
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, Hawaii Revised Statutes,
4 relating to the Hawaii code of military justice, was enacted in
5 1982. This was the first major update to the code of military
6 justice for the state military forces since 1894-1895. The
7 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 Accordingly, the purpose of this Act is to repeal and the
18 replace the Hawaii code of military justice.

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



1 "CHAPTER

2 HAWAII CODE OF MILITARY JUSTICE

3 PART I: GENERAL PROVISIONS

4 § -1 Definitions. In this chapter, unless the context
5 otherwise requires:

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

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

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

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

16 "Arrest in quarters" means the restraint involved is
17 enforced by a moral obligation rather than by physical means.
18 This punishment shall be imposed only on officers. An officer
19 undergoing this punishment may be required to perform those
20 duties prescribed by the United States Secretary of the Armed
21 Service concerned; provided that an officer so punished shall be



1 required to remain within that officer's quarters during the
2 period of punishment unless the limits of arrest are otherwise
3 extended by appropriate authority. The quarters of an officer
4 may consist of a military residence, whether a tent, stateroom,
5 or other quarters assigned, or a private residence when
6 government quarters have not been provided.

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

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

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

19 "Confinement" means the physical restraint of a person.

20 "Contemtuious words" means words or speech manifesting, or
21 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 chapter, which is measured in terms of days shall, when
12 served in a status other than annual field training, be
13 construed to 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 "Enlisted member" means a person in an enlisted grade.

5 "Governor" means the governor of the State.

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

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

12 (1) Certified or designated as a judge advocate in the
13 Judge Advocate General's Corps of the Army, Air Force,
14 Navy, Marine Corps, or Coast Guard, or a reserve
15 component of one of the above;

16 (2) Certified as a non-federally recognized judge advocate
17 by the senior judge advocate of the commander of the
18 force in the state military forces of which the
19 accused is a member, as competent to perform the
20 military justice duties required by this chapter; or



1 (3) Certified by a senior judge advocate of the commander
2 of another force in the state military forces, as the
3 convening authority directs, if there is no judge
4 advocate available.

5 "Legal officer" means any commissioned officer of the
6 organized militia of the State designated to perform legal
7 duties for a command.

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

9 "Military court" means a court-martial, or a court of
10 inquiry.

11 "Military judge" means an official of a general or special
12 court-martial detailed in accordance with part V of this
13 chapter.

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

17 "Officer" means a commissioned or warrant officer.

18 "Officer in charge" means a member of the state military
19 forces designated by the appropriate authority.



1 "President" means the detailed member senior in rank of a
2 court-martial then serving unless the context otherwise
3 requires.

4 "Rank" means the order of precedence among members of the
5 state military forces.

6 "Record," when used in connection with the proceedings of a
7 court-martial or court of inquiry, means:

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

10 (2) An official audiotape, videotape, digital image or
11 file, or similar material from which sound, or sound
12 and visual images, depicting the proceedings may be
13 reproduced.

14 "Restriction" means the least severe form of deprivation of
15 liberty. Restriction involves moral rather than physical
16 restraint. The severity of this type of restraint depends on
17 its duration and the geographical limits specified when the
18 punishment is imposed. A person undergoing restriction may be
19 required to report to a designated place at specified times if
20 reasonably necessary to ensure that the punishment is being
21 properly executed. Unless otherwise specified by the



1 nonjudicial punishment authority, a person in restriction may be
2 required to perform any military duty.

3 "Senior force judge advocate" means the senior judge
4 advocate of the commander of the same force of the state
5 military forces as the accused and who is that commander's chief
6 legal advisor.

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

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

14 "Superior commissioned officer" means a commissioned
15 officer superior in rank or command.

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

19 (b) Subject matter jurisdiction is established if a nexus
20 exists between an offense, either military or non-military, and
21 the state military force. Courts-martial have primary



1 jurisdiction of military offenses. A proper civilian court has
2 primary jurisdiction of a non-military offense when an act or
3 omission violates both this chapter and local criminal law,
4 foreign or domestic. A court-martial may be initiated only
5 after the civilian authority has declined to prosecute or
6 dismissed the charge; provided that jeopardy has not attached.
7 Jurisdiction over attempted crimes, conspiracy crimes,
8 solicitation, and accessory crimes shall be determined by the
9 underlying offense.

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

19 (b) No person who has deserted from the state military
20 forces shall be relieved from amenability to the jurisdiction of



1 this chapter by virtue of a separation from any later period of
2 service.

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

20 (b) If the governor fails to convene a general court-
21 martial within six months from the presentation of an



1 application for trial under this chapter, the adjutant general
2 shall substitute for the dismissal ordered by the governor a
3 form of discharge authorized for administrative issue.

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

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

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



1 of the state military forces; provided further that this grant
2 of military jurisdiction shall neither preclude nor limit
3 civilian jurisdiction over an offense, which shall be limited
4 only by the prohibition of double jeopardy.

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

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

18 (b) The adjutant general may appoint as many assistant
19 state judge advocates as the adjutant general considers
20 necessary. To be eligible for appointment, assistant state



1 judge advocates shall be officers of the state military forces
2 and members of the bar of the highest court of the State.

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

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

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



1 § -7 **Rights of the victim of an offense under this**
2 **chapter.** A victim of an offense under this chapter shall retain
3 all rights conferred by state law under chapter 801D. Nothing
4 in this chapter shall limit the rights of a victim of sexual
5 assault that qualifies for representation by a special victims'
6 counsel under title 10 United States Code section 1044e, as it
7 applies to the National Guard.

8 **PART II. APPREHENSION AND RESTRAINT**

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

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

20 (c) If an alleged offender is apprehended outside the
21 State, the alleged offender's return to the area shall be in



1 accordance with normal extradition procedures or by reciprocal
2 agreement.

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

9 § -12 **Apprehension of deserters.** Any civil officer
10 having authority to apprehend alleged offenders under the laws
11 of the United States or this State or of a state, territory,
12 commonwealth, or possession, or the District of Columbia, may
13 summarily apprehend an alleged deserter from the state military
14 forces and deliver the alleged deserter into the custody of the
15 state military forces. If an alleged offender is apprehended
16 outside the State, the alleged offender's return to the area
17 shall be in accordance with normal extradition procedures or
18 reciprocal agreement.

19 § -13 **Imposition of restraint.** (a) An enlisted member
20 may be ordered into arrest or confinement by any commissioned
21 officer by an order, oral or written, delivered in person or



1 through other persons subject to this chapter or through any
2 person authorized by this chapter to apprehend persons. A
3 commanding officer may authorize warrant officers, petty
4 officers, or noncommissioned officers to order enlisted members
5 of the commanding officer's command or subject to the commanding
6 officer's authority into arrest or confinement.

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

14 (c) No person shall be ordered apprehended or into arrest
15 or confinement except for probable cause.

16 (d) This section shall not limit the authority of persons
17 authorized to apprehend an alleged offender to secure the
18 custody of the alleged offender until the proper authority is
19 notified.

20 **§ -14 Restraint of persons charged with offenses. (a)**

21 Subject to subsection (b), any person subject to this chapter



1 may be ordered into arrest or confinement as the circumstances
2 require.

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

6 (c) When any person subject to this chapter is placed in
7 arrest or confinement prior to trial:

8 (1) Immediate steps shall be taken to inform the person of
9 the specific charge or offense of which the person is
10 accused; and

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

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

18 § -15 Place of confinement; reports and receiving of

19 prisoners. (a) If a person subject to this chapter is confined
20 before, during, or after trial, confinement shall be in a state
21 correctional facility designated by the governor, by a person



1 authorized by the governor to act, or a military confinement
2 facility.

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

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

16 (d) Civilian confinement facilities shall not charge the
17 state military forces for the cost of receiving or detaining the
18 person.

19 § -16 **Punishment prohibited before trial.** Subject to
20 section -93, no person while being held for trial or awaiting
21 a verdict shall be subjected to punishment or penalty other than



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

7 **§ -17 Delivery of alleged offenders to civil**

8 **authorities.** (a) A person subject to this chapter accused of
9 an offense against civil authority may be delivered upon request
10 to the civil authority for trial or confinement.

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

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

20 **§ -21 Commanding officer's non-judicial punishment.** (a)

21 In accordance with rules adopted by the governor, any commanding



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



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

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

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

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

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

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

(4) A reduction to the lowest or any intermediate pay grade if the soldier or airmen is in the grade of E-6 or below; provided that an enlisted member in a pay grade above E-4 shall not be reduced more than two pay grades;

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



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

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

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

8 (A) Any punishment authorized in subsection (c) (1),
9 (2), (3), and (6); and

10 (B) Arrest in quarters for not more than thirty days
11 that need not be consecutive; and

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

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

20 (f) Prior to the offer of non-judicial punishment, the
21 commanding officer shall determine whether arrest in quarters or



1 restriction shall be considered as punishments; provided that if
2 the commanding officer determine that the punishment options may
3 include arrest in quarters or restriction, the accused shall be
4 notified of the right to demand trial by court-martial; provided
5 further that if the commanding officer determines that the
6 punishment options shall not include arrest in quarters or
7 restriction, the accused shall be notified that there is no
8 right to trial by courts-martial in lieu of non-judicial
9 punishment.

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

15 (1) Mitigate reduction in grade to forfeiture of pay;

16 (2) Mitigate arrest in quarters to restriction; or

17 (3) Mitigate extra duties to restriction.

18 The mitigated punishment shall not be for a greater period
19 than the punishment mitigated. When mitigating reduction in
20 grade to forfeiture of pay, the amount of the forfeiture shall
21 not be greater than the amount that could have been imposed



1 initially under this section by the officer who imposed the
2 punishment mitigated. Reduction in grade shall be mitigated to
3 forfeiture of pay only within four months after the date of
4 execution.

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

19 (i) The imposition and enforcement of disciplinary
20 punishment under this section for any act or omission is not a
21 bar to trial by court-martial or a civilian court of competent



1 jurisdiction for a serious crime or offense growing out of the
2 same act or omission and not properly punishable under this
3 section; provided that the fact that a disciplinary punishment
4 has been enforced may be shown by the accused upon trial and,
5 when so shown, it shall be considered in determining the measure
6 of punishment to be adjudged in the event of a finding of
7 guilty.

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

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

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

15 **§ -31 Courts-martial classified; general courts-martial;**
16 **special courts-martial; summary courts-martial.** (a) The three
17 kinds of courts-martial in each of the state military forces are
18 the following:

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

20 (b);



(2) Special courts-martial, as described in subsection
(c); and

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

(b) General courts-martial consists of:

(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,



1 requests, orally or on the record or in writing,
2 a court composed of a military judge alone and
3 the military judge approves the request.

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

6 § -32 Jurisdiction of courts-martial in general. Each
7 component of the state military forces shall have court-martial
8 jurisdiction over all members of the particular component who
9 are subject to this chapter. Additionally, the Hawaii army and
10 air national guard shall have court-martial jurisdiction over
11 all members subject to this chapter.

12 § -33 Jurisdiction of general courts-martial. Subject
13 to section -32, general courts-martial shall have
14 jurisdiction to try persons subject to this chapter for any
15 offense made punishable by this chapter, and may, under
16 limitations as prescribed by the governor, adjudge any
17 punishment not forbidden by this chapter.

18 § -34 Jurisdiction of special courts-martial. (a)
19 Subject to section -32, special courts-martial shall have
20 jurisdiction to try persons subject to this chapter for any
21 offense made punishable by this chapter, and may, under



1 limitations as prescribed by the governor, adjudge any
2 punishment not forbidden by this chapter except dishonorable
3 discharge, dismissal, confinement for more than one year,
4 forfeiture of pay exceeding two-thirds pay per month, or
5 forfeiture of pay for more than one year.

