
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 legislature finds that chapter 124A, Hawaii
2 Revised Statutes, relating to the Hawaii code of military
3 justice, was enacted in 1982. This was the first major update
4 to the code of military justice for the state military forces
5 since 1894 to 1895. The current Hawaii code of military justice
6 lacks the necessary disciplinary options to provide for
7 effective and efficient good order and discipline in the state
8 military forces. This Act will remedy those issues and bring
9 the state military justice process in line with the Uniform Code
10 of Military Justice.

11 The purpose of this Act is to update the procedures and
12 punitive sections of military justice within the state military
13 forces and 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. This Act is based on the
17 Uniform Code of Military Justice as contained in title 10 United



1 States Code sections 801 et seq. and the Model State Code of
2 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 to 328, except for provisions not applicable
6 to or suitable for state military forces not in federal service.
7 This Act 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 This Act also provides for the right of appeal through a
13 civilian court process. This, and other features designed to
14 ensure better protection of the rights of the individual without
15 sacrificing command efficiency, are included in this version of
16 the Hawaii code of military justice.

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

20 **"CHAPTER**

21 **HAWAII CODE OF MILITARY JUSTICE**



PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

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

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

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

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

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



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

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

9 "Candidate" has the same meaning as the term "cadet", as
10 defined in this section.

11 "Code" means the Hawaii Code of Military Justice, adopted
12 pursuant to this Act.

13 "Commander" has the same meaning as the term "commanding
14 officer", as defined in this section, unless the context
15 otherwise requires.

16 "Commanding officer" includes only commissioned officers of
17 the state military forces and shall include officers in charge
18 only when administering nonjudicial punishment under section
19 -21.

20 "Commissioned officer" includes a commissioned warrant
21 officer.



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

2 "Contemptuous words" means words or speech manifesting, or
3 expressing, deep hatred or disapproval.

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

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

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

17 "Disrespect" means behavior that detracts from the respect
18 due the authority and person of a superior commissioned officer
19 or fellow soldier. "Disrespect" may consist of acts or
20 language, however expressed, and it is immaterial whether they
21 refer to the superior as an officer or as a private individual.



1 Disrespect by words may be conveyed by abusive epithets or other
2 contemptuous or denunciatory language. Truth is no defense.
3 Disrespect by acts includes neglecting the customary salute, or
4 showing a marked disdain, indifference, insolence, impertinence,
5 undue familiarity, or other rudeness in the presence of the
6 superior officer or fellow soldier.

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

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

17 "Governor" means the governor of the State.

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



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

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

9 (2) Certified as a non-federally recognized judge
10 advocate, under regulations promulgated pursuant to
11 this chapter, by the senior judge advocate of the
12 commander of the force in the state military forces of
13 which the accused is a member, as competent to perform
14 such military justice duties required by this code.

15 If there is no such judge advocate available, then
16 such certification may be made by such senior judge
17 advocate of the commander of another force in the
18 state military forces, as the convening authority
19 direct.

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



1 "Legal officer" means any commissioned officer of the
2 organized militia of the State designated to perform legal
3 duties for a command.

4 "Midshipman" has the same meaning as the term "cadet", as
5 defined in this section.

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

7 "Military court" means a court-martial, or a court of
8 inquiry.

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

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

15 "Officer" means a commissioned or warrant officer.

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

18 "President" means the detailed member senior in rank of a
19 court-martial then serving unless the context otherwise
20 requires.



1 "Rank" means the order of precedence among members of the
2 state military forces.

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

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

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

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



1 "Senior force commander" means the commander of the same
2 force of the state military forces as the accused.

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

11 "State judge advocate" means the commissioned officer
12 responsible for supervising the administration of the military
13 justice in the state military forces.

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

18 "Superior commissioned officer" means a commissioned
19 officer superior in rank or command.



1 § -2 **Persons subject to this chapter; jurisdiction.** (a)

2 This chapter applies to all members of the state military forces
3 at all times.

4 (b) Subject matter jurisdiction is established if a nexus
5 exists between an offense, either military or non-military, and
6 the state military force. Courts-martial have primary
7 jurisdiction of military offenses as defined in this chapter. A
8 proper civilian court has primary jurisdiction of a non-military
9 offense when an act or omission violates both this chapter and
10 local criminal law, foreign or domestic. In such a case, a
11 court-martial may be initiated only after the civilian authority
12 has declined to prosecute or dismissed the charge, provided
13 jeopardy has not attached. Jurisdiction over attempted crimes,
14 conspiracy crimes, solicitation, and accessory crimes shall be
15 determined by the underlying offense.

16 § -3 **Jurisdiction to try certain personnel.** (a) Each

17 person discharged from the state military forces who is later
18 charged with having fraudulently obtained the person's discharge
19 is, subject to section -68, subject to trial by court-martial
20 on that charge and after apprehension is subject to this chapter
21 while in the custody of the military for that trial. Upon



1 conviction of that charge, the person is subject to trial by
2 court-martial for all offenses under this chapter committed
3 before the fraudulent discharge.

4 (b) No person who has deserted from the state military
5 forces shall be relieved from amenability to the jurisdiction of
6 this chapter by virtue of a separation from any later period of
7 service.

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



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

4 (b) If the governor fails to convene a general court-
5 martial within six months from the presentation of an
6 application for trial under this chapter, the adjutant general
7 shall substitute for the dismissal ordered by the governor a
8 form of discharge authorized for administrative issue.

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

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



1 § -5 **Territorial applicability.** (a) This chapter has
2 applicability at all times and in all places, provided that
3 either the person subject to the chapter is in a duty status or,
4 if not in a duty status, that there is a nexus between the act
5 or omission constituting the offense and the efficient
6 functioning of the state military forces; however, this grant of
7 military jurisdiction shall neither preclude nor limit civilian
8 jurisdiction over an offense, which is limited only by the
9 prohibition of double jeopardy.

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

17 § -6 **Judge advocates.** (a) The governor, on the
18 recommendation of the adjutant general, shall appoint an officer
19 of the state military forces as state judge advocate. To be
20 eligible for appointment, an officer shall be a member of the



1 bar of the highest court of the State and shall have been a
2 member of the bar of the State for at least five years.

3 (b) The adjutant general may appoint as many assistant
4 state judge advocates as the adjutant general considers
5 necessary. To be eligible for appointment, assistant state
6 judge advocates shall be officers of the state military forces
7 and members of the bar of the highest court of the State.

8 (c) The state judge advocate, the state judge advocate's
9 assistants, or senior force judge advocates in each of the
10 state's military forces or that judge advocate's delegates shall
11 make frequent inspections in the field in supervision of the
12 administration of military justice.

