 officer taking a deposition, of or for the State or for the
2 United States, wrongfully refuses to qualify as a witness or to
3 answer a question after having been directed to do so by the
4 person presiding shall be punished as a court-martial may
5 direct.

6 **§ -218 Prevention of authorized seizure of property.**

7 Any person subject to this chapter who, knowing that one or more
8 persons authorized to make searches and seizures are seizing,
9 are about to seize, or are endeavoring to seize property,
10 destroys, removes, or otherwise disposes of the property with
11 intent to prevent the seizure thereof shall be punished as a
12 court-martial may direct.

13 **§ -219 Noncompliance with procedural rules.** Any person

14 subject to this chapter who:

- 15 (1) Is responsible for unnecessary delay in the
16 disposition of any case of a person accused of an
17 offense under this chapter; or
18 (2) Knowingly and intentionally fails to enforce or comply
19 with any provision of this chapter regulating the
20 proceedings before, during, or after trial of an
21 accused,



1 shall be punished as a court-martial may direct.

2 § -220 **Wrongful interference with adverse administrative**
3 **proceeding.** Any person subject to this chapter who, having
4 reason to believe that an adverse administrative proceeding is
5 pending against any person subject to this chapter, wrongfully
6 acts with the intent:

7 (1) To influence, impede, or obstruct the conduct of the
8 proceeding; or

9 (2) Otherwise obstruct the due administration of justice,
10 shall be punished as a court-martial may direct.

11 § -221 **Retaliation.** (a) Any person subject to this
12 chapter who, with the intent to retaliate against any person for
13 reporting or planning to report a criminal offense, or making or
14 planning to make a protected communication, or with the intent
15 to discourage any person from reporting a criminal offense or
16 making or planning to make a protected communication:

17 (1) Wrongfully takes or threatens to take an adverse
18 personnel action against any person; or

19 (2) Wrongfully withholds or threatens to withhold a
20 favorable personnel action with respect to any person,
21 shall be punished as a court-martial may direct.



1 (b) In this section:

2 (1) The term "protected communication" means the
3 following:

4 (A) A lawful communication to a Member of Congress or
5 an Inspector General; or

6 (B) A communication to a covered individual or
7 organization in which a member of the state
8 military forces, or the Armed Forces of the
9 United States complains of, or discloses
10 information that the member reasonably believes
11 constitutes evidence of, any of the following:

12 (i) A violation of law or regulation, including
13 a law or regulation prohibiting sexual
14 harassment or unlawful discrimination; or

15 (ii) Gross mismanagement, a gross waste of funds,
16 an abuse of authority, or a substantial and
17 specific danger to public health or safety;

18 (2) The term "Inspector General" has the meaning given
19 that term in title 10 United States Code section
20 1034(j); and



(3) The term "covered individual or organization" means any recipient of a communication specified in clauses (i) through (vi) of title 10 United States Code section 1034(b)(1)(B).

§ -222 **Conduct unbecoming an officer.** Any commissioned officer who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.

§ -223 **General article.** Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the state military forces, all conduct of a nature to bring discredit upon the state military forces, offenses specified by the governor or the adjutant general by rule, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. Where a crime constitutes an offense that violates both this chapter and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court shall be determined in accordance with section -2(b).



1 **PART XI. MISCELLANEOUS PROVISIONS**

2 § **-231 Courts of inquiry.** (a) Courts of inquiry to
3 investigate any matter may be convened by any person authorized
4 to convene a general court-martial or by any other person
5 designated by the governor or the adjutant general for that
6 purpose, whether or not the persons involved have requested such
7 an inquiry.

8 (b) A court of inquiry consists of three or more
9 commissioned officers. For each court of inquiry, the convening
10 authority shall also appoint counsel for the court.

11 (c) Any person subject to this chapter whose conduct is
12 subject to inquiry shall be designated as a party.

13 (d) Any person who is subject to this chapter or employed
14 by the state department of defense, and who has a direct
15 interest in the subject of the inquiry has the right to be
16 designated as a party upon request to the court.

17 (e) Any person designated as a party shall be given due
18 notice and has the right to be present, to be represented by
19 counsel, to cross examine witnesses, and to introduce evidence.

20 (f) Members of a court of inquiry may be challenged by a
21 party, but only for cause stated to the court.



1 (g) The members, counsel, reporter, and interpreters of
2 courts of inquiry shall take an oath or affirmation to
3 faithfully perform their duties.

4 (h) Witnesses may be summoned to appear and testify and be
5 examined before courts of inquiry, as provided for courts-
6 martial.

7 (i) Courts of inquiry shall make findings of fact but may
8 not express opinions or make recommendations unless required to
9 do so by the convening authority.