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

11 **§ -35 Jurisdiction of summary courts-martial. (a)**

12 Subject to section -32, summary courts-martial shall have
13 jurisdiction to try persons subject to this chapter, except
14 officers, cadets, candidates, and midshipmen, for any offense
15 made punishable by this chapter under limitations as prescribed
16 by the governor.

17 (b) No person with respect to whom summary courts-martial
18 have jurisdiction shall be brought to trial before a summary
19 court-martial if that person objects thereto. If objection to
20 trial by summary court-martial is made by an accused, trial by
21 special or general court-martial may be ordered as appropriate.



Summary courts-martial may, under limitations as prescribed by the governor, adjudge any punishment not forbidden by this chapter except dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

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

PART V. COMPOSITION OF COURTS-MARTIAL

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

General courts-martial may be convened by:

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

(b) If any commanding officer authorized under subsection (a) is an accuser, the court shall be convened by superior



1 competent authority and may in any case be convened by the
2 superior authority if considered desirable by the authority.

3 **§ -42 Who may convene special courts-martial. (a)**

4 Special courts-martial may be convened by:

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

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

18 **§ -43 Who may convene summary courts-martial. (a)**

19 Summary courts-martial may be convened by:

- 20 (1) Any person who may convene a general or special court-
21 martial;



1 (2) The commanding officer of a detached company or other
2 detachment, or corresponding unit of the Army;

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

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

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

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

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



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



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

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

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

17 (g) The convening authority shall detail not less than the
18 number of members necessary to impanel the court-martial under
19 section -49.

20 (h) Before a court-martial is assembled for the trial of a
21 case, the convening authority may excuse a member of the court



1 from participating in the case. The convening authority may
2 delegate the authority under this subsection to a judge advocate
3 or to any other principal assistant judge advocate.

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

8 § -45 Military judge of a general or special court-
9 martial. (a) A military judge shall be detailed to each
10 general and special court-martial. The military judge shall
11 preside over each open session of the court-martial to which the
12 military judge has been detailed.

13 (b) A military judge shall be:

14 (1) An active or retired commissioned officer of an
15 organized state military force;

16 (2) A member in good standing of the bar of the highest
17 court of the State or a member of the bar of a federal
18 court for at least five years; and

19 (3) Certified as qualified for duty as a military judge by
20 the senior force judge advocate that is in the same
21 force as the accused.



1 (c) In the instance when a military judge is not a member
2 of the bar of the highest court of the State, the military judge
3 shall be deemed admitted pro hac vice, subject to filing a
4 certificate with the senior force judge advocate that is in the
5 same force as the accused, setting forth the certifications as
6 provided in subsection (b)(3).

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

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

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



1 § **-46 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 adopted 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 § **-47 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 shall 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 shall act later in the same case for the
5 defense, nor shall any person who has acted for the defense act
6 later in 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; 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.

§ -48 Detail or employment of reports and interpreters.

in accordance with rules adopted by the governor, 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. The convening authority of a military court may detail or employ interpreters who shall interpret for the court.

§ -49 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 a court-martial is assembled, no member shall be absent unless the member is excused:

(1) As a result of a challenge;

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



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

3 (b) In accordance with rules adopted by the governor or
4 the adjutant general, the military judge of a general or special
5 court-martial with members shall:

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

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

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

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

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

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

20 (2) Fewer than four members with respect to a special
21 court-martial,



1 the trial shall not proceed unless the convening authority
2 details new members and, from among the members so detailed, the
3 military judge impanels new members sufficient in number to
4 provide the membership specified in subsection (f).

5 (f) The membership referred to in subsection (e) shall be
6 as follows:

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

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

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

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

19 (i) In the case of a new military judge under subsection
20 (g), the trial shall proceed as if no evidence had been
21 introduced, unless the evidence previously introduced is read



1 or, in the case of audiotape, videotape, or similar recording,
2 is played, in the presence of the new military judge, the
3 accused, and counsel for both sides.

4 **PART VI. PRE-TRIAL PROCEDURE**

5 **§ -51 Charges and specifications.** (a) Charges and
6 specifications:

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

9 (2) Shall be referred by presentment in writing, signed
10 under oath or affirmation before a commissioned
11 officer of the armed forces who is authorized to
12 administer oaths or affirmations, and shall state
13 that:

14 (A) The signer has personal knowledge of or has
15 investigated the matters set forth in the charges
16 and specifications; and

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



(b) 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 adopted 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 -7 for victims of sexual assault qualifying for a special



1 victims' counsel under title 10 United States Code
2 section 1044e as it applies to the National Guard.

3 (b) The rules adopted under subsection (a) shall:

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

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

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

15 (d) The governor or the adjutant general shall adopt rules
16 providing for the manner in which military judges shall be
17 detailed to proceedings under subsection (a).

18 (e) In accordance with rules adopted by the governor or
19 the adjutant general, a military judge detailed to a proceeding
20 under subsection (a), other than a proceeding described in



1 subsection (a)(2), may designate a military magistrate to
2 preside over the proceeding.

3 § **-53 Compulsory self-incrimination prohibited.** (a) No
4 person subject to this chapter shall compel any person to
5 incriminate the person's self or to answer any question the
6 answer to which may tend to incriminate the person.

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

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

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



1 influence, or unlawful inducement shall 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) In accordance with rules adopted by the governor or
11 the adjutant general, a preliminary hearing shall not be held if
12 the accused submits a written waiver to the convening authority
13 and the convening authority determines that a hearing is not
14 required.

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

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

19 (2) Whether or not there is probable cause to believe that
20 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 -47; 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 -47 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 is relevant to a disposition under
16 sections -51 and -54, in accordance with rules
17 adopted by the governor or the adjutant general; 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 shall have the right to be represented at the
5 preliminary hearing as provided in section -63 and in rules
6 adopted thereunder. 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 shall 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 shall 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
21 the recording and shall have access to the recording in



1 accordance with rules adopted by the governor or the adjutant
2 general.

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; provided that failure to
16 follow the requirements does not constitute jurisdictional
17 error. A defect in a report under subsection (e) is not a basis
18 for relief if the report is in substantial compliance with that
19 subsection.

20 (l) In accordance with rules adopted pursuant to
21 subsection (b), a preliminary hearing shall not be held if the



1 accused submits a written waiver to the convening authority and
2 the convening authority determines that a hearing is not
3 required.

4 (m) For purposes of this section, the term "victim" means
5 a person who:

6 (1) Is alleged to have suffered a direct physical,
7 emotional, or pecuniary harm as a result of the
8 matters set forth in a charge or specification being
9 considered; and

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

11 § -55 Advice to convening authority before referral to
12 trial. (a) Before referral of charges and specifications to a
13 general court-martial for trial, the convening authority shall
14 submit the matter to the staff judge advocate for advice, which
15 the staff judge advocate shall provide to the convening
16 authority in writing. The convening authority shall not refer a
17 specification under a charge to a general court-martial unless
18 the staff judge advocate advises the convening authority in
19 writing that:

20 (1) The specification alleges an offense under this
21 chapter;



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

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

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

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

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

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

21 (1) To correct errors in form; and



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

(f) For purposes of 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.

§ -56 Service of charges; commencement of trial. (a)

In general, trial counsel detailed for a court-martial under section -47 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, shall 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) shall 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 the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

PART VII. TRIAL PROCEDURE

§ -61 Governor or the adjutant general; rulemaking authority. Additional pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial and other military tribunals, and procedures for courts of inquiry, shall be adopted by the governor or the adjutant general by rule or as otherwise provided by law, and shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces that are not contrary to or inconsistent with this chapter.

§ -62 Unlawfully influencing action of court. (a) No authority convening a general, special, or summary court-martial, nor any other commanding officer or officer serving on



1 the staff thereof, shall censure, reprimand, or admonish the
2 court or any member, military judge, or counsel thereof, with
3 respect to the findings or sentence adjudged by the court or
4 with respect to any other exercise of its or their functions in
5 the conduct of the proceeding. No person subject to this
6 chapter shall attempt to coerce or, by any unauthorized means,
7 influence the action of a court-martial or any other military
8 tribunal or any member thereof, in reaching the findings or
9 sentence in any case, or the action of any convening, approving,
10 or reviewing authority with respect to their judicial acts.

11 This subsection shall not apply to:

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

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

20 (b) In the preparation of an effectiveness, fitness, or
21 efficiency report, or any other report or document used in whole



1 or in part for the purpose of determining whether a member of
2 the armed forces is qualified to be advanced in grade, in
3 determining the assignment or transfer of a member of the armed
4 forces, or in determining whether a member of the armed forces
5 should be retained on active duty, no person subject to this
6 chapter shall, in preparing any report:

7 (1) Consider or evaluate the performance of duty of any
8 member as a member of a court-martial or witness
9 therein; or

10 (2) Give a less favorable rating or evaluation of any
11 member of the armed forces because of the zeal with
12 which the member, as counsel, represented any accused
13 before a court-martial.

14 **§ -63 Duties of trial counsel and defense counsel.** (a)

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

18 (b) The accused shall have the right to be represented in
19 the accused's defense before a general or special court-martial
20 or at a preliminary hearing under section -54 as provided in
21 this section.



1 (c) The accused may be represented:

2 (1) By military counsel detailed under section -47;

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

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

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

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

15 (e) The accused shall not be entitled to be represented by
16 more than one military counsel; provided that the person
17 authorized under section -47 to detail counsel in their own
18 discretion may:

19 (1) Detail additional military counsel as assistant
20 defense counsel; and



1 (2) Approve a request from the accused that military
2 counsel detailed under subsection (c)(1) act as
3 assistant defense counsel, if the accused is
4 represented by military counsel of the accused's own
5 selection under subsection (c)(2).

6 (f) The senior force judge advocate of the same force of
7 which the accused is a member shall determine whether the
8 military counsel selected by an accused is reasonably available.

9 (g) In any court-martial proceeding resulting in a
10 conviction, the defense counsel may:

11 (1) Forward for attachment to the record of proceedings a
12 brief of the matters as the defense counsel determines
13 should be considered on behalf of the accused on
14 review, including any objection to the contents of the
15 record that the defense counsel considers appropriate;

16 (2) Assist the accused in the submission of any matter
17 under part IX; and

18 (3) Take other actions authorized by this chapter.

19 (h) An assistant trial counsel of a general court-martial
20 may, under the direction of the trial counsel or when the
21 assistant trial counsel is qualified to be a trial counsel as



1 required by section -47, perform any duty imposed by law,
2 rule, or the custom of the service upon the trial counsel of the
3 court. An assistant trial counsel of a special court-martial
4 may perform any duty of the trial counsel.

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

8 § -64 Sessions. (a) At any time after the service of
9 charges that have been referred for trial to a court-martial
10 composed of a military judge and members, the military judge
11 may, subject to section -55, call the court into session
12 without the presence of the members for the purpose of:

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

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

20 (3) Holding the arraignment and receiving the pleas of the
21 accused;



1 (4) Conducting a sentencing proceeding and sentencing the
2 accused under section -79; and

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

7 (b) Proceedings under subsection (a) shall be conducted in
8 the presence of the accused, the defense counsel, and the trial
9 counsel and shall be made a part of the record. These
10 proceedings may be conducted notwithstanding the number of
11 members of the court and without regard to section -49. If
12 authorized by rule, and if at least one defense counsel is
13 physically in the presence of the accused, the presence required
14 by this subsection may otherwise be established by audiovisual
15 technology, including video teleconferencing technology.

16 (c) When the members of a court-martial deliberate or
17 vote, only the members shall be present. All other proceedings,
18 including any other consultation of the members of the court
19 with counsel or the military judge, shall be made a part of the
20 record and shall be in the presence of the accused, the defense
21 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 appears 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 shall 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 -49, 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; provided that preemptory
17 challenges shall not be exercised at that time.