13 (d) Convening authorities shall at all times communicate
14 directly with their staff judge advocates or legal officer in
15 matters relating to the administration of military justice; and
16 the staff judge advocate or legal officer of any command may
17 communicate directly with the staff judge advocate or legal
18 officer of a superior or subordinate command, or with the state
19 judge advocate.

20 (e) No person who has acted as member, military judge,
21 trial counsel, assistant trial counsel, defense counsel,



1 assistant defense counsel, or investigating officer in any case,
2 or who has been a witness for either the prosecution or defense
3 in any case may later act as staff judge advocate or legal
4 officer to any reviewing authority upon the same case.

5 § -6a (Reserved).

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

13 **PART II. APPREHENSION AND RESTRAINT**

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



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

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

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

§ -12 Apprehension of deserters. Any civil officer having authority to apprehend alleged offenders under the laws of the United States or this State or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend an alleged deserter from the state military forces and deliver the alleged deserter into the custody of the state military forces. If an alleged offender is apprehended



1 outside the State, the alleged offender's return to the area
2 shall be in accordance with normal extradition procedures or
3 reciprocal agreement.

4 § **-13 Imposition of restraint.** (a) An enlisted member
5 may be ordered into arrest or confinement by any commissioned
6 officer by an order, oral or written, delivered in person or
7 through other persons subject to this chapter or through any
8 person authorized by this chapter to apprehend persons. A
9 commanding officer may authorize warrant officers, petty
10 officers, or noncommissioned officers to order enlisted members
11 of the commanding officer's command or subject to the commanding
12 officer's authority into arrest or confinement.

13 (b) A commissioned officer or a warrant officer may be
14 ordered apprehended or into arrest or confinement only by a
15 commanding officer to whose authority the commissioned officer
16 or warrant officer is subject, by an order, oral or written,
17 delivered in person or by another commissioned officer. The
18 authority to order such persons apprehended or into arrest or
19 confinement may not be delegated.

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



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

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

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

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

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

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

(d) To facilitate compliance with subsection (c), the governor shall adopt rules setting forth procedures relating to referral for trial, including procedures for prompt forwarding



1 of the charges and specifications and, if applicable, the
2 preliminary hearing report submitted under section -54.

3 § -15 Place of confinement; reports and receiving of

4 **prisoners.** (a) If a person subject to this chapter is confined
5 before, during, or after trial, confinement shall be in a state
6 correctional facility designated by the governor or by such
7 person as the governor may authorize to act or military
8 confinement facility.

9 (b) No person authorized to receive prisoners pursuant to
10 subsection (a) may refuse to receive or keep any prisoner
11 committed to the person's charge by a commissioned officer of
12 the state military forces, when the committing officer furnishes
13 a statement, signed by such officer, of the offense charged
14 against the prisoner, unless otherwise authorized by law.

15 (c) Every person authorized to receive prisoners pursuant
16 to subsection (a) to whose charge a prisoner is committed shall,
17 within twenty-four hours after that commitment or as soon as the
18 person is relieved from guard, report to the commanding officer
19 of the prisoner the name of the prisoner, the offense charged
20 against the prisoner, and the name of the person who ordered or
21 authorized the commitment.



1 (d) Civilian confinement facilities may not charge the
2 state military forces for the cost of receiving or detaining the
3 person.

4 § -16 (Reserved) .

5 § -17 **Punishment prohibited before trial.** No person,
6 while being held for trial or awaiting a verdict, may be
7 subjected to punishment or penalty other than arrest or
8 confinement upon the charge pending against the person, nor
9 shall the arrest or confinement imposed upon the person be any
10 more rigorous than the circumstances require to insure the
11 person's presence, but the person may be subjected to minor
12 punishment during that period for infractions of discipline.

13 § -18 **Delivery of alleged offenders to civil**

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

17 (b) When delivery under this section is made to any civil
18 authority of a person undergoing sentence of a court-martial,
19 the delivery, if followed by conviction in a civil tribunal,
20 interrupts the execution of the sentence of the court-martial,
21 and the offender after having answered to the civil authorities



1 for the offender's offense shall, upon the request of competent
2 military authority, be returned to military custody for the
3 completion of the offender's sentence.

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

5 **§ -21 Commanding officer's non-judicial punishment. (a)**

6 Under such rules as the governor may prescribe, any commanding
7 officer (and for purposes of this section, officers-in-charge)
8 may impose disciplinary punishments for minor offenses pursuant
9 to this section without the intervention of a court-martial.

10 The governor, the adjutant general, or an officer of a general
11 or flag rank in command may delegate the powers under this
12 section to a principal assistant who is a member of the state
13 military forces.

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

- 16 (1) An admonition;
17 (2) A reprimand;
18 (3) The withholding of privileges for not more than six
19 months that need not be consecutive;
20 (4) The forfeiture of not more than seven days' pay;
21 (5) A fine of not more than seven days' pay;



(6) A reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the 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 airman is in the grade of E-6 or below, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;



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

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

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

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

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

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

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

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



1 (f) Prior to the offer of non-judicial punishment, the
2 commanding officer shall determine whether arrest in quarters or
3 restriction shall be considered as punishments. Should the
4 commanding officer determine that the punishment options may
5 include arrest in quarters or restriction, the accused shall be
6 notified of the right to demand trial by court-martial. Should
7 the commanding officer determine that the punishment options may
8 not include arrest in quarters or restriction, the accused shall
9 be notified that there is no right to trial by court-martial in
10 lieu of non-judicial punishment.

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

16 (1) Reduction in grade to forfeiture of pay;

17 (2) Arrest in quarters to restriction; or

18 (3) Extra duties to restriction.

19 The mitigated punishment may not be for a greater period
20 than the punishment mitigated. When mitigating reduction in
21 grade to forfeiture of pay, the amount of the forfeiture may not



1 be greater than the amount that could have been imposed
2 initially under this section by the officer who imposed the
3 punishment mitigated. Reduction in grade may be mitigated to
4 forfeiture of pay only within four months after the date of
5 execution.

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

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

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

13 PART IV. COURT-MARTIAL JURISDICTION

14 § -31 Courts-martial classified; general courts-martial;
15 special courts-martial; summary courts-martial. (a) The three
16 kinds of courts-martial in each of the state military forces are
17 the following:

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

19 (b);

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

21 (c); and



- 1 (3) Summary courts-martial, as described in subsection
2 (d).
- 3 (b) General courts-martial consist of:
- 4 (1) A military judge and not less than eight members; or
5 (2) A military judge alone, if before the court is
6 assembled, the accused, knowing the identity of the
7 military judge and after consultation with defense
8 counsel, requests orally on the record or in writing a
9 court composed only of a military judge and the
10 military judge approves the request.
- 11 (c) Special courts-martial consist of:
- 12 (1) A military judge and not less than four members; or
13 (2) A military judge alone:
- 14 (A) If the case is so referred by the convening
15 authority, subject to section -34; or
16 (B) If the case is referred under paragraph (1) and,
17 before the court is assembled, the accused,
18 knowing the identity of the military judge and
19 after consultation with defense counsel,
20 requests, orally or on the record or in writing,



1 a court composed of a military judge alone and
2 the military judge approves the request.