10 (j) Each court of inquiry shall keep a record of its
11 proceedings, which shall be authenticated by the signatures of
12 the president and counsel for the court and forwarded to the
13 convening authority. If the record cannot be authenticated by
14 the president, it shall be signed by a member in lieu of the
15 president. If the record cannot be authenticated by the counsel
16 for the court, it shall be signed by a member in lieu of the
17 counsel.

18 **§ -232 Authority to administer oaths or affirmations.**

19 (a) The following members of the state military forces may
20 administer oaths or affirmations for the purposes of military
21 administration, including military justice, and affidavits may



1 be taken for those purposes before persons having the general
2 powers of a notary public:

3 (1) All judge advocates;

4 (2) All summary courts-martial;

5 (3) All adjutants, assistant adjutants, acting adjutants,
6 and personnel adjutants;

7 (4) All commanding officers;

8 (5) All staff judge advocates and legal officers, and
9 acting or assistant staff judge advocates and legal
10 officers;

11 (6) The president, military judge, trial counsel, and
12 assistant trial counsel for all general and special
13 courts-martial;

14 (7) The president and counsel for the court of any court
15 of inquiry;

16 (8) All officers designated to take a deposition;

17 (9) All persons detailed to conduct an investigation; and

18 (10) All other persons designated by regulations of the
19 armed forces, rules promulgated by the governor or the
20 adjutant general, or by law.



1 (b) Officers of the state military forces may not be
2 authorized to administer oaths or affirmations as provided in
3 this section unless they are on active duty in or with those
4 forces under orders of the governor as prescribed in this
5 chapter.

6 (c) The signature without seal of any such person,
7 together with the title of the person's office, is prima facie
8 evidence of the person's authority.

9 § -233 Articles to be explained. (a) The procedures
10 and provisions of this chapter shall be explained at least once
11 every three years to each unit of the state military forces.

12 (b) The procedures and provisions of this chapter shall be
13 carefully explained to every enlisted member at the time of the
14 member's enlistment or transfer or induction into, or at the
15 time of the member's order to duty in or with any of the state
16 military forces or within ninety days thereafter.

17 (c) Under rules prescribed by the governor or the adjutant
18 general, officers with the authority to convene courts-martial
19 or to impose non-judicial punishment shall receive periodic
20 training regarding the purposes and administration of this
21 chapter.



1 (d) A complete text of this chapter and of the rules
2 adopted by the governor or the adjutant general thereunder shall
3 be made available in either hard copy or in an electronic format
4 to any member of the state military forces by the member's
5 commander, upon the member's request, for the member's personal
6 examination.

7 § -234 **Complaints of wrongs.** Any member of the state
8 military forces who has a complaint against the member's
9 commanding officer, and who, upon due application to that
10 commanding officer, is refused redress, may complain to any
11 superior commissioned officer, who shall forward the complaint
12 to the officer exercising general court-martial jurisdiction
13 over the officer against whom it is made. The officer
14 exercising general court-martial jurisdiction shall examine into
15 the complaint and take proper measures for redressing the wrong
16 complained of, and shall, as soon as possible, send to the
17 governor or the adjutant general a true statement of that
18 complaint, with the proceedings had thereon.

19 § -235 **Redress of injuries to property.** (a) Whenever a
20 complaint is made to any commanding officer that willful damage
21 has been done to the property of any person or that the person's



1 property has been wrongfully taken by members of the state
2 military forces, the commanding officer may, subject to such
3 rules as the governor or the adjutant general may adopt, convene
4 a board to investigate the complaint. The board shall consist
5 of from one to three commissioned officers, and, for the purpose
6 of that investigation, it has power to summon witnesses and
7 examine them upon oath or affirmation, to receive depositions or
8 other documentary evidence, and to assess the damages sustained
9 against the responsible parties. The assessment of damages made
10 by the board is subject to the approval of the commanding
11 officer, and the amount approved by the commanding officer shall
12 be charged against the pay of the offenders. The order of the
13 commanding officer directing charges herein authorized is
14 conclusive, except as provided in subsection (c), on any
15 disbursing officer for the payment by the disbursing officer to
16 the injured parties of the damages so assessed and approved.

17 (b) If the offenders cannot be ascertained, but the
18 organization or detachment to which they belong is known,
19 charges totaling the amount of damages assessed and approved may
20 be made in such proportion as may be considered just upon the
21 individual members thereof who are shown to have been present at



1 the scene at the time the damages complained of were inflicted,
2 as determined by the approved findings of the board.
3 Alternatively, if the offenders cannot be ascertained, but the
4 organization or detachment to which they belong is known,
5 charges totaling the amount of damages assessed and approved may
6 be paid to the injured parties from the military funds of the
7 units of the state military forces to which the offenders
8 belonged.