18 (b) Each accused and the trial counsel shall be entitled
19 initially to one preemptory challenge of members of the court.
20 The military judge shall 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 -49, 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 the members are
8 presented and decided, each accused and the trial counsel shall
9 be 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. The rules may provide



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

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

10 § -68 Statute of limitations. (a) A person charged
11 with desertion or absence without leave in time of war, or with
12 aiding the enemy or with mutiny, may be tried and punished at
13 any time without limitation.

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



1 (c) Except as otherwise provided in this section, a person
2 charged with any offense shall not be liable to be tried by
3 court-martial or punished under section -21 if the offense
4 was 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) New charges and specifications shall:

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

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

13 § -69 **Former jeopardy.** (a) No person shall without the
14 person's consent be tried a second time in any military court of
15 the State for the same offense.

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

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



1 (1) After introduction of evidence; and

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

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

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

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

16 § -70 **Pleas of the accused.** (a) If an accused after
17 arraignment makes an irregular pleading, or after a plea of
18 guilty sets up matter inconsistent with the plea, or if it
19 appears that the accused has entered the plea of guilty
20 improvidently or through a lack of understanding of its meaning
21 and effect, or if the accused fails or refuses to plead, a plea



1 of not guilty shall be entered in the record, and the court
2 shall proceed as though the accused had pleaded not guilty.

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

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

14 **§ -71 Opportunity to obtain witnesses and other**
15 **evidence.** (a) In a case referred for trial by court-martial,
16 the trial counsel, the defense counsel, and the court-martial
17 shall have equal opportunity to obtain witnesses and other
18 evidence in accordance with rules adopted by the governor or the
19 adjutant general or as provided by law.

20 (b) Any subpoena or other process issued under this
21 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 adopted by the governor or the adjutant general 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;

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

or



1 (4) As otherwise authorized under this chapter.

2 (e) An investigative subpoena under subsection (d)(3) may
3 be issued before referral of charges to a court-martial only if
4 a general court-martial convening authority has authorized
5 counsel for the government to issue a subpoena or a military
6 judge issues a subpoena pursuant to section -52.

7 (f) With respect to an investigation of an offense under
8 this chapter, a military judge detailed in accordance with
9 sections -41, -42, or -45 may issue warrants or court
10 orders for contents of, and records concerning, wire or
11 electronic communications in the same manner as warrants and
12 orders may be issued by courts of the State under chapter 803,
13 subject to limitations as prescribed by the governor or the
14 adjutant general by rule or as prescribed by law.

15 (g) If a person requests relief from a subpoena or other
16 process under this section on grounds that compliance is
17 unreasonable or oppressive or is prohibited by law, a military
18 judge detailed in accordance with sections -41, -42, or
19 -45 shall review the request and shall:

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



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

3 § -72 Refusal of person not subject to chapter to
4 appear, testify, or produce evidence. Any person not subject to
5 this chapter who:

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

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

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

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

20 § -73 Contempts; authority to punish; punishment. (a)

21 With respect to any proceeding under this chapter:



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

3 (2) Any military magistrate designated to preside under
4 section -46; or

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

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

11 (c) A punishment imposed under this section:

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

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

19 § -74 **Depositions.** (a) At any time after charges have
20 been signed, as provided in section -51, any party may take
21 oral or written depositions unless an authority competent to



1 convene a court-martial for the trial of those charges forbids
2 it for good cause. If a deposition is to be taken before
3 charges are referred for trial, an authority may designate
4 commissioned officers to represent the prosecution and the
5 defense and may authorize those officers to take the deposition
6 of any witness.

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

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

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

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



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

6 (3) That the present whereabouts of the witness is
7 unknown.

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

14 § -75 Admissibility of sworn testimony from records of
15 courts of inquiry. (a) In any case not extending to the
16 dismissal of a commissioned officer, the sworn testimony,
17 contained in the duly authenticated record of proceedings of a
18 court of inquiry, of a person whose oral testimony cannot be
19 obtained, may, if otherwise admissible under the rules of
20 evidence, be read in evidence by any party before a court-
21 martial if the accused was a party before the court of inquiry



1 and if the same issue was involved or if the accused consents to
2 the introduction of the evidence.

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

6 (c) The sworn testimony admissible under subsection (a)
7 may be read in evidence before a court of inquiry or a military
8 board.

9 (d) Sworn testimony that:

10 (1) Is recorded by audiotape, videotape, or similar
11 method; and

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

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

18 § -76 Defense of lack of physical or mental

19 responsibility. (a) It is an affirmative defense in a trial by
20 court-martial that, at the time of the commission of the acts
21 constituting the offense, the accused, as a result of a severe



1 physical or mental disease or defect, was unable to appreciate
2 the nature and quality or the wrongfulness of the acts. Mental
3 disease or defect shall not otherwise constitute a defense.

4 (b) The accused has the burden of proving the defense of
5 lack of physical or mental responsibility by clear and
6 convincing evidence.

7 (c) Whenever lack of physical or mental responsibility of
8 the accused with respect to an offense is properly at issue, the
9 military judge shall follow the forms and procedures of chapter
10 704.

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

14 (1) A majority of the members of the court-martial present
15 at the time the vote is taken determines that the
16 defense of lack of physical or mental responsibility
17 has been established by clear and convincing evidence;
18 or

19 (2) In the case of a court-martial composed of a military
20 judge only, the military judge determines that the



1 defense of lack of physical or mental responsibility
2 has been established by clear and convincing evidence.

3 § -77 **Voting and rulings.** (a) Voting by members of a
4 general or special court-martial upon questions of challenge, on
5 the findings, and on the sentence shall be by secret written
6 ballot. The junior member of the court shall in each case count
7 the votes. The count shall be checked by the president, who
8 shall forthwith announce the result of the ballot to the members
9 of the court.

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

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



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

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

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

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

13 (d) Subsections (a), (b), and (c) shall not apply to a
14 court-martial composed of a military judge only. The military
15 judge of a court-martial shall determine all questions of law
16 and fact arising during the proceedings and, if the accused is
17 convicted, adjudge an appropriate sentence. The military judge
18 of a court-martial shall make a general finding and shall in
19 addition on request find the facts specially. If an opinion or
20 memorandum of decision is filed, it will be sufficient if the
21 findings of fact appear therein.



1 § -78 **Votes required for conviction, sentencing, and**
2 **other matters.** (a) No person shall be convicted of an offense
3 in a general or special court-martial, other than:

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

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

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

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

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



(d) A tie vote on a challenge under section -66 shall disqualify the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity shall be a determination against the accused. A tie vote on any other question shall be a determination in favor of the accused.

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

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

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

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

§ -80 Plea agreements. (a) At any time before the announcement of findings under section -79, the convening



1 authority and the accused may enter into a plea agreement with
2 respect to the following matters:

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

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

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

12 (1) Contains a provision that has not been accepted by
13 both parties;

14 (2) Contains a provision that is not understood by the
15 accused;

16 (3) Contains a provision for a sentence that is less than
17 the mandatory minimum sentence applicable to an
18 offense prescribed by this chapter;

19 (4) Is prohibited by law; or

20 (5) Is contrary to or is inconsistent with rules adopted
21 by the governor or the adjutant general, or the Hawaii



1 rules of penal procedures with respect to terms,
2 conditions, or other aspects of plea agreements.

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

6 § -81 **Record of trial.** (a) Each general or special
7 court-martial shall keep a separate record of the proceedings in
8 each case brought before it. The record shall be certified by a
9 recorder of the proceedings and authenticated by the signatures
10 of the military judge and the senior member of the panel or
11 military judge alone if presided by a judge alone. If the
12 record cannot be authenticated by either the military judge or
13 senior member of the panel, by reason of death, disability, or
14 absence, it shall be signed by the next senior member of the
15 panel in lieu of the military judge or senior officer. If both
16 the military judge and the senior member of the panel are
17 unavailable, the record shall be authenticated by two members of
18 the panel.

19 (b) Each summary court-martial shall keep a separate
20 record of the proceedings in each case, and the record shall be



1 certified in the manner required by rules adopted by the
2 governor or the adjutant general or as required by this chapter.

3 (c) Except as provided in subsection (d), the record shall
4 contain matters as prescribed by the governor or the adjutant
5 general by rule.

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

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

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

21 **PART VIII. SENTENCES**



1 § **-91 Cruel and unusual punishments prohibited.**

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

7 § **-92 Sentencing.** (a) The punishment directed by a
8 court-martial for an offense shall not exceed limits as
9 prescribed by the governor or the adjutant general for that
10 offense; provided that in no instance shall a sentence exceed
11 more than ten years confinement. A conviction by general court-
12 martial of any offense for which an accused may receive a
13 sentence of confinement for more than one year is a felony
14 offense. Except for convictions by a summary court-martial, all
15 other offenses are misdemeanors. Any conviction by a summary-
16 court martial is not a criminal conviction.

17 (b) Except as provided in subsection (a) of section -
18 80, punishment for the following offenses shall include
19 dismissal or dishonorable discharge, as applicable:

20 (1) Sexual assault in the first degree under section 707-
21 730;



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

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

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

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

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

(2) The impact of the offense on:

(A) The financial, social, psychological, or medical 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:



- 1 (A) To reflect the seriousness of the offense;
2 (B) To promote respect for the law;
3 (C) To provide just punishment for the offense;
4 (D) To promote adequate deterrence of misconduct;
5 (E) To protect others from further crimes by the
6 accused;
7 (F) To rehabilitate the accused; and
8 (G) To provide, in appropriate cases, the opportunity
9 for retraining and return to duty to meet the
10 needs of the service; and

11 (4) The sentences available under this chapter.

12 (d) In announcing the sentence in a general or special
13 court-martial in which the accused is sentenced by military
14 judge alone under section -79, the military judge shall, with
15 respect to each offense of which the accused is found guilty,
16 specify the term of confinement, if any, and the amount of fine,
17 if any. If the accused is sentenced to confinement for more
18 than one offense, the military judge shall specify whether the
19 terms of confinement are to run consecutively or concurrently.

20 (e) In a general or special court-martial in which the
21 accused has elected sentencing by members, the court-martial



1 shall announce a single sentence for all of the offenses of
2 which the accused was found guilty.

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

8 (1) The sentence violates the law; or

9 (2) The sentence is plainly unreasonable as determined in
10 accordance with standards and procedures adopted by
11 the governor or the adjutant general.

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

15 § -93 **Effective date of sentences.** (a) A court-martial
16 sentence shall be executed and take effect as follows:

17 (1) A forfeiture of pay or allowances shall be applicable
18 to pay and allowances accruing on and after the date
19 on which the sentence takes effect. Any forfeiture of
20 pay or allowances or reduction in grade that is



1 included in a sentence of a court-martial shall take
2 effect on the earlier of:

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

5 (B) In the case of a summary court-martial, the date
6 on which the sentence is approved by the
7 convening authority;

8 (2) Any period of confinement included in a sentence of a
9 court-martial shall begin to run from the date the
10 sentence is adjudged by the court-martial; provided
11 that periods during which the sentence to confinement
12 is suspended or deferred shall be excluded in
13 computing the service of the term of confinement;

14 (3) If in the case of a commissioned officer, cadet, or
15 midshipman, the sentence of a court-martial extends to
16 dismissal or in the case of an enlisted member, the
17 sentence of a court-martial extends to a dishonorable
18 discharge, that part of the sentence providing for
19 dismissal shall not be executed until approved by the
20 governor. The governor may commute, remit, or suspend
21 the sentence, or any part of the sentence as the



1 governor sees fit. In the time of war or state of
2 emergency the governor may commute a sentence of
3 dismissal or dishonorable discharge to reduction to
4 any enlisted grade. A person so reduced may be
5 required to serve for the duration of the war or
6 emergency and six months thereafter; and

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

12 (b) On application by an accused, the convening authority
13 or, if the accused is no longer under that convening authority's
14 jurisdiction, the officer exercising general court-martial
15 jurisdiction over the command to which the accused is currently
16 assigned, may, in their sole discretion, defer the effective
17 date of a sentence of confinement, reduction, or forfeiture.
18 The deferment shall terminate upon entry of judgment or, in the
19 case of a summary court-martial, when the convening authority
20 acts on the sentence. The deferment may be rescinded at any
21 time by the officer who granted it or, if the accused is no



1 longer under that officer's jurisdiction, by the officer
2 exercising general court-martial jurisdiction over the command
3 to which the accused is currently assigned.