3 (d) Summary courts-martial consist of one commissioned
4 officer.

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

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

17 § -34 **Jurisdiction of special courts-martial.** (a)
18 Subject to section -32, special courts-martial have
19 jurisdiction to try persons subject to this chapter for any
20 offense made punishable by this chapter, and may, under such
21 limitations as the governor may prescribe, adjudge any



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

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

10 § -35 Jurisdiction of summary courts-martial. (a)

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

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



1 as the governor may prescribe, adjudge any punishment not
2 forbidden by this chapter except dismissal, dishonorable or bad-
3 conduct discharge, confinement for more than one month,
4 restriction to specified limits for more than two months, or
5 forfeiture of more than two-thirds of one month's pay.

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

9 § -36 (Reserved).

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

11 § -41 **Who may convene general courts-martial.** (a)

12 General courts-martial may be convened by:

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

20 (b) If any commanding officer authorized under subsection

21 (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 such 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 such 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;



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

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

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

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

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

(b) Any warrant officer of the state military forces is eligible to serve on general and special courts-martial for the trial of any person subject to this chapter, other than a 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 is eligible to
3 serve on general and special courts-martial for the trial of any
4 enlisted member subject to this chapter, but that member shall
5 serve as a member of a court only if, before the conclusion of a
6 session called by the military judge under section -64 prior
7 to trial or, in the absence of such a session, before the court
8 is assembled for the trial of the accused, the accused
9 personally has requested orally on the record or in writing that
10 enlisted members serve on it. After such a request, the accused
11 may not be tried by a general or special court-martial the
12 membership of which does not include enlisted members in a
13 number comprising at least one-third of the total membership of
14 the court, unless eligible enlisted members cannot be obtained
15 on account of physical conditions or military exigencies. If
16 the eligible enlisted members cannot be obtained, the court may
17 be assembled and the trial held without the enlisted members,
18 but the convening authority shall make a detailed written
19 statement, to be appended to the record, stating why they could
20 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 may 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 thereof such members of the
10 state military forces as, in the convening authority's opinion,
11 are best qualified for the duty by reason of age, education,
12 training, experience, length of service, and judicial
13 temperament. No member of the state military forces is eligible
14 to serve as a member of a general or special court-martial when
15 that member is the accuser, a witness, or has acted as
16 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 -50.

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

8 § -45 (Reserved).

9 § -46 **Military judge of a general or special court-**
10 **martial.** (a) A military judge shall be detailed to each
11 general and special court-martial. The military judge shall
12 preside over each open session of the court-martial to which the
13 military judge has been detailed.

14 (b) A military judge shall be:

- 15 (1) An active or retired commissioned officer of an
16 organized state military force;
17 (2) A member in good standing of the bar of the highest
18 court of the State or a member of the bar of a federal
19 court for at least five years; and



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

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

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

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



1 (f) The military judge of a court-martial may not consult
2 with the members of the court except in the presence of the
3 accused, trial counsel, and defense counsel, nor vote with the
4 members of the court.

5 § -47 **Military magistrates.** (a) A military magistrate
6 shall be a commissioned officer of the state military forces
7 who:

8 (1) Is a member of the bar of the highest court of this
9 State; and

10 (2) Is certified to be qualified, by reason of education,
11 training, experience, and judicial temperament, for
12 duty as a military magistrate by the senior force
13 judge advocate of the force of which the officer is a
14 member.

15 (b) In accordance with rules adopted by the governor or
16 the adjutant general, in addition to duties when designated
17 under section -52, a military magistrate may be assigned to
18 perform other duties of a nonjudicial nature.

19 § -48 **Detail of trial counsel and defense counsel.** (a)
20 For each general and special court-martial, the authority
21 convening the court shall detail trial counsel, defense counsel,



1 and their assistants as the convening authority considers
2 appropriate.

3 (b) No person who has acted as investigating officer,
4 military judge, or court member in any case may act later as
5 trial counsel, assistant trial counsel, or, unless expressly
6 requested by the accused, as defense counsel or assistant
7 defense counsel in the same case. No person who has acted for
8 the prosecution may act later in the same case for the defense,
9 nor may any person who has acted for the defense act later in
10 the same case for the prosecution.

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

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

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

18 (d) In the instance when a defense counsel is not a member
19 of the highest court of the State, the defense counsel shall be
20 deemed admitted pro hac vice, subject to filing a certificate



1 with the military judge setting forth the qualifications that
2 counsel is:

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

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

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

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

12 § -49 Detail or employment of reporters and
13 interpreters. Under such rules as the governor may adopt, the
14 convening authority of a general or special court-martial or
15 court of inquiry shall detail or employ qualified court
16 reporters, who shall record the proceedings of and testimony
17 taken before that court. Under like rules the convening
18 authority of a military court may detail or employ interpreters
19 who shall interpret for the court.

20 § -50 Assembly and impaneling of members; detail of new
21 members and military judges. (a) The military judge shall



1 announce the assembly of a general or special court-martial with
2 members. After such a court-martial is assembled, no member may
3 be absent, unless the member is excused:

4 (1) As a result of a challenge;

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

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

8 (b) Under rules adopted by the governor or the adjutant
9 general, the military judge of a general or special court-
10 martial with members shall:

11 (1) After determination of challenges, impanel the
12 members; and

13 (2) Excuse the members who, having been assembled, are not
14 impaneled.

15 (c) In a general court-martial, the military judge shall
16 impanel eight members. In a special court-martial, the military
17 judge shall impanel four members.

18 (d) In addition to members under subsection (c), the
19 military judge shall impanel alternate members, if the convening
20 authority authorizes alternate members.



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

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

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

7 the trial may not proceed unless the convening authority details
8 new members and, from among the members so detailed, the
9 military judge impanels new members sufficient in number to
10 provide the membership specified in subsection (f).

11 (f) The membership referred to in subsection (e) is as
12 follows:

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

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

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

19 (h) In the case of new members under subsection (e), the
20 trial may proceed with new members present after the evidence
21 previously introduced is read or, in the case of audiotape,



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

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

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

11 **§ -51 Charges and specifications.** (a) Charges and
12 specifications:

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

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

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



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

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

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

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

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

§ -52 Certain proceedings conducted before referral.