9 (c) Any person subject to this chapter who is accused of
10 causing willful damage to property has the right to be
11 represented by counsel, to summon witnesses in the person's
12 behalf, and to cross-examine those appearing against the person.
13 The person has the right of appeal to the next higher commander.

14 § -236 Delegation of authority by the governor;
15 rulemaking authority of the governor. (a) The governor may
16 delegate any authority vested in the governor under this chapter
17 to the adjutant general and may provide for the sub delegation
18 of any such authority as appropriate.

19 (b) The governor or the adjutant general, in accordance
20 with chapter 91, shall adopt such rules necessary to administer
21 and implement this chapter. Any rules required to be adopted by



any provision in this chapter shall be adopted in accordance with chapter 91. Chapter 91 shall apply notwithstanding section 121-5 or any other contrary provision of law.

§ -237 Case management; data collection and accessibility. The adjutant general shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system, including pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of federal and state courts:

- (1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews;
- (2) Case processing and management;
- (3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system; and
- (4) Facilitation of access to docket information, filings, and records, taking into consideration restrictions



1 appropriate to judicial proceedings and military
2 records.

3 § -238 **Execution of process and sentence.** In the state
4 military forces not in federal service, the processes and
5 sentences of its courts-martial shall be executed by the civil
6 officers prescribed by the laws of the State.

7 § -239 **Process of military courts.** (a) Military courts
8 may issue any process or mandate necessary to carry into effect
9 their powers. Such a court may issue subpoenas and subpoenas
10 duces tecum and enforce by attachment attendance of witnesses
11 and production of books and records, when it is sitting within
12 the State and the witnesses, books, and records sought are also
13 so located.

14 (b) Process and mandates may be issued by summary courts-
15 martial, military judges, or the president of other military
16 courts and may be directed to and may be executed by the
17 marshals of the military court or any peace officer and shall be
18 in such form as may be prescribed by rules issued under this
19 chapter.

20 (c) All officers to whom process or mandates may be so
21 directed shall execute them and make return of their acts



1 thereunder according to the requirements of those documents.
2 Except as otherwise specifically provided in this chapter, no
3 such officer may demand or require payment of any fee or charge
4 for receiving, executing, or returning such a process or mandate
5 or for any service in connection therewith.

6 **§ -240 Payment of fines and disposition thereof.** Fines
7 imposed by a military court may be paid to it or to an officer
8 executing its process. The amount of such fine may be noted
9 upon any state roll or account for pay of the delinquent and
10 deducted from any pay or allowance due or thereafter to become
11 due the delinquent, until the fine is liquidated. Any sum so
12 deducted shall be returned to the military court that imposed
13 the fine. The officer collecting a fine or penalty imposed by a
14 military court upon an officer or enlisted person shall pay it
15 within thirty days to the director of finance to the credit of
16 the state general fund.

17 **§ -241 Immunity for action of military courts or**
18 **nonjudicial punishment.** No accused may bring an action or
19 proceeding against:

- 20 (1) The convening authority or a member of a military
21 court or officer or person acting under its authority



1 or reviewing its proceedings because of the approval,
2 imposition, or execution of any sentence or the
3 imposition or collection of a fine or penalty, or the
4 execution of any process or mandate of a military
5 court; or

6 (2) A commanding officer for imposing any authorized
7 nonjudicial punishment.

8 § -242 **Presumption of jurisdiction.** The jurisdiction of
9 the military courts and boards established by this chapter shall
10 be presumed and the burden of proof rests on any person seeking
11 to oust those courts or boards of jurisdiction in any action or
12 proceeding.

13 § -243 **Uniformity of interpretation.** This chapter shall
14 be so construed as to effectuate its general purpose to make
15 uniform the law of those states that enact it and, so far as
16 practical, to make that law uniform with the law of the United
17 States.

18 § -244 **Severability.** The provisions of this chapter are
19 hereby declared to be severable and if any provision of this
20 chapter or the application of such provision to any person or
21 circumstance is declared invalid for any reason, such



1 declaration shall not affect the validity of the remaining
2 portions of this chapter."

3 SECTION 3. Chapter 124A, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. This Act shall take effect on January 1, 2023.

9



Report Title:

Department of Defense; Hawaii National Guard; The Hawaii Code of Military Justice

Description:

Updates the Hawaii Code of Military Justice, by repealing chapter 124A, Hawaii Revised Statutes, and adding a new chapter to promote order and discipline in the State Military Forces by fostering an independent military justice system and updating nonjudicial punishment and courts-martial procedures. Effective 1/1/2023. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