4 (c) In any case in which a court-martial sentences a
5 person to confinement and review of the case under section -
6 111 is pending, the governor may defer further service of the
7 sentence to confinement while that review is pending.

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

9 (1) The time for the accused to file a petition for review
10 by the Hawaii intermediate court of appeals under
11 section -111 has expired and the accused has not
12 filed a timely petition for review and the case is not
13 otherwise under review by that court; or

14 (2) A review under section -111 is completed by the
15 Hawaii intermediate court of appeals and:

16 (A) The time for the accused to file a petition for
17 review by the Hawaii supreme court has expired
18 and the accused has not filed a timely petition
19 for the review and the case is not otherwise
20 under review by that court;



1 (B) The petition by the accused is rejected by the
2 Hawaii supreme court; or

3 (C) Review is completed in accordance with the
4 judgment of the intermediate court of appeals and
5 review is completed in accordance with the
6 judgment of the Hawaii supreme court.

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

9 § -94 Execution of confinement. (a) A sentence of
10 confinement adjudged by a military court, whether or not the
11 sentence includes discharge or dismissal, and whether or not the
12 discharge or dismissal has been executed, may be carried into
13 execution by confinement in any place of confinement under the
14 control of any of the forces of the state military forces or in
15 any state correctional facility designated for that purpose.
16 Persons so confined in a state correctional facility are subject
17 to the same discipline and treatment as persons confined or
18 committed to a state correctional facility by the courts of the
19 State.

20 (b) The omission of the words "hard labor" from any
21 sentence or punishment of a court-martial adjudging confinement



1 shall not deprive the authority executing that sentence or
2 punishment of the power to require hard labor as a part of the
3 punishment.

4 (c) The keepers, officers, and wardens of state
5 correctional facilities designated by the governor, or by a
6 person authorized by the governor to act under part II shall
7 receive persons ordered into confinement before trial and
8 persons committed to confinement by a military court and shall
9 confine them according to law. No keeper, officer, or warden
10 shall require payment of any fee or charge for so receiving or
11 confining a person.

12 § -95 Sentences; reduction in enlisted grade upon
13 approval. (a) A court-martial sentence of an enlisted member
14 in a pay grade above E-1, as set forth in the judgment of the
15 court-martial entered into the record under section -105,
16 that includes:

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

18 (2) Confinement,

19 Shall reduce that member to pay grade E-1, if the reduction is
20 authorized by rules adopted by the governor or the adjutant



1 general. The reduction in pay grade shall take effect on the
2 date on which the judgment is so entered.

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

12 § -96 Sentences; forfeiture of pay and allowances during
13 confinement. (a) A court-martial sentence described in
14 subsection (b) shall result in the forfeiture of pay or of pay
15 and allowances due that member during any period of confinement
16 or parole. The forfeiture pursuant to this section shall take
17 effect on the date determined under section -93 and may be
18 deferred as provided in that section. The pay and allowances
19 forfeited in the case of a general court-martial shall be all
20 pay and allowances due that member during the period and in the



1 case of a special court-martial shall be two-thirds of all pay
2 due that member during the period.

3 (b) A sentence covered by this section is any sentence
4 that includes:

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

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

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

16 (d) If the sentence of a member who forfeits pay and
17 allowances under subsection (a) is set aside or disapproved or
18 as finally approved does not provide for a punishment referred
19 to in subsection (b), the member shall be paid the pay and
20 allowances that the member would have been paid, except for the



1 forfeiture, for the period during which the forfeiture was in
2 effect.

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

4 **§ -101 Error of law; lesser included offense.** (a) A
5 finding or sentence of a court-martial shall not be held
6 incorrect on the ground of an error of law unless the error
7 materially prejudices the substantial rights of the accused.

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

11 **§ -102 Post-trial processing in general and special**
12 **courts-martial.** (a) The military judge of a general or special
13 court-martial shall enter into the record of trial a document
14 entitled "statement of trial results" that shall set forth:

- 15 (1) Each plea and finding;
16 (2) The sentence, if any; and
17 (3) Other information as prescribed by the governor or the
18 adjutant general by rule.

19 (b) Copies of the statement of trial results shall be
20 provided promptly to the convening authority, the accused, and
21 any victim of the offense.



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

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

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

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

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

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

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

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



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

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

7 (4) A general or special court-martial in which the
8 accused is found guilty of sexual assault in the first
9 degree or continuous sexual assault of a minor under
10 fourteen years of age or other offense as prescribed
11 by the governor or the adjutant general by rule.

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

15 (d) In accordance with rules adopted by the governor or
16 the adjutant general, a commissioned officer commanding for the
17 time being, a successor in command, or any person exercising
18 general court-martial jurisdiction may act under this section in
19 place of the convening authority.



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

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

7 (2) A sentence of dismissal, dishonorable discharge, or
8 bad-conduct discharge.

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

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

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

16 (2) A sentence of dismissal, dishonorable discharge, or
17 bad-conduct discharge.

18 (h) Except as provided in subsection (i) or (j), the
19 convening authority under subsection (g) shall not:

20 (1) Suspend a mandatory minimum sentence; or



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

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

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

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

20 (l) In determining whether to act under this section, the
21 convening authority shall consider matters submitted in writing



1 by the accused or any victim of an offense in accordance with
2 rules adopted by the governor or the adjutant general. The
3 rules shall include:

4 (1) Procedures for notice of the opportunity to make
5 submissions;

6 (2) The deadlines for submissions; and

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

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

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

18 (o) If the convening authority reduces, commutes, or
19 suspends the sentence, the decision of the convening authority
20 shall include a written explanation of the reasons for the
21 action.



(p) If the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall be forwarded to the military judge for appropriate modification of the entry of judgment, which shall be transmitted to the senior force judge advocate for appropriate action.

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

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

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

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

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

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



1 (6) Disapprove the sentence and order a rehearing as to
2 the sentence.

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

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

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

17 (e) In accordance with rules adopted by the governor or
18 the adjutant general, a commissioned officer commanding a
19 successor in command or any person exercising general court-
20 martial jurisdiction may act under this section in place of the
21 convening authority.



1 (f) The convening authority shall not order a rehearing
2 under this section:

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

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

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

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

17 (h) In a general or special court-martial, the decision of
18 the convening authority under this section shall be forwarded to
19 the military judge, with copies provided to the accused and to
20 any victim of the offense.



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

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

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

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

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

or

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

(b) In accordance with rules adopted by the governor or the adjutant 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 shall constitute the judgment of the court-martial and shall be recorded and distributed in accordance with rules adopted 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, in accordance with rules adopted by the governor or the adjutant general, the accused may waive the right to appeal. 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 -111.



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 shall 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. The 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 shall not be taken
13 when 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 as prescribed in section -111.

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; provided 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) This section shall be liberally construed to affect
9 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 shall not be tried
14 for any offense of which the accused was found not guilty by the
15 first 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 prescribed by the governor or the adjutant
8 general by rule.

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
13 limitations as prescribed by the governor or the adjutant
14 general by rule.

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



1 advocate has acted in the same case as an accuser, preliminary
2 hearing officer, member of the court, military judge, or counsel
3 or has otherwise acted on behalf of the prosecution or defense.

4 The judge advocate's review shall be in writing and shall
5 contain 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) The 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) Charges shall be dismissed if a rehearing is ordered
18 but the convening authority finds a rehearing impracticable.

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 for review.

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 -111 by
15 means of depositing in the United States mail for delivery by
16 first class certified mail to the accused at an address provided
17 by the accused or, if no 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) shall not apply if the accused waives
21 the right to appeal under section -106.



1 (e) A review shall be completed in each general and
2 special court-martial appealed to the State's intermediate court
3 of appeals by the accused.

4 (f) A review conducted under this section may be conducted
5 by an attorney within the office of the judge advocate for the
6 state military forces or by another attorney designated in
7 accordance with rules adopted by the governor or the adjutant
8 general.

9 (g) A review shall include a written decision providing
10 each of the following:

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

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

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

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

19 (h) A review shall be completed in each general and
20 special court-martial if:



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

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

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

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

13 (k) In setting aside findings or sentence, the state judge
14 advocate may order a rehearing; provided that a rehearing shall
15 not be ordered in violation of section -69.

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

19 (m) If the state judge advocate sets aside findings and
20 orders a rehearing and the convening authority determines that a



1 rehearing would be impractical, the convening authority shall
2 dismiss the charges.

3 § -111 **Review by state appellate authority.** (a) An
4 accused, who was tried by a special or general court-martial and
5 who deems the accused is self aggrieved after the accused has
6 exhausted all of the accused's rights of review under this part,
7 shall be entitled to appeal the judgment or sentence of the
8 special or general court-martial, as modified on review under
9 this part prior to judicial review under this section, subject
10 to chapter 602, in the manner provided for civil appeals from
11 the circuit courts, and within the time provided by the rules of
12 court.

13 (b) The filing of an appeal pursuant to subsection (a)
14 shall not of itself stay the execution of the judgment or
15 sentence appealed from; provided that the appellate court may
16 stay the same upon motion upon conditions as it deems proper,
17 notwithstanding any law to the contrary relating to the
18 effective date or execution of sentences.

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



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

6 (d) Upon the request of the accused, the state judge
7 advocate shall appoint a lawyer in accordance with section
8 -112, who is a member of the bar of the highest court of the
9 State and who has been qualified as a judge advocate, as defined
10 in section -1 and section -47, to represent the accused in
11 the accused's appeal of the court-martial judgment or sentence.
12 If the accused wishes to be represented by civilian counsel
13 rather than by appointed military counsel, the accused may do so
14 at the accused's own expense.

15 § -112 **Appellate counsel.** (a) The senior force judge
16 advocate shall detail one or more judge advocates as appellate
17 government counsel, and one or more judge advocates as appellate
18 defense counsel, who are qualified under section -47.

19 (b) Appellate government counsel shall represent the State
20 before the state intermediate court of appeals or the state
21 supreme court when directed to do so by the senior force judge



1 advocate. Appellate government counsel may represent the State
2 before federal courts in cases arising under this chapter when
3 requested to do so by the state attorney general.

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

7 (1) When requested by the accused;

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

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

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

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

17 § -113 **Vacation of suspension.** (a) Before the vacation
18 of the suspension of a special court-martial sentence that
19 includes a bad-conduct discharge, or of any general court-
20 martial sentence, the officer having special court-martial
21 jurisdiction over the probationer shall hold a hearing on the



1 alleged violation of probation. The court-martial convening
2 authority may detail a judge advocate, who is qualified under
3 section -47, to conduct the hearing. The probationer shall
4 be represented at the hearing by counsel if the probationer so
5 desires.

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

15 (c) The suspension of any other sentence may be vacated by
16 any authority competent to convene, for the command in which the
17 accused is serving or assigned, a court of the kind that imposed
18 the sentence.

19 § -114 **Petition for a new trial.** At any time within two
20 years after approval by the convening authority of a court-
21 martial sentence that extends to dismissal, dishonorable or bad-



1 conduct discharge, the accused may petition the governor for a
2 new trial on ground of newly discovered evidence or fraud on the
3 court-martial. If the accused's case is pending before the
4 state intermediate court of appeals or state supreme court, the
5 state judge advocate shall refer the petition to the appropriate
6 court for action. Otherwise, the state judge advocate shall act
7 upon the petition.

8 § **-115 Remission and suspension.** (a) The governor, the
9 adjutant general, or a convening authority may remit or suspend
10 any part or amount of the unexecuted part of any sentence,
11 including all uncollected forfeitures.