(a) Proceedings may be conducted to review, or otherwise act on the following matters before referral of charges and specifications to court-martial for trial in accordance with rules 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 -6b for victims of sexual assault qualifying for a special victims' counsel under title 10 United States Code section 1044e as it applies to the National Guard.

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

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

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

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



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

4 (e) In accordance with rules adopted by the governor or
5 the adjutant general, a military judge detailed to a proceeding
6 under subsection (a), other than a proceeding described in
7 paragraph (2) of that subsection, may designate a military
8 magistrate to preside over the proceeding.

9 § -53 **Compulsory self-incrimination prohibited.** (a) No
10 person subject to this chapter may compel any person to
11 incriminate the person's self or to answer any question the
12 answer to which may tend to incriminate the person.

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



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

(d) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

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

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

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



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

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

5 (3) Whether or not the convening authority has court-
6 martial jurisdiction over the accused and over the
7 offense; and

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

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

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

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

20 Whenever practicable, the hearing officer shall be equal in
21 grade or senior in grade to military counsel who are detailed to



1 represent the accused or the Government at the preliminary
2 hearing.

3 (e) After a preliminary hearing under this section, the
4 hearing officer shall submit to the convening authority a
5 written report (accompanied by a recording of the preliminary
6 hearing under subsection (i)) that includes the following:

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

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

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



1 (4) A statement of action taken on evidence adduced with
2 respect to uncharged offenses, as described in
3 subsection (j).

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

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

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



1 (i) A preliminary hearing under subsection (a) shall be
2 recorded by a suitable recording device. The victim may request
3 the recording and shall have access to the recording under such
4 rules as the governor or the adjutant general may prescribe.

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

10 (1) Is present at the preliminary hearing;

11 (2) Is informed of the nature of each uncharged offense
12 considered; and

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

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

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



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

(2) Is named in one of the specifications.

§ -55 (Reserved).

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

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

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

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



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

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

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

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

17 (1) To correct errors in form; and

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



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

4 § -57 Service of charges; commencement of trial. (a)

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

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

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

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

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



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

4 **PART VII. TRIAL PROCEDURE**

5 **§ -61 Governor or the adjutant general may adopt rules.**

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

15 **§ -62 Unlawfully influencing action of court.** (a) No

16 authority convening a general, special, or summary court-
17 martial, nor any other commanding officer, or officer serving on
18 the staff thereof, may censure, reprimand, or admonish the court
19 or any member, military judge, or counsel thereof, with respect
20 to the findings or sentence adjudged by the court, or with
21 respect to any other exercise of its or their functions in the



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

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

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

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



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

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

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

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

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

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

18 (c) The accused may be represented:

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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



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

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

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



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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

(1) Has expired; or

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



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

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

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

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

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

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



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

3 (1) After introduction of evidence; and

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

(3) As otherwise authorized under this chapter.

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

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

(2) For a deposition under section -74;



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

2 or

3 (4) As otherwise authorized under this chapter.

4 (e) An investigative subpoena under subsection (d)(3) may
5 be issued before referral of charges to a court-martial only if
6 a general court-martial convening authority has authorized
7 counsel for the government to issue such a subpoena or a
8 military judge issues such a subpoena pursuant to section -
9 51.

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

18 (g) If a person requests relief from a subpoena or other
19 process under this section on grounds that compliance is
20 unreasonable or oppressive or is prohibited by law, a military



1 judge detailed in accordance with sections -41, -42, or
2 -74 shall review the request and shall:

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

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

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

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

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

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



1 is guilty of an offense against the State and a military court
2 may punish the person in the same manner as the civil courts of
3 the State.

4 § -73 **Contempts; authority to punish; punishment.** (a)

5 With respect to any proceeding under this chapter:

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

8 (2) Any military magistrate designated to preside under
9 section -47; or

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

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

16 (c) A punishment imposed under this section:

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

20 (2) If imposed by a court of inquiry, shall be subject to
21 review by the convening authority in accordance with



1 rules adopted by the governor or the adjutant general,
2 or as provided by law.

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

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

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

19 (d) A duly authenticated deposition taken upon reasonable
20 notice to the other parties, so far as otherwise admissible
21 under the rules of evidence, may be read in evidence before any



1 court-martial or in any proceeding before a court of inquiry, if
2 it appears:

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

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

11 (3) That the present whereabouts of the witness is
12 unknown.

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

19 § -75 **Admissibility of sworn testimony from records of**
20 **courts of inquiry.** (a) In any case not extending to the
21 dismissal of a commissioned officer, the sworn testimony,



1 contained in the duly authenticated record of proceedings of a
2 court of inquiry, of a person whose oral testimony cannot be
3 obtained, may, if otherwise admissible under the rules of
4 evidence, be read in evidence by any party before a court-
5 martial if the accused was a party before the court of inquiry
6 and if the same issue was involved or if the accused consents to
7 the introduction of the evidence.

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

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

14 (d) Sworn testimony that:

15 (1) Is recorded by audiotape, videotape, or similar
16 method; and

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

19 is admissible before a court-martial, court of inquiry, or
20 military board, to the same extent as sworn testimony may be



1 read in evidence before any such body under subsections (a),
2 (b), or (c).

3 § -76 **Defense of lack of physical or mental**

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

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

13 (c) Whenever lack of physical or mental responsibility of
14 the accused with respect to an offense is properly at issue, the
15 military judge shall follow the forms and procedures of chapter
16 704.

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

20 (1) A majority of the members of the court-martial present
21 at the time the vote is taken determines that the



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

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

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

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



1 constitutes the ruling of the court, except that the military
2 judge may change a ruling at any time during trial.

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

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

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

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

17 (4) That the burden of proof of establishing the guilt of
18 the accused beyond a reasonable doubt is upon the
19 State.

20 (d) Subsections (a), (b), and (c) do not apply to a court-
21 martial composed of a military judge only. The military judge



1 of such a court-martial shall determine all questions of law and
2 fact arising during the proceedings and, if the accused is
3 convicted, adjudge an appropriate sentence. The military judge
4 of such a court-martial shall make a general finding and shall
5 in addition on request find the facts specially. If an opinion
6 or memorandum of decision is filed, it will be sufficient if the
7 findings of fact appear therein.

8 § -78 **Votes required for conviction, sentencing, and**
9 **other matters.** (a) No person may be convicted of an offense in
10 a general or special court-martial, other than:

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

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

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

17 (b) Except as provided in subsections (a) and (c), all
18 matters to be decided by members of a general or special court-
19 martial shall be determined by a majority vote, but a
20 reconsideration of a finding of guilty or reconsideration of a
21 sentence, with a view toward decreasing the sentence, may be



1 made by any lesser vote that indicates that the reconsideration
2 is not opposed by the number of votes required for that finding
3 or sentence.

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

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

12 § -79 Findings and sentencing. (a) A court-martial
13 shall announce its findings and sentence to the parties as soon
14 as determined.

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

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



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

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

8 (1) The manner in which the convening authority will
9 dispose of one or more charges and specifications; and

10 (2) Limitations on the sentence that may be adjudged for
11 one or more charges and specifications.

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

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

17 (1) Contains a provision that has not been accepted by
18 both parties;

19 (2) Contains a provision that is not understood by the
20 accused;



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

(4) Is prohibited by law; or

(5) Is contrary to, or is inconsistent with, rules adopted by the governor, the adjutant general, or the Hawaii rules of penal procedure with respect to terms, conditions, or other aspects of plea agreements.

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

§ -81 Record of trial. (a) Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a recorder of the proceedings and authenticated by the signatures of the military judge and the senior officer of the panel or military judge alone if presided over by a judge alone. If the record cannot be authenticated by either the military judge or senior officer of the panel, by reason of death, disability, or absence, it shall be signed by the next senior member of the panel in lieu of the military judge or senior officer. If both



1 the military judge and the senior member of the panel are
2 unavailable, the record shall be authenticated by two members of
3 the panel.

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

9 (c) Except as provided in subsection (d), the record shall
10 contain such matters as the governor or the adjutant general may
11 adopt by rules.

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

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

20 (f) In the case of a general or special court-martial,
21 upon request, a copy of all prepared records of the proceedings



1 of the court-martial shall be given to the victim of the offense
2 if the victim testified during the proceedings. The records of
3 the proceedings shall be provided without charge and as soon as
4 the records are certified. The victim shall be notified of the
5 opportunity to receive the records of the proceedings.

6 **PART VIII. SENTENCES**

7 **§ -91 Cruel and unusual punishments prohibited.**

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

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



1 are misdemeanors. Any conviction by a summary court-martial is
2 not a criminal conviction.

3 (b) Except as provided in subsection (a) of section
4 -80, punishment for the following offenses shall include
5 dismissal or dishonorable discharge, as applicable:

6 (1) Sexual assault in the first degree under section 707-
7 730;

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

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

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

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

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



1 (2) The impact of the offense on:

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

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

7 (3) The need for the sentence:

8 (A) To reflect the seriousness of the offense;

9 (B) To promote respect for the law;

10 (C) To provide just punishment for the offense;

11 (D) To promote adequate deterrence of misconduct;

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

14 (F) To rehabilitate the accused; and

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

18 (4) The sentences available under this chapter.

19 (d) In announcing the sentence in a general or special
20 court-martial in which the accused is sentenced by military
21 judge alone under section -79, the military judge shall, with



1 respect to each offense of which the accused is found guilty,
2 specify the term of confinement, if any, and the amount of fine,
3 if any. If the accused is sentenced to confinement for more
4 than one offense, the military judge shall specify whether the
5 terms of confinement are to run consecutively or concurrently.

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

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

15 (1) The sentence violates the law; or

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

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



1 § **-93 Effective date of sentences.** (a) A court-martial
2 sentence shall be executed and take effect as follows:

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

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

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

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

20 (3) If in the case of a commissioned officer, cadet, or
21 midshipman, the sentence of a court-martial extends to



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

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

18 (b) On application by an accused, the convening authority
19 or, if the accused is no longer under that convening authority's
20 jurisdiction, the officer exercising general court-martial
21 jurisdiction over the command to which the accused is currently



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

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

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

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



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

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

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

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

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

§ -94 **Execution of confinement.** (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in



1 any state correctional facility designated for that purpose.
2 Persons so confined in a state correctional facility are subject
3 to the same discipline and treatment as persons confined or
4 committed to a state correctional facility by the courts of the
5 State.

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

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

19 § -95 Sentences; reduction in enlisted grade upon
20 approval. (a) A court-martial sentence of an enlisted member
21 in a pay grade above E-1, as set forth in the judgment of the



1 court-martial entered into the record under section -105,
2 that includes:

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

4 (2) Confinement,

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

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

18 § -96 Sentences; forfeiture of pay and allowances during
19 confinement. (a) A court-martial sentence described in
20 subsection (b) shall result in the forfeiture of pay, or of pay
21 and allowances, due that member during any period of confinement



1 or parole. The forfeiture pursuant to this section shall take
2 effect on the date determined under section -93 and may be
3 deferred as provided in that section. The pay and allowances
4 forfeited, in the case of a general court-martial, shall be all
5 pay and allowances due that member during such period and, in
6 the case of a special court-martial, shall be two-thirds of all
7 pay due that member during such period.

8 (b) A sentence covered by this section is any sentence
9 that includes:

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

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

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



(d) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or as finally approved, does not provide for a punishment referred to in subsection (b), the member shall be paid the pay and allowances that the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

PART IX. POST-TRIAL PROCEDURES AND REVIEW OF COURTS-MARTIAL

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

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

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

(1) Each plea and finding;

(2) The sentence, if any; and



(3) Such other information as the governor or the adjutant general may adopt by rule.

(b) Copies of the statement of trial results shall be provided promptly to the convening authority, the accused, and 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) May not act on the findings of the court-martial.



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

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

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

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

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

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



1 (d) Under rules adopted by the governor or the adjutant
2 general, a commissioned officer commanding for the time being, a
3 successor in command, or any person exercising general court-
4 martial jurisdiction may act under this section in place of the
5 convening authority.

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

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

12 (2) A sentence of dismissal, dishonorable discharge, or
13 bad-conduct discharge.

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

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

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



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

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

(1) Suspend a mandatory minimum sentence; or

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

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

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



1 (k) In evaluating whether the accused has provided
2 substantial assistance under this section, the convening
3 authority may consider the pre-sentence assistance of the
4 accused.

5 (l) In accordance with rules adopted by the governor or
6 the adjutant general, in determining whether to act under this
7 section, the convening authority shall consider matters
8 submitted in writing by the accused or any victim of an offense.
9 Such rules shall include:

10 (1) Procedures for notice of the opportunity to make such
11 submissions;

12 (2) The deadlines for such submissions; and

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

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



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

4 (o) If, under this section, the convening authority
5 reduces, commutes, or suspends the sentence, the decision of the
6 convening authority shall include a written explanation of the
7 reasons for such action.

8 (p) If, under subsection (j), the convening authority
9 reduces, commutes, or suspends the sentence, the decision of the
10 convening authority shall be forwarded to the military judge for
11 appropriate modification of the entry of judgment, which shall
12 be transmitted to the senior force judge advocate for
13 appropriate action.