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

15 § **-116 Restoration.** (a) In accordance with rules as
16 the governor may adopt, all rights, privileges, and property
17 affected by an executed part of a court-martial sentence that
18 has been set aside or disapproved, except an executed dismissal
19 or discharge, shall be restored unless a new trial or rehearing
20 is ordered and the executed part is included in a sentence
21 imposed upon the new trial or rehearing.



1 (b) If a previously executed sentence of dishonorable or
2 bad-conduct discharge is not imposed on a new trial, the
3 governor shall substitute a form of discharge authorized for
4 administrative issuance unless the accused is to serve out the
5 remainder of the accused's enlistment.

6 (c) If a previously executed sentence of dismissal is not
7 imposed on a new trial, the governor shall substitute a form of
8 discharge authorized for administrative issue, and the
9 commissioned officer dismissed by that sentence may be
10 reappointed by the governor alone to the commissioned grade and
11 with the rank as in the opinion of the governor that former
12 officer would have attained had the former officer not been
13 dismissed. The reappointment of a former officer may be made if
14 a position vacancy is available under the applicable tables of
15 organization. All time between the dismissal and reappointment
16 shall be considered as service for all purposes, including the
17 right to pay and allowances.

18 (d) The governor or the adjutant general shall adopt rules
19 with limitations as the governor or the adjutant general
20 considers appropriate governing eligibility for pay and



1 allowances for the period after the date on which an executed
2 part of a court-martial is sentence is set aside.

3 **§ -117 Finality of proceedings, findings, and sentences.**

4 The appellate review of records of trial provided under this
5 chapter, the proceedings, findings, and sentences of courts-
6 martial as reviewed and approved, as required by this chapter,
7 and all dismissals and discharges carried into execution under
8 sentences by courts-martial following review and approval, as
9 required by this chapter, are final and conclusive. Orders
10 publishing the proceedings of courts-martial and all actions
11 taken pursuant to those proceedings are binding upon all
12 departments, courts, agencies, and officers of the State,
13 subject only to action upon a petition for a new trial as
14 provided in section -114 and to action taken under section
15 -115.

16 **§ -118 Leave required to be taken pending review of**
17 **certain court-martial convictions.** In accordance with rules
18 adopted by the governor or the adjutant general, an accused who
19 has been sentenced by a court-martial may be required to take
20 leave pending completion of action under part IX if the sentence
21 includes an unsuspended dismissal or an unsuspended dishonorable



1 or bad-conduct discharge. The accused may be required to begin
2 leave on the date of the entry of judgment under section -105
3 at any time after the date, and the leave may be continued until
4 the date on which action under part IX is completed or may be
5 terminated at any earlier time.

6 § -119 **Lack of physical or mental capacity or**
7 **responsibility; commitment of accused for examination and**
8 **treatment.** (a) Whenever there is reason to doubt the accused's
9 fitness to proceed, the court may immediately suspend all
10 further proceedings in the trial and conduct an examination in
11 accordance with section 704-404.

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

16 **PART X. PUNITIVE SECTIONS**

17 § -131 **Principals.** Any person punishable under this
18 chapter who:

- 19 (1) Commits an offense punishable by this chapter, or
20 aids, abets, counsels, commands, or procures its
21 commission; or



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

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

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

- (1) The offense charged;
- (2) A lesser included offense;
- (3) An attempt to commit the offense charged; and
- (4) An attempt to commit a lesser included offense if the attempt is an offense in its own right.

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

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



(2) Any lesser included offense so designated by rules adopted by the governor or the adjutant general; provided that any designation of a lesser included offense shall be reasonably included in the greater offense.

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

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

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

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



1 § **-136 Soliciting commission of offenses.** (a) Any
2 person subject to this chapter who solicits or advises another
3 to commit an offense under this chapter, other than an offense
4 specified in subsection (b) shall be punished as directed by a
5 court-martial.

6 (b) Any person subject to this chapter who solicits or
7 advises another to violate sections -139, -151, or -
8 157:

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

12 (2) If the offense solicited or advised is not attempted
13 or committed, shall be punished as directed by a court
14 martial.

15 § **-137 Malingering.** Any person subject to this chapter
16 who, with the intent to avoid work, duty, or service:

17 (1) Feigns illness, physical disability, mental lapse, or
18 mental derangement; or

19 (2) Intentionally inflicts self-injury,
20 shall be punished as directed by a court-martial.



1 § **-138 Breach of medical quarantine.** Any person subject
2 to this chapter:

3 (1) Who is ordered into medical quarantine by a person
4 authorized to issue the order; and

5 (2) Who, with knowledge of the quarantine and the limits
6 of the quarantine, goes beyond those limits before
7 being released from the quarantine by proper
8 authority,

9 shall be punished as directed by a court-martial.

10 § **-139 Desertion.** (a) Any member of the state military
11 forces who:

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

15 (2) Quits the member's unit, organization, or place of
16 duty with intent to avoid hazardous duty or to shirk
17 important service; or

18 (3) Without being regularly separated from one of the
19 state military forces enlists or accepts an
20 appointment in the same or another one of the state
21 military forces or in one of the armed forces of the



1 United States without fully disclosing the fact that
2 the member has not been regularly separated, or enters
3 any foreign armed service except when authorized by
4 the United States,
5 is guilty of desertion.

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

11 (c) Any person found guilty of desertion or attempt to
12 desert committed in a time of war shall be punished by
13 confinement of not more than ten years or other punishment as
14 directed by a court-martial; provided that if the desertion or
15 attempt to desert occurs at any other time punishment shall be
16 as directed by a court-martial.

17 § -140 **Absence without leave.** Any member of the state
18 military forces who, without authority:

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

21 (2) Goes from that place; or



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

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

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

§ -142 **Resistance, flight, breach of arrest, and escape.** Any person subject to this chapter who:

- (1) Resists apprehension;
 - (2) Flees from apprehension;
 - (3) Breaks arrest; or
 - (4) Escapes from custody or confinement,
- shall be punished as directed by a court-martial.



1 § -143 Offenses against correctional custody and
2 restriction. (a) Any person subject to this chapter who:

3 (1) Is placed in correctional custody by a person
4 authorized to do so;

5 (2) While in correctional custody, is under physical
6 restraint; and

7 (3) Escapes from the physical restraint before being
8 released from the physical restraint by proper
9 authority,

10 shall be punished as directed by a court-martial.

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

12 (1) Is placed in correctional custody by a person
13 authorized to do so;

14 (2) While in correctional custody, is under restraint
15 other than physical restraint; and

16 (3) Goes beyond the limits of the restraint before being
17 released from the correctional custody or relieved of
18 the restraint by proper authority,

19 shall be punished as directed by a court-martial.

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



1 (1) Is ordered to be restricted to certain limits by a
2 person authorized to do so; and

3 (2) With knowledge of the limits of the restriction, goes
4 beyond those limits before being released by proper
5 authority,

6 shall be punished as directed by a court-martial.

7 § -144 Contempt toward officials. Any commissioned
8 officer who uses contemptuous words against the President, the
9 Vice President, Congress, the Secretary of Defense, the
10 secretary of a military department, the Secretary of Homeland
11 Security, or the governor or legislature of the State shall be
12 punished as directed by a court-martial.

13 § -145 Disrespect toward superior commissioned officer;
14 assault of superior commissioned officer. (a) Any person
15 subject to this chapter who behaves with disrespect toward that
16 person's superior commissioned officer shall be punished as
17 directed by a court-martial.

18 (b) Any person subject to this chapter who strikes that
19 person's superior commissioned officer or draws or lifts up any
20 weapon or offers any violence against that officer while the



1 officer is in the execution of the officer's office shall be
2 punished:

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

6 (2) If the offense is committed at any other time, by
7 punishment as directed by a court-martial.

8 § -146 **Willfully disobeying superior commissioned**
9 **officer.** Any person subject to this chapter who willfully
10 disobeys a lawful command of that person's superior commissioned
11 officer shall be punished:

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

15 (2) If the offense is committed at any other time, by
16 punishment as directed by a court-martial.

17 § -147 **Insubordinate conduct toward warrant officer,**
18 **noncommissioned officer, or petty officer.** Any warrant officer
19 or enlisted member who:



1 (1) Strikes or assaults a warrant officer, noncommissioned
2 officer, or petty officer, while that officer is in
3 the execution of that officer's office;
4 (2) Willfully disobeys the lawful order of a warrant
5 officer, noncommissioned officer, or petty officer; or
6 (3) Treats with contempt or is disrespectful in language
7 or deportment toward a warrant officer,
8 noncommissioned officer, or petty officer, while that
9 officer is in the execution of that officer's office,
10 shall be punished as directed by a court-martial.

11 § -148 **Failure to obey order, regulation, or rule.** Any
12 person subject to this chapter who:

13 (1) Violates or fails to obey any lawful general order,
14 regulation, or rule;
15 (2) Having knowledge of any other lawful order issued by a
16 member of the state military forces, that it is that
17 person's duty to obey, fails to obey the order; or
18 (3) Is derelict in the performance of that person's
19 duties,
20 shall be punished as directed by a court-martial.



1 § **-149 Cruelty and maltreatment.** Any person subject to
2 this chapter who is guilty of cruelty toward, or oppression or
3 maltreatment of, any person subject to that person's orders
4 shall be punished as directed by a court-martial.

5 § **-150 Prohibited activities with military recruit or**
6 **trainee by person in position of special trust.** (a) Any person
7 subject to this chapter who:

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

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

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

16 shall be punished as directed by a court-martial.

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

18 (1) Is a military recruiter and engages in prohibited
19 sexual activity with an applicant for military
20 service; or



1 (2) Is a military recruiter and engages in prohibited
2 sexual activity with a specially protected junior
3 member of the state military forces who is enlisted
4 under a delayed entry program,
5 shall be punished as directed by a court-martial.

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

8 (d) In this section:

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

11 (A) A member of the state military forces who is
12 assigned to, or is awaiting assignment to, basic
13 training or other initial active duty for
14 training, including a member who is enlisted
15 under a delayed entry program;

16 (B) A member of the state military forces who is a
17 cadet, a midshipman, an officer candidate, or a
18 student in any other officer qualification
19 program; or

20 (C) A member of the state military forces in any
21 program that by regulation or rule adopted by the



1 Secretary concerned or the governor or the
2 adjutant general, is identified as a training
3 program for initial career qualification.

4 (2) The term "training leadership position" means, with
5 respect to a specially protected junior member of the
6 state military forces, any drill instructor position
7 or other leadership position in a basic training
8 program, an officer candidate school, a reserve
9 officers' training corps unit, a training program for
10 entry into the state military forces, or any program
11 that, by rule adopted by the Secretary concerned or
12 the governor or the adjutant general, is identified as
13 a training program for initial career qualification.

14 (3) The term "applicant for military service" means a
15 person who is an applicant for original enlistment or
16 appointment in the state military forces under rules
17 adopted by the Secretary concerned or the governor or
18 the adjutant general.

19 (4) The term "military recruiter" means a person who has
20 the primary duty to recruit persons for military



1 service under rules adopted by the Secretary concerned
2 or the governor or the adjutant general,

3 (5) The term "prohibited sexual activity" means
4 inappropriate physical intimacy under circumstances as
5 specified in rules adopted by the Secretary concerned
6 or the governor or the adjutant general.

7 § -151 **Mutiny or sedition.** (a) Any person subject to
8 this chapter who:

9 (1) With intent to usurp or override lawful military
10 authority, refuses, in concert with any other person,
11 to obey orders or otherwise do that person's duty or
12 creates any violence or disturbance is guilty of
13 mutiny;

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

18 (3) Fails to do that person's utmost to prevent and
19 suppress a mutiny or sedition being committed in the
20 person's presence or fails to take all reasonable
21 means to inform the person's superior commissioned



1 officer or commanding officer of a mutiny or sedition
2 that the person knows or has reason to believe is
3 taking place is guilty of a failure to suppress or
4 report a mutiny or sedition.