14 § -104 Post-trial actions in summary courts-martial and
15 certain general and special courts-martial. (a) In a court-
16 martial not specified in subsection (b) of section -103, the
17 convening authority may:

18 (1) Dismiss any charge or specification by setting aside
19 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

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

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

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

(d) The convening authority may act under this section after entry of judgment in a general or special court-martial in the same manner as the convening authority may act under section -103(j). Such action shall be forwarded to the trial judge,



1 who shall ensure appropriate modification of the entry of
2 judgment and shall transmit the entry of judgment to the senior
3 force judge advocate for appropriate action.

4 (e) Under rules adopted by the governor or the adjutant
5 general, a commissioned officer commanding for the time being, a
6 successor in command, or any person exercising general court-
7 martial jurisdiction may act under this section in place of the
8 convening authority.

9 (f) The convening authority may not order a rehearing
10 under this section:

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

13 (2) To reconsider a finding of not guilty of any
14 specification or a ruling that amounts to a finding of
15 not guilty; or

16 (3) To reconsider a finding of not guilty of any charge,
17 unless there has been a finding of guilty under a
18 specification laid under that charge that sufficiently
19 alleges a violation of a section.

20 (g) In accordance with rules adopted by the governor or
21 the adjutant general, in determining whether to act under this



1 section, the convening authority shall consider matters
2 submitted in writing by the accused or any victim of the
3 offense. Such rules shall include the matter required by
4 section -103(1).

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

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

13 § -105 **Entry of judgment.** (a) In accordance with rules
14 adopted by the governor or the adjutant general, in a general or
15 special court-martial, the military judge shall enter into the
16 record of trial the judgment of the court. The judgment of the
17 court shall consist of the following:

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

19 (2) Any modifications of, or supplements to, the statement
20 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) Under 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, constitutes the judgment of the court-
martial and shall be recorded and distributed under 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, under rules adopted by the governor or the adjutant
general, the accused may waive the right to appeal. Such a
waiver shall be:

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



1 (2) Attached to the record of trial.

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

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

7 **§ -107 Appeal by the state.** (a) In a trial by general
8 or special court-martial or in a pretrial proceeding under
9 section -52, the State may appeal the following:

10 (1) An order or ruling of the military judge that
11 terminates the proceedings with respect to a charge or
12 specification;

13 (2) An order or ruling that excludes evidence that is
14 substantial proof of a fact material in the
15 proceeding;

16 (3) An order or ruling that directs the disclosure of
17 classified information;

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



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

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

7 (7) An order or ruling of the military judge entering a
8 finding of not guilty with respect to a charge or
9 specification following the return of a finding of
10 guilty by the members.

11 (b) An appeal of an order or ruling may not be taken
12 unless the trial counsel provides the military judge with
13 written notice of appeal from the order or ruling within
14 seventy-two hours of the order or ruling. Such notice shall
15 include a certification by the trial counsel that the appeal is
16 not taken for the purpose of delay and, if the order or ruling
17 appealed is one that excludes evidence, that the evidence
18 excluded is substantial proof of a fact material in the
19 proceeding.

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



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

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

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

11 (g) The State may appeal a ruling or order of a military
12 magistrate in the same manner as if the ruling or order had been
13 made by a military judge, except that the issue shall first be
14 presented to the military judge who designated the military
15 magistrate or to a military judge detailed to hear the issue.

16 (h) The provisions of this section shall be liberally
17 construed to effect its purposes.

18 § -108 Rehearings. (a) Each rehearing under this
19 chapter shall take place before a court-martial composed of
20 members that are not members of the court-martial that first
21 heard the case. Upon a rehearing the accused may not be tried



1 for any offense of which he was found not guilty by the first
2 court-martial, and no sentence in excess of, or more severe
3 than, the original sentence may be adjudged, unless the sentence
4 is based upon a finding of guilty of an offense not considered
5 upon the merits in the original proceedings, or unless the
6 sentence prescribed for the offense is mandatory.

7 (b) If the sentence adjudged by the first court-martial
8 was in accordance with a plea agreement under section -80 and
9 the accused at the rehearing does not comply with the agreement,
10 or if a plea of guilty was entered for an offense at the first
11 court-martial and a plea of not guilty was entered at the
12 rehearing, the sentence as to those charges or specifications
13 may include any punishment not in excess of the punishment that
14 could have been adjudged at the first court-martial, subject to
15 limitations as the governor or the adjutant general may adopt by
16 rules.

17 (c) If, after appeal by the government under section
18 -107, the sentence adjudged is set aside and a rehearing on
19 the sentence is ordered by the intermediate court of appeals,
20 the court-martial may impose any adjudged sentence, subject to



1 such limitations as the governor or the adjutant general may
2 adopt by rules.

3 § -109 **Senior force judge advocate review of finding of**
4 **guilty in summary court-martial.** (a) Under rules adopted by
5 the governor or the adjutant general, each summary court-martial
6 in which there is a finding of guilty shall be reviewed by the
7 senior force judge advocate or a judge advocate designated by
8 the senior force judge advocate. A judge advocate may not
9 review a case under this subsection if the judge advocate has
10 acted in the same case as an accuser, preliminary hearing
11 officer, member of the court, military judge, or counsel, or has
12 otherwise acted on behalf of the prosecution or defense. The
13 judge advocate's review shall be in writing and shall contain
14 the following:

15 (1) Conclusions as to whether:

16 (A) The court had jurisdiction over the accused and
17 the offense;

18 (B) The charge and specification stated an offense;
19 and

20 (C) The sentence was within the limits prescribed by
21 law or by rule;



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

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

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened or to that person's successor in command if:

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

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

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

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

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



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

(4) Dismiss the charges.

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

(e) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the state judge advocate for review under this section.

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

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



1 (c) The state judge advocate shall provide notice to the
2 accused of the right to file an appeal under section -113 by
3 means of depositing in the United States mail for delivery by
4 first class certified mail to the accused at an address provided
5 by the accused or, if no such address has been provided by the
6 accused, at the latest address listed for the accused in the
7 official service record of the accused.

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

10 (e) A review conducted under this section may be conducted
11 by an attorney within the office of the judge advocate for the
12 state military forces or by another attorney designated under
13 rules adopted by the governor or the adjutant general.

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

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

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



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

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

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

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

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

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

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

16 (j) If after a review of record under subsection (e), the
17 attorney conducting the review believes corrective action may be
18 required, the record shall be forwarded to the state judge
19 advocate, who may set aside the findings or sentence, in whole
20 or in part.



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

4 (l) If the state judge advocate sets aside the findings
5 and sentence and does not order a rehearing, the state judge
6 advocate shall dismiss the charges.

7 (m) If the state judge advocate sets aside the findings
8 and orders a rehearing and the convening authority determines
9 that a rehearing would be impracticable, the convening authority
10 shall dismiss the charges.

11 § -111 (Reserved).

12 § -112 (Reserved).

13 § -113 **Review by state appellate authority.** (a) An
14 accused, who was tried by a special or general court-martial and
15 who deems the accused is self aggrieved after the accused has
16 exhausted all of the accused's rights of review under this part,
17 shall be entitled to appeal the judgment or sentence of the
18 special or general court-martial, as may have been modified on
19 review under this part prior to judicial review under this
20 section, subject to chapter 602, in the manner provided for



1 civil appeals from the circuit courts, and within the time
2 provided by the rules of court.

3 (b) The filing of an appeal pursuant to subsection (a) may
4 not of itself stay the execution of the judgment or sentence
5 appealed from, but the appellate court may stay the same upon
6 motion upon such conditions as it may deem proper,
7 notwithstanding any conflicting or contrary provision in this
8 chapter relating to the effective date or execution of sentences
9 or any other contrary provision of law.

10 (c) In reviewing the judgment or sentence of a special or
11 general court-martial, as may have been modified on review prior
12 to judicial review, the appellate court may take any of the
13 actions and exercise any of the powers specified in section 641-
14 16 as the court may deem appropriate in reviewing a judgment or
15 sentence of a military court-martial, and the court shall follow
16 as appropriate or applicable the standards and requirements in
17 section 641-16.

18 (d) Upon the request of the accused, the state judge
19 advocate shall appoint a lawyer, in accordance with section
20 -116, who is a member of the bar of the highest court of the
21 State and who has been qualified as a judge advocate, as defined



1 in section -1 and section -48, to represent the accused in
2 the accused's appeal of the court-martial judgment or sentence.
3 If the accused wishes to be represented by civilian counsel,
4 rather than by appointed military counsel, the accused may do so
5 at the accused's own expense.

6 § -114 (Reserved) .

7 § -115 (Reserved) .

8 § -116 **Appellate counsel.** (a) The senior force judge
9 advocate shall detail one or more judge advocates as appellate
10 government counsel, and one or more judge advocates as appellate
11 defense counsel, who are qualified under section -48.

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

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

21 (1) When requested by the accused;



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

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

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

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

10 § -117 (Reserved) .

11 § -118 Vacation of suspension. (a) Before the vacation
12 of the suspension of a special court-martial sentence, which as
13 approved includes a bad-conduct discharge, or of any general
14 court-martial sentence, the officer having special court-martial
15 jurisdiction over the probationer shall hold a hearing on the
16 alleged violation of probation. The court-martial convening
17 authority may detail a judge advocate, who is qualified under
18 section -48, to conduct the hearing. The probationer shall
19 be represented at the hearing by counsel if the probationer so
20 desires.



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

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

14 § -119 **Petition for a new trial.** At any time within two
15 years after approval by the convening authority of a court-
16 martial sentence that extends to dismissal or dishonorable or
17 bad-conduct discharge, the accused may petition the governor for
18 a new trial on the grounds of newly discovered evidence or fraud
19 on the court-martial. If the accused's case is pending before
20 the state intermediate court of appeals or state supreme court,
21 the state judge advocate shall refer the petition to the



1 appropriate court for action. Otherwise, the state judge
2 advocate shall act upon the petition.

3 § **-120 Remission and suspension.** (a) The governor, the
4 adjutant general, or a convening authority may remit or suspend
5 any part or amount of the unexecuted part of any sentence,
6 including all uncollected forfeitures.

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

10 § **-121 Restoration.** (a) Under the rules as the
11 governor may adopt, all rights, privileges, and property
12 affected by an executed part of a court-martial sentence that
13 has been set aside or disapproved, except an executed dismissal
14 or discharge, shall be restored unless a new trial or rehearing
15 is ordered, and such executed part is included in a sentence
16 imposed upon the new trial or rehearing.

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



1 (c) If a previously executed sentence of dismissal is not
2 imposed on a new trial, the governor shall substitute therefor a
3 form of discharge authorized for administrative issue, and the
4 commissioned officer dismissed by that sentence may be
5 reappointed by the governor alone to such commissioned grade and
6 with such rank as in the opinion of the governor that former
7 officer would have attained had the former officer not been
8 dismissed. The reappointment of such a former officer shall be
9 without regard to the existence of a vacancy and shall affect
10 the promotion status of other officers only insofar as the
11 governor may direct. All time between the dismissal and
12 reappointment shall be considered as service for all purposes,
13 including the right to pay and allowances.

14 (d) The governor or the adjutant general shall adopt
15 rules, with such limitations as the governor or the adjutant
16 general considers appropriate, governing eligibility for pay and
17 allowances for the period after the date on which an executed
18 part of a court-martial is sentence is set aside.

19 § -122 **Finality of proceedings, findings, and sentences.**

20 The appellate review of records of trial provided under this
21 chapter; the proceedings, findings, and sentences of courts-



1 martial as reviewed and approved, as required by this chapter;
2 and all dismissals and discharges carried into execution under
3 sentences by courts-martial following review and approval, as
4 required by this chapter, are final and conclusive. Orders
5 publishing the proceedings of courts-martial and all actions
6 taken pursuant to those proceedings are binding upon all
7 departments, courts, agencies, and officers of the State,
8 subject only to action upon a petition for a new trial as
9 provided in section -119 and to action taken under section
10 -120.

11 § -123 **Leave required to be taken pending review of**
12 **certain court-martial convictions.** Under rules adopted by the
13 governor or the adjutant general, an accused who has been
14 sentenced by a court-martial may be required to take leave
15 pending completion of action under part IX if the sentence
16 includes an unsuspended dismissal or an unsuspended dishonorable
17 or bad-conduct discharge. The accused may be required to begin
18 such leave on the date of the entry of judgment under section
19 -105 at any time after such date, and such leave may be
20 continued until the date on which action under part IX is
21 completed or may be terminated at any earlier time.



1 § **-124 Lack of physical or mental capacity or**
2 **responsibility; commitment of accused for examination and**
3 **treatment.** (a) Whenever there is reason to doubt the accused's
4 fitness to proceed, the court may immediately suspend all
5 further proceedings in the trial and conduct an examination in
6 accordance with section 704-404.

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

11 **PART X. PUNITIVE SECTIONS**

12 § **-131 Principals.** Any person punishable under this
13 chapter who:

14 (1) Commits an offense punishable by this chapter, or
15 aids, abets, counsels, commands, or procures its
16 commission; or

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

20 § **-132 Accessory after the fact.** Any person subject to
21 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 a court-martial may direct.

§ -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.

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



1 § **-134 Attempts.** (a) An act, done with specific intent
2 to commit an offense under this chapter, amounting to more than
3 mere preparation and tending, even though failing, to effect its
4 commission, is an attempt to commit that offense.