5 (b) A person who is found guilty of attempted mutiny,
6 mutiny, sedition, or failure to suppress or report a mutiny or
7 sedition shall be punished as directed by a court-martial.

8 § -152 Offenses by sentinel or lookout. (a) Any
9 sentinel or lookout who is drunk on post, who sleeps on post, or
10 who leaves post before being regularly relieved, shall be
11 punished:

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

15 (2) If the offense is committed other than in time of war,
16 by punishment as directed by a court-martial.

17 (b) Any sentinel or lookout who loiters or wrongfully sits
18 down on post shall be punished as directed by a court-martial.

19 § -153 Disrespect toward sentinel or lookout. (a) Any
20 person subject to this chapter who, knowing that another person
21 is a sentinel or lookout, uses wrongful and disrespectful



1 language that is directed toward and within the hearing of the
2 sentinel or lookout, who is in the execution of duties as
3 sentinel or lookout, shall be punished as directed by a court-
4 martial.

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

11 § -154 Release of prisoner without authority; drinking
12 with prisoner. (a) Any person subject to this chapter:

13 (1) Who, without authority to do so, releases a prisoner;
14 or

15 (2) Who, through neglect or designs, allows a prisoner to
16 escape,

17 shall be punished as directed by a court-martial, whether or not
18 the prisoner was committed in strict compliance with the law.

19 (b) Any person subject to this chapter who unlawfully
20 drinks any alcoholic beverage with a prisoner shall be punished
21 as directed by a court-martial.



1 § **-155 Unlawful detention.** Any person subject to this
2 chapter who, except as provided by law, apprehends, arrests, or
3 confines any person shall be punished as directed by a court-
4 martial.

5 § **-156 Misconduct as prisoner.** Any person subject to
6 this chapter who, while in the hands of the enemy in time of
7 war:

8 (1) For the purpose of securing favorable treatment by the
9 person's captors acts without proper authority in a
10 manner contrary to law, custom, regulation, or rule to
11 the detriment of others of whatever nationality held
12 by the enemy as civilian or military prisoners; or

13 (2) While in a position of authority over persons,
14 maltreats the person without justifiable cause,
15 shall be punished as directed by a court-martial.

16 § **-157 Misbehavior before the enemy.** Any member of the
17 state military forces who before the presence of the enemy:

18 (1) Runs away;

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



- 1 (3) Through disobedience, neglect, or intentional
2 misconduct endangers the safety of any command, unit,
3 place, or military property;
- 4 (4) Casts away the person's arms or ammunition;
- 5 (5) Is guilty of cowardly conduct;
- 6 (6) Quits the person's place of duty to plunder or
7 pillage;
- 8 (7) Causes false alarms in any command, unit, or place
9 under control of the state military forces;
- 10 (8) Willfully fails to do the person's utmost to
11 encounter, engage, capture, or destroy any enemy
12 troops, combatants, vessels, aircraft, or any other
13 thing that it is the person's duty so to encounter,
14 engage, capture, or destroy; or
- 15 (9) Does not afford all practicable relief and assistance
16 to any troops, combatants, vessels, or aircraft of the
17 state military forces or the armed forces belonging to
18 the State, the United States or their allies, or any
19 other state, commonwealth, or territory when engaged
20 in battle,
- 21 shall be punished as directed by a court-martial.



1 § **-158 Subordinate compelling surrender.** Any person
2 subject to this chapter who compels or attempts to compel the
3 commander of any place, vessel, aircraft, or other military
4 property, or of any body of members of the state military forces
5 or the armed forces of the United States to give it up to an
6 enemy or to abandon it, or who strikes the color or flag to an
7 enemy without proper authority, shall be punished as directed by
8 a court-martial.

9 § **-159 Improper use of countersign.** Any person subject
10 to this chapter who in time of war discloses the parole or
11 countersign to any person not entitled to receive it or who
12 gives to another who is entitled to receive and use the parole
13 or countersign a different parole or countersign from that
14 which, to that person's knowledge, the person was authorized and
15 required to give, shall be punished as directed by a court-
16 martial.

17 § **-160 Forcing a safeguard.** Any person subject to this
18 chapter who forces a safeguard shall be punished as directed by
19 a court-martial.

20 § **-161 Spies.** Any person who in time of war is found
21 lurking as a spy or acting as a spy in or about any place,



1 vessel, or aircraft, within the control or jurisdiction of the
2 state military forces or of the United States armed forces, or
3 in or about any shipyard, any manufacturing or industrial plant,
4 or any other place or institution engaged in work in aid of the
5 prosecution of the war by the United States, or elsewhere, shall
6 be tried by a general court-martial and on conviction shall be
7 punished as directed by a court-martial.

8 § **-162 Espionage.** (a) Any person subject to this
9 chapter who, with intent or reason to believe that it is to be
10 used to the injury of the State or the United States, or to
11 another state, commonwealth, or territory of the United States,
12 or to the advantage of a foreign nation, communicates, delivers,
13 or transmits, or attempts to communicate, deliver, or transmit,
14 to any entity described in subsection (b), either directly or
15 indirectly, anything described in subsection (c) shall be
16 punished as directed by a court-martial.

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

18 (1) A foreign government;

19 (2) A faction or party or military or naval force within a
20 foreign country, whether recognized or unrecognized by
21 the United States; or



(3) A representative, officer, agent, employee, subject,
or citizen of a government, faction, party, or force.

(c) A thing referred to in subsection (a) is a document,
writing, code book, signal book, sketch, photograph,
photographic negative, blueprint, plan, map, model, note,
instrument, appliance, or information relating to the State or
national defense.

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

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

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

shall be punished as directed by a court-martial.

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

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



1 (2) Takes a public record with the intent to alter,
2 conceal, remove, mutilate, obliterate, or destroy the
3 public record,
4 shall be punished as directed by a court-martial.

5 § **-165 Fraudulent enlistment, appointment, or**
6 **separation.** Any person who:

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

13 (2) Procures for that person's own separation from the
14 state military forces by knowingly false
15 representation or deliberate concealment as to that
16 person's eligibility for that separation,
17 shall be punished as directed by a court-martial.

18 § **-166 Unlawful enlistment, appointment, or separation.**

19 Any person subject to this chapter who effects an enlistment or
20 appointment in or a separation from the state military forces of
21 any person who is known to that person to be ineligible for that



1 enlistment, appointment, or separation because it is prohibited
2 by law, regulation, rule, or order shall be punished as directed
3 by a court-martial.

4 § **-167 Forgery.** Any person subject to this chapter who,
5 with intent to defraud:

6 (1) Falsely makes or alters any signature to, or any part
7 of, any writing that would, if genuine, impose a legal
8 liability on another or change the person's legal
9 right or liability to the person's prejudice; or
10 (2) Utters, offers, issues, or transfers the writing,
11 known by the person to be falsely made or altered,
12 is guilty of forgery and shall be punished as directed by a
13 court-martial.

14 § **-168 False or unauthorized pass offenses.** (a) Any
15 person subject to this chapter who, wrongfully and falsely,
16 makes, alters, counterfeits, or tampers with a military or
17 official pass, permit, discharge certificate, or identification
18 card shall be punished as directed by a court-martial.

19 (b) Any person subject to this chapter who wrongfully
20 sells, gives, lends, or disposes of a false or unauthorized
21 military or official pass, permit, discharge certificate, or



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

4 (c) Any person subject to this chapter who wrongfully uses
5 or possesses a false or unauthorized military or official pass,
6 permit, discharge certificate, or identification card, knowing
7 that the pass, permit, discharge certificate, or identification
8 card is false or unauthorized, shall be punished as directed by
9 a court-martial.

10 § -169 Impersonation of officer, noncommissioned or
11 petty officer, or agent or official. (a) Any person subject to
12 this chapter who, wrongfully and willfully, impersonates:

13 (1) An officer, a noncommissioned officer, or a petty
14 officer;

15 (2) An agent of superior authority of one of the armed
16 forces; or

17 (3) An official of a government,
18 shall be punished as directed by a court-martial.

19 (b) Any person subject to this chapter who, wrongfully and
20 willfully, and with intent to defraud, impersonates any person



1 referred to in subsection (a)(1), (2), or (3) shall be punished
2 as directed by a court-martial.

3 (c) Any person subject to this chapter who wrongfully and
4 willfully, and without intent to defraud, impersonates an
5 official of a government by committing an act that exercises or
6 asserts the authority of the office that the person claims to
7 have shall be punished as directed by a court-martial.

8 § -170 **Wearing unauthorized insignia, decoration, badge,**
9 **ribbon, device, or lapel button.** Any person subject to this
10 chapter who:

11 (1) Is not authorized to wear an insignia, decoration,
12 badge, ribbon, device, or lapel button; and

13 (2) Wrongfully wears any insignia, decoration, badge,
14 ribbon, device, or lapel button upon the person's
15 uniform or civilian clothing,

16 shall be punished as directed by a court-martial.

17 § -171 **False official statements; false swearing.** (a)

18 Any person subject to this chapter who, with intent to deceive:

19 (1) Signs any false record, return, regulation, order, or
20 other official document, knowing it to be false; or



1 (2) Makes any other false official statement knowing it to
2 be false,
3 shall be punished as directed by a court-martial.

4 (b) Any person subject to this chapter:

5 (1) Who takes an oath or affirmation that:

6 (A) Is administered in a matter in which the oath or
7 affirmation is required or authorized by law; and

8 (B) Is administered by a person with authority to do
9 so; and

10 (2) Who, upon the oath or affirmation, makes or subscribes
11 to a statement,
12 if the statement is false and at the time of taking the oath
13 affirmation, the person does not believe the statement to be
14 true, shall be punished as directed by a court-martial.

15 § -172 **Military property; loss, damage, destruction, or**
16 **wrongful disposition.** Any person subject to this chapter who,
17 without proper authority:

18 (1) Sells or otherwise disposes of;

19 (2) Willfully or through neglect damages, destroys, or
20 loses; or



1 (3) Willfully or through neglect suffers to be lost,
2 damaged, destroyed, sold, or wrongfully disposed of,
3 any military property of the State, the United States, or any of
4 its states, territories, or commonwealths, shall be punished as
5 directed by a court-martial.

6 § -173 **Captured or abandoned property.** (a) All persons
7 subject to this chapter shall secure all public property taken
8 from the enemy for the service of the United States or the State
9 and shall give notice and turn over to the proper authority
10 without delay all captured or abandoned property in their
11 possession, custody, or control.

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

13 (1) Fails to carry out the duties prescribed in subsection
14 (a);

15 (2) Buys, sells, trades, or in any way deals in or
16 disposes of captured or abandoned property, whereby
17 the person receives or expects any profit, benefit, or
18 advantage to the person's self, or another directly or
19 indirectly connected with the person's self; or

20 (3) Engages in looting or pillaging,
21 shall be punished as directed by a court-martial.



1 § **-174 Property other than military property; waste,**
2 **spoilage, or destruction.** Any person subject to this chapter
3 who willfully or recklessly wastes, spoils, or otherwise
4 willfully and wrongfully destroys or damages any property other
5 than military property of the United States or of the State
6 shall be punished as directed by a court-martial.

7 § **-175 Mail matter; wrongful taking; opening.** (a) Any
8 person subject to this chapter who, with the intent to obstruct
9 the correspondence of, or to pry into the business or secrets
10 of, any person or organization, wrongfully takes mail matter
11 before the mail matter is delivered to or received by the
12 addressee shall be punished as directed by a court-martial.

13 (b) Any person subject to this chapter who wrongfully
14 opens, secrets, destroys, or steals mail matter before the
15 matter is delivered to or received by the addressee shall be
16 punished as directed by a court-martial.

17 § **-176 Improper hazarding of vessel or aircraft.** (a)
18 Any person subject to this chapter who, willfully and
19 wrongfully, hazards or suffers to be hazarded any vessel or
20 aircraft of the armed forces of the United States or any state
21 military force shall be punished as directed by a court-martial.



(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel or aircraft of the armed forces of the United States or any state military force shall be punished as directed by a court-martial.

§ -177 Drunkenness and other incapacitation offenses.

(a) Any person subject to this chapter who is drunk on duty shall be punished as directed by a court-martial.

(b) Any person subject to this chapter who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as directed by a court-martial.

(c) Any person subject to this chapter who is a prisoner and is drunk while the person is a prisoner shall be punished as directed by a court-martial.

§ -178 Wrongful use, possession, etc., of controlled substances. (a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed



1 forces or any state military force a substance described in
2 subsection (b) shall be punished as directed by a court-martial.

3 (b) The substances referred to in subsection (a) are the
4 following:

5 (1) Opium, heroin, cocaine, amphetamine, lysergic acid
6 diethylamide, methamphetamine, phencyclidine,
7 barbituric acid, and marijuana and any compound or
8 derivative of the substance;

9 (2) Any substance not specified in paragraph (1) that is
10 listed on a schedule of controlled substances
11 prescribed by the President for the purposes of the
12 Uniform Code of Military Justice of the armed forces
13 of the United States as provided in title 10 United
14 States Code sections 801 et. seq.; and

15 (3) Any other substance not specified in paragraph (1) or
16 contained on a list prescribed by the President under
17 paragraph (2) that is listed in schedules I through V
18 of article 202 of the Controlled Substances Act as
19 contained in title 21 United States Code section 812.



1 § -179 Drunken or reckless operation of a vehicle,
2 aircraft, or vessel. (a) Any person subject to this chapter
3 who:

4 (1) Operates or physically controls a vehicle, aircraft,
5 or vessel in a reckless or wanton manner or while
6 impaired by a substance described in section -178;
7 or

8 (2) Operates or is in actual physical control of any
9 vehicle, aircraft, or vessel while drunk or when the
10 alcohol concentration in the person's blood or breath
11 is equal to or exceeds the applicable limit under
12 subsection (b),

13 shall be punished as directed by a court martial.

14 (b) For purposes of subsection (a), the applicable limit
15 on the alcohol concentration in a person's blood or breath is
16 the lesser of:

17 (1) The blood alcohol content limit under the law of the
18 State, district, territory, or commonwealth of the
19 United States in which the conduct occurred; except as
20 provided under paragraph (3) for conduct on a military



1 installation that is in more than one state, district,
2 territory, or commonwealth;

3 (2) The blood alcohol content limit specified in
4 subsection (c); or

5 (3) In the case of a military installation that is in more
6 than one state, district, territory, or commonwealth,
7 if those states, districts, territories, or
8 commonwealths have different blood alcohol content
9 limits under their respective state laws, the limit
10 specified for the installation.

11 (c) For purposes of subsection (b), the blood alcohol
12 content limit with respect to alcohol concentration in a
13 person's blood is 0.08 grams of alcohol per one hundred
14 milliliters of blood and with respect to alcohol concentration
15 in a person's breath is 0.08 grams of alcohol per two hundred
16 ten liters of breath, as shown by chemical analysis.

17 § -180 **Endangerment offenses.** (a) Any person subject
18 to this chapter who engages in conduct that:

19 (1) Is wrongful and reckless or is wanton; and

20 (2) Is likely to produce death or grievous bodily harm to
21 another person,



1 shall be punished as directed by a court-martial.

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

3 (1) Fights or promotes a fight, or is concerned in or
4 connives a fight; or

5 (2) Having knowledge of a challenge sent or about to be
6 sent, fails to report the facts promptly to the proper
7 authority,

8 shall be punished as directed by a court-martial.

9 (c) Any person subject to this chapter who, willfully and
10 wrongly, discharges a firearm, under circumstances as to
11 endanger human life shall be punished as directed by a court-
12 martial.

13 (d) Any person subject to this chapter who unlawfully
14 carries a dangerous weapon concealed on or about his person
15 shall be punished as directed by a court-martial.

16 § -181 **Communicating threats.** (a) Any person subject
17 to this chapter who wrongfully communicates a threat to injure
18 the person, property, or reputation of another shall be punished
19 as directed by a court-martial.



1 (b) Any person subject to this chapter who wrongfully
2 communicates a threat to injure the person or property of
3 another by use of:

4 (1) An explosive;

5 (2) A weapon of mass destruction;

6 (3) A biological or chemical agent, substance, or weapon;

7 or

8 (4) A hazardous material,

9 shall be punished as directed by a court-martial.

10 (c) Any person subject to this chapter who maliciously
11 communicates a false threat concerning injury to the person or
12 property of another by use of:

13 (1) An explosive;

14 (2) A weapon of mass destruction;

15 (3) a biological or chemical agent, substance, or weapon;

16 or

17 (4) A hazardous material,

18 shall be punished as directed by a court-martial.

19 (d) As used in this section, the term "false threat" means
20 a threat that, at the time the threat is communicated, is known
21 to be false by the person communicating the threat.



1 § **-182 Riot or breach of peace.** Any person subject to
2 this chapter who causes or participates in any riot or breach of
3 the peace shall be punished as directed by a court-martial.

4 § **-183 Provoking speeches or gestures.** Any person
5 subject to this chapter who uses provoking or reproachful words
6 or gestures towards any other person subject to this chapter
7 shall be punished as directed by a court-martial.

8 § **-184 Offenses concerning government computers.** (a)

9 Any person subject to this chapter who:

10 (1) Knowingly accesses a government computer, with an
11 unauthorized purpose, and by doing so obtains
12 classified information, with reason to believe the
13 information could be used to the injury of the United
14 States, or to the advantage of any foreign nation, and
15 intentionally communicates, delivers, transmits, or
16 causes to be communicated, delivered, or transmitted
17 the information to any person not entitled to receive
18 it;

19 (2) Intentionally accesses a government computer, with an
20 unauthorized purpose, and thereby obtains classified



1 or other protected information from any government
2 computer; or
3 (3) Knowingly causes the transmission of a program,
4 information, code, or command, and as a result of the
5 conduct, intentionally causes damage without
6 authorization, to a government computer,
7 shall be punished as directed by a court-martial.

8 (b) In this section:

9 (1) The term "computer" has the meaning given that term as
10 provided in title 18 United States Code section 1030.

11 (2) The term "government computer" means a computer owned
12 or operated by or on behalf of the United States
13 Government or the State, including the state military
14 forces.

15 (3) The term "damage" has the meaning given that term as
16 provided in title 18 United States Code section 1030.

17 § -185 **Frauds against the government.** Any person
18 subject to this chapter:

19 (1) Who, knowing it to be false or fraudulent:

20 (A) Makes any claim against the United States, the
21 State, or any officer thereof; or



1 (B) Presents to any person in the civil or military
2 service thereof, for approval or payment, any
3 claim against the United States, the State, or
4 any officer thereof;

5 (2) Who, for the purpose of obtaining the approval,
6 allowance, or payment of any claim against the United
7 States, the State, or any officer thereof:

8 (A) Makes or uses any writing or other paper knowing
9 it to contain any false or fraudulent statements;

10 (B) Makes any oath or affirmation to any fact or to
11 any writing or other paper knowing the oath or
12 affirmation to be false; or

13 (C) Forges or counterfeits any signature upon any
14 writing or other paper, or uses any signature
15 knowing it to be forged or counterfeited;

16 (3) Who, having charge, possession, custody or control of
17 any money, or other property of the United States or
18 the State, furnished or intended for the armed forces
19 of the United States or the state military forces,
20 knowingly delivers to any person having authority to



1 receive it, an amount thereof less than that for which
2 a certificate or receipt is received; or

3 (4) Who, being authorized to make or deliver any paper
4 certifying the receipt of any property of the United
5 States or the State furnished or intended for the
6 armed forces thereof, makes or delivers to any person
7 writing without having full knowledge of the truth of
8 the statements therein contained and with intent to
9 defraud the United States or the State,

10 shall upon conviction be punished as directed by a court-
11 martial.

12 § -186 Perjury. Any person subject to this chapter who
13 in a judicial proceeding or in a course of justice conducted
14 under this chapter willfully and corruptly:

15 (1) Upon a lawful oath or affirmation, or in any form
16 allowed by law to be substituted for an oath or
17 affirmation, gives any false testimony material to the
18 issue or matter of inquiry; or

19 (2) In any declaration, certificate, verification, or
20 statement under penalty of perjury as permitted under
21 title 28 United States Code section 1746, subscribes



1 any false statement material to the issue or matter of
2 inquiry,
3 is guilty of perjury and shall be punished as directed by a
4 court-martial.

5 § -187 **Subornation of perjury.** (a) Any person subject
6 to this chapter who induces and procures another person:

7 (1) To take an oath or affirmation; and

8 (2) Falsely testify, depose, or state upon the oath or
9 affirmation,

10 shall, if the conditions specified in subsection (b) are
11 satisfied, be punished as directed by a court-martial.

12 (b) The conditions referred to in subsection (a) are the
13 following:

14 (1) The oath or affirmation is administered with respect
15 to a matter for which the oath or affirmation is
16 required or authorized by law;

17 (2) The oath or affirmation is administered by a person
18 having authority to do so;

19 (3) Upon the oath or affirmation, the other person
20 willfully makes or subscribes a statement;

21 (4) The statement is material;



1 (5) The statement is false; and

2 (6) When the statement is made or subscribed, the person
3 subject to this chapter and the other person do not
4 believe that the statement is true.

5 § -189 **Obstructing justice.** Any person subject to this
6 chapter who engages in conduct in the case of a certain person
7 against whom the accused had reason to believe there were or
8 would be criminal or disciplinary proceedings pending, with
9 intent to influence, impede, or otherwise obstruct due
10 administration of justice shall be punished as directed by a
11 court-martial.

12 § -190 **Misprision of serious offense.** Any person
13 subject to this chapter:

14 (1) Who knows that another person has committed a serious
15 offense; and

16 (2) Wrongfully conceals the commission of the offense and
17 fails to make the commission of the offense known to
18 civilian or military authorities as soon as possible,
19 shall be punished as directed by a court-martial.

20 § -191 **Wrongful refusal to testify.** Any person subject
21 to this chapter who, in the presence of a court-martial, a board



1 of officers, a court of inquiry, preliminary hearing, or an
2 officer taking a deposition, of or for the State or for the
3 United States, wrongfully refuses to qualify as a witness or to
4 answer a question after having been directed to do so by the
5 person presiding shall be punished as directed by a court-
6 martial.

7 **§ -192 Prevention of authorized seizure of property.**

8 Any person subject to this chapter who, knowing that one or more
9 persons authorized to make searches and seizures are seizing,
10 are about to seize, or are endeavoring to seize property,
11 destroys, removes, or otherwise disposes of the property with
12 intent to prevent the seizure thereof shall be punished as
13 directed by a court-martial.

14 **§ -193 Noncompliance with procedural rules.** Any person
15 subject to this chapter who:

16 (1) Is responsible for unnecessary delay in the
17 disposition of any case of a person accused of an
18 offense under this chapter; or

19 (2) Knowingly and intentionally fails to enforce or comply
20 with any provision of this chapter regulating the



1 proceedings before, during, or after trial of an
2 accused,
3 shall be punished as directed by a court-martial.

4 **§ -194 Wrongful interference with adverse administrative**
5 **proceeding.** Any person subject to this chapter who, having
6 reason to believe that an adverse administrative proceeding is
7 pending against any person subject to this chapter, wrongfully
8 acts with the intent:

9 (1) To influence, impede, or obstruct the conduct of the
10 proceeding; or

11 (2) Otherwise obstruct the due administration of justice,
12 shall be punished as directed by a court-martial.

13 **§ -195 Retaliation.** (a) Any person subject to this
14 chapter who, with the intent to retaliate against any person for
15 reporting or planning to report a criminal offense, or making or
16 planning to make a protected communication, or with the intent
17 to discourage any person from reporting a criminal offense or
18 making or planning to make a protected communication:

19 (1) Wrongfully takes or threatens to take an adverse
20 personnel action against any person; or



1 (2) Wrongfully withholds or threatens to withhold a
2 favorable personnel action with respect to any person,
3 shall be punished as directed by a court-martial.

4 (b) In this section:

5 (1) The term "protected communication" means the
6 following:

7 (A) A lawful communication to a Member of Congress or
8 an Inspector General; or

9 (B) A communication to a covered individual or
10 organization in which a member of the state
11 military forces, or the Armed Forces of the
12 United States complains of, or discloses
13 information that the member reasonably believes
14 constitutes evidence of, any of the following:

15 (i) A violation of law or regulation, including
16 a law or regulation prohibiting sexual
17 harassment or unlawful discrimination; or
18 (ii) Gross mismanagement, a gross waste of funds,
19 an abuse of authority, or a substantial and
20 specific danger to public health or safety;



1 (2) The term "Inspector General" has the meaning given
2 that term in title 10 United States Code section
3 1034(j); and

4 (3) The term "covered individual or organization" means
5 any recipient of a communication specified in clauses
6 (i) through (vi) of title 10 United States Code
7 section 1034(b)(1)(B).

8 § -196 **Conduct unbecoming an officer.** Any commissioned
9 officer who is convicted of conduct unbecoming an officer shall
10 be punished as directed by a court-martial.

11 § -197 **General article.** Though not specifically
12 mentioned in this chapter, all disorders and neglects to the
13 prejudice of good order and discipline in the state military
14 forces, all conduct of a nature to bring discredit upon the
15 state military forces, offenses prescribed by the governor or
16 the adjutant general by rule, and crimes and offenses not
17 capital, of which persons subject to this chapter may be guilty,
18 shall be taken cognizance of by a general, special, or summary
19 court-martial according to the nature and degree of the offense
20 and shall be punished at the discretion of that court. Where a
21 crime constitutes an offense that violates both this chapter and



1 the criminal laws of the state where the offense occurs or
2 criminal laws of the United States, jurisdiction of the military
3 court shall be determined in accordance with section -2(b).

4 **PART XI. MISCELLANEOUS PROVISIONS**

5 **§ -231 Courts of inquiry.** (a) Courts of inquiry to
6 investigate any matter may be convened by any person authorized
7 to convene a general court-martial or by any other person
8 designated by the governor or the adjutant general for that
9 purpose, whether or not the persons involved have requested an
10 inquiry.

11 (b) A court of inquiry consists of three or more
12 commissioned officers. For each court of inquiry, the convening
13 authority shall also appoint counsel for the court.

14 (c) Any person subject to this chapter whose conduct is
15 subject to inquiry shall be designated as a party.

16 (d) Any person who is subject to this chapter or employed
17 by the state department of defense, and who has a direct
18 interest in the subject of the inquiry has the right to be
19 designated as a party upon request to the court.



1 (e) Any person designated as a party shall be given due
2 notice and has the right to be present, to be represented by
3 counsel, to cross examine witnesses, and to introduce evidence.

4 (f) Members of a court of inquiry may be challenged by a
5 party only for cause stated to the court.

6 (g) The members, counsel, reporter, and interpreters of
7 courts of inquiry shall take an oath or affirmation to
8 faithfully perform their duties.

9 (h) Witnesses may be summoned to appear and testify and be
10 examined before courts of inquiry, as provided for courts-
11 martial.

12 (i) Courts of inquiry shall make findings of fact but
13 shall not express opinions or make recommendations unless
14 required to do so by the convening authority.

15 (j) Each court of inquiry shall keep a record of its
16 proceedings, which shall be authenticated by the signatures of
17 the president and counsel for the court and forwarded to the
18 convening authority. If the record cannot be authenticated by
19 the president, it shall be signed by a member in lieu of the
20 president. If the record cannot be authenticated by the counsel



1 for the court, it shall be signed by a member in lieu of the
2 counsel.

3 **§ -232 Authority to administer oaths or affirmations.**

4 (a) The following members of the state military forces may
5 administer oaths or affirmations for the purposes of military
6 administration, including military justice, and affidavits may
7 be taken for those purposes before persons having the general
8 powers of a notary public:

- 9 (1) All judge advocates;
- 10 (2) All summary courts-martial;
- 11 (3) All adjutants, assistant adjutants, acting adjutants,
12 and personnel adjutants;
- 13 (4) All commanding officers;
- 14 (5) All staff judge advocates and legal officers, and
15 acting or assistant staff judge advocates and legal
16 officers;
- 17 (6) The president, military judge, trial counsel, and
18 assistant trial counsel for all general and special
19 courts-martial;
- 20 (7) The president and counsel for the court of any court
21 of inquiry;



1 (8) All officers designated to take a deposition;

2 (9) All persons detailed to conduct an investigation; and

3 (10) All other persons designated by regulations of the
4 armed forces, rules adopted by the governor or the
5 adjutant general, or by law.

6 (b) Officers of the state military forces shall not be
7 authorized to administer oaths or affirmations as provided in
8 this section unless they are on active duty in or with those
9 forces under orders of the governor as prescribed in this
10 chapter.

11 (c) The signature without seal of any person, together
12 with the title of the person's office, is prima facie evidence
13 of the person's authority.

14 § -233 Articles to be explained. (a) The procedures
15 and provisions of this chapter shall be explained at least once
16 every three years to each unit of the state military forces.

17 (b) The procedures and provisions of this chapter shall be
18 carefully explained to every enlisted member at the time of the
19 member's enlistment or transfer or induction into, or at the
20 time of the member's order to duty in or with any of the state
21 military forces or within ninety days thereafter.



1 (c) In accordance with rules adopted by the governor or
2 the adjutant general, officers with the authority to convene
3 courts-martial or to impose non-judicial punishment shall
4 receive periodic training regarding the purposes and
5 administration of this chapter.

6 (d) A complete text of this chapter and of the rules
7 adopted by the governor or the adjutant general thereunder shall
8 be made available in either hard copy or in an electronic format
9 to any member of the state military forces by the member's
10 commander, upon the member's request, for the member's personal
11 examination.

12 § -234 **Complaints of wrongs.** Any member of the state
13 military forces who has a complaint against the member's
14 commanding officer, and who, upon due application to that
15 commanding officer, is refused redress, may complain to any
16 superior commissioned officer, who shall forward the complaint
17 to the officer exercising general court-martial jurisdiction
18 over the officer against whom it is made. The officer
19 exercising general court-martial jurisdiction shall examine into
20 the complaint and take proper measures for redressing the wrong
21 complained of, and shall, as soon as possible, send to the



1 governor or the adjutant general a true statement of that
2 complaint, with the proceedings had thereon.

3 § -235 **Redress of injuries to property.** (a) Whenever a
4 complaint is made to any commanding officer that willful damage
5 has been done to the property of any person or that the person's
6 property has been wrongfully taken by members of the state
7 military forces, the commanding officer may, in accordance with
8 rules adopted by the governor or the adjutant general, convene a
9 board to investigate the complaint. The board shall consist of
10 from one to three commissioned officers, and, for the purpose of
11 that investigation, it has power to summon witnesses and examine
12 them upon oath or affirmation, to receive depositions or other
13 documentary evidence, and to assess the damages sustained
14 against the responsible parties. The assessment of damages made
15 by the board is subject to the approval of the commanding
16 officer, and the amount approved by the commanding officer shall
17 be charged against the pay of the offenders. The order of the
18 commanding officer directing charges herein authorized is
19 conclusive, except as provided in subsection (c), on any
20 disbursing officer for the payment by the disbursing officer to
21 the injured parties of the damages so assessed and approved.



(b) If the offenders cannot be ascertained but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in a proportion as is considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

Alternatively, if the offenders cannot be ascertained but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

(c) Any person subject to this chapter who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in the person's behalf, and to cross-examine those appearing against the person. The person has the right of appeal to the next higher commander.

§ -236 Delegation of authority by the governor;
rulemaking authority of the governor. (a) The governor may delegate any authority vested in the governor under this chapter



1 to the adjutant general and may provide for the sub-delegation
2 of any authority as appropriate.

3 (b) The governor or the adjutant general shall adopt rules
4 in accordance with chapter 91 necessary to administer and
5 implement this chapter. Chapter 91 shall apply notwithstanding
6 section 121-5 or any other provision of law to the contrary.

7 § -237 **Case management; data collection and**
8 **accessibility.** The adjutant general shall prescribe uniform
9 standards and criteria for conduct of each of the following
10 functions at all stages of the military justice system,
11 including pretrial, trial, post-trial, and appellate processes,
12 using, insofar as practicable, the best practices of federal and
13 state courts:

14 (1) Collection and analysis of data concerning substantive
15 offenses and procedural matters in a manner that
16 facilitates case management and decision making within
17 the military justice system, and that enhances the
18 quality of periodic reviews;

19 (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 appropriate to judicial proceedings and military records.

§ -238 Execution of process and sentence. In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the State.

§ -239 Process of military courts. (a) Military courts may issue any process or mandate necessary to carry into effect their powers. A court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the State and the witnesses, books, and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, military judges, or the president of other military courts and may be directed to and may be executed by the



1 marshals of the military court or any peace officer and shall be
2 in a form as prescribed by rules adopted under this chapter.

3 (c) All officers to whom process or mandates are so
4 directed shall execute them and make return of their acts
5 thereunder according to the requirements of those documents.
6 Except as otherwise specifically provided in this chapter, no
7 officer shall demand or require payment of any fee or charge for
8 receiving, executing, or returning a process or mandate or for
9 any service in connection therewith.

10 § -240 **Payment of fines and disposition thereof.** Fines
11 imposed by a military court may be paid to it or to an officer
12 executing its process. The amount of the fine may be noted upon
13 any state roll or account for pay of the delinquent and deducted
14 from any pay or allowance due or thereafter to become due the
15 delinquent, until the fine is liquidated. Any sum so deducted
16 shall be returned to the military court that imposed the fine.
17 The officer collecting a fine or penalty imposed by a military
18 court upon an officer or enlisted person shall pay it within
19 thirty days to the director of finance to the credit of the
20 state general fund.



1 § **-241 Immunity for action of military courts or**
2 **nonjudicial punishment.** No accused shall bring an action or
3 proceeding against:

4 (1) The convening authority or a member of a military
5 court or officer or person acting under its authority
6 or reviewing its proceedings because of the approval,
7 imposition, or execution of any sentence or the
8 imposition or collection of a fine or penalty, or the
9 execution of any process or mandate of a military
10 court; or

11 (2) A commanding officer for imposing any authorized
12 nonjudicial punishment.

13 § **-242 Presumption of jurisdiction.** The jurisdiction of
14 the military courts and boards established by this chapter shall
15 be presumed and the burden of proof rests on any person seeking
16 to oust those courts or boards of jurisdiction in any action or
17 proceeding.

18 § **-243 Uniformity of interpretation.** This chapter shall
19 be so construed as to effectuate its general purpose to make
20 uniform the law of those states that enact it and, so far as



1 practical, to make that law uniform with the law of the United
2 States.

3 § -244 **Severability.** If any provision of this chapter,
4 or the application thereof to any person or circumstance, is
5 held invalid, the invalidity does not affect other provisions or
6 applications of the chapter that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this chapter are severable."

9 SECTION 3. Chapter 124A, Hawaii Revised Statutes, is
10 repealed.

11 SECTION 4. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 5. This Act shall take effect on July 30, 2075.



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 7/30/2075. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