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

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

12 § **-135 Conspiracy.** Any person subject to this chapter
13 who conspires with any other person to commit an offense under
14 this chapter shall, if one or more of the conspirators does an
15 act to affect the object of the conspiracy, be punished as a
16 court-martial may direct.

17 § **-136 Soliciting commission of offenses.** (a) Any
18 person subject to this chapter who solicits or advises another
19 to commit an offense under this chapter, other than an offense
20 specified in subsection (b), shall be punished as a court-
21 martial may direct.



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

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

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

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

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

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

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

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

(2) Who, with knowledge of the quarantine and the limits of the quarantine, goes beyond those limits before



1 being released from the quarantine by proper
2 authority,

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

4 § **-139 Desertion.** (a) Any member of the state military
5 forces who:

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

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

12 (3) Without being regularly separated from one of the
13 state military forces, enlists or accepts an
14 appointment in the same or another one of the state
15 military forces or in one of the armed forces of the
16 United States without fully disclosing the fact that
17 the member has not been regularly separated, or enters
18 any foreign armed service except when authorized by
19 the United States,

20 is guilty of desertion.



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

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

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

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

(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 a court-martial may direct.



1 § **-141 Missing movement; jumping from vessel.** (a) Any
2 person subject to this chapter who, through neglect or design,
3 misses the movement of a ship, aircraft, or unit with which the
4 person is required in the course of duty move shall be punished
5 as a court-martial may direct.

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

10 § **-142 Resistance, flight, breach of arrest, and escape.**

11 Any person subject to this chapter who:

- 12 (1) Resists apprehension;
13 (2) Flees from apprehension;
14 (3) Breaks arrest; or
15 (4) Escapes from custody or confinement,
16 shall be punished as a court-martial may direct.

17 § **-143 Offenses against correctional custody and**
18 **restriction.** (a) Any person subject to this chapter who:

- 19 (1) Is placed in correctional custody by a person
20 authorized to do so;



- 1 (2) While in correctional custody, is under physical
2 restraint; and
- 3 (3) Escapes from the physical restraint before being
4 released from the physical restraint by proper
5 authority,
6 shall be punished as a court-martial may direct.
- 7 (b) Any person subject to this chapter who:
- 8 (1) Is placed in correctional custody by a person
9 authorized to do so;
- 10 (2) While in correctional custody, is under restraint
11 other than physical restraint; and
- 12 (3) Goes beyond the limits of the restraint before being
13 released from the correctional custody or relieved of
14 the restraint by proper authority,
15 shall be punished as a court-martial may direct.
- 16 (c) Any person subject to this chapter who:
- 17 (1) Is ordered to be restricted to certain limits by a
18 person authorized to do so; and
- 19 (2) With knowledge of the limits of the restriction, goes
20 beyond those limits before being released by proper
21 authority,



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

2 § **-144 Contempt toward officials.** Any commissioned
3 officer who uses contemptuous words against the President, the
4 Vice President, Congress, the Secretary of Defense, the
5 secretary of a military department, the Secretary of Homeland
6 Security, or the governor or legislature of the State shall be
7 punished as a court-martial may direct.

8 § **-145 Disrespect toward superior commissioned officer;
9 assault of superior commissioned officer.** (a) Any person
10 subject to this chapter who behaves with disrespect toward that
11 person's superior commissioned officer shall be punished as a
12 court-martial may direct.

13 (b) Any person subject to this chapter who strikes that
14 person's superior commissioned officer or draws or lifts up any
15 weapon or offers any violence against that officer while the
16 officer is in the execution of the officer's office shall be
17 punished:

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



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

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

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

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

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

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

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

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer,



1 noncommissioned officer, or petty officer, while that
2 officer is in the execution of that officer's office,
3 shall be punished as a court-martial may direct.

4 § -148 **Failure to obey order, regulation, or rule.** Any
5 person subject to this chapter who:

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

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

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

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

14 § -149 **Cruelty and maltreatment.** Any person subject to
15 this chapter who is guilty of cruelty toward, or oppression or
16 maltreatment of, any person subject to that person's orders
17 shall be punished as a court-martial may direct.

18 § -150 **Prohibited activities with military recruit or**
19 **trainee by person in position of special trust.** (a) Any person
20 subject to this chapter who:



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

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

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

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

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

11 (1) Is a military recruiter and engages in prohibited
12 sexual activity with an applicant for military
13 service; or

14 (2) Is a military recruiter and engages in prohibited
15 sexual activity with a specially protected junior
16 member of the state military forces who is enlisted
17 under a delayed entry program,

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

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

21 (d) In this section:



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

3 (A) A member of the state military forces who is
4 assigned to, or is awaiting assignment to, basic
5 training or other initial active duty for
6 training, including a member who is enlisted
7 under a delayed entry program;

8 (B) A member of the state military forces who is a
9 cadet, a midshipman, an officer candidate, or a
10 student in any other officer qualification
11 program; or

12 (C) A member of the state military forces in any
13 program that by regulation or rule prescribed or
14 adopted by the Secretary concerned or the
15 governor or the adjutant general, is identified
16 as a training program for initial career
17 qualification.

18 (2) The term "training leadership position" means, with
19 respect to a specially protected junior member of the
20 state military forces, any drill instructor position
21 or other leadership position in a basic training



1 program, an officer candidate school, a reserve
2 officers' training corps unit, a training program for
3 entry into the state military forces, or any program
4 that, by regulation or rule prescribed or adopted by
5 the Secretary concerned or the governor or the
6 adjutant general, is identified as a training program
7 for initial career qualification.

8 (3) The term "applicant for military service" means a
9 person who, under regulations or rules prescribed or
10 adopted by the Secretary concerned or the governor or
11 the adjutant general, is an applicant for original
12 enlistment or appointment in the state military
13 forces.

14 (4) The term "military recruiter" means a person who,
15 under regulations or rules prescribed or adopted by
16 the Secretary concerned or the governor or the
17 adjutant general, has the primary duty to recruit
18 persons for military service.

19 (5) The term "prohibited sexual activity" means, as
20 specified in regulations or rules prescribed or
21 adopted by the Secretary concerned or the governor or



1 the adjutant general, inappropriate physical intimacy
2 under circumstances described in the regulations or
3 rules.

4 § -151 **Mutiny or sedition.** (a) Any person subject to
5 this chapter who:

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

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

15 (3) Fails to do that person's utmost to prevent and
16 suppress a mutiny or sedition being committed in the
17 person's presence or fails to take all reasonable
18 means to inform the person's superior commissioned
19 officer or commanding officer of a mutiny or sedition
20 that the person knows or has reason to believe is



1 taking place is guilty of a failure to suppress or
2 report a mutiny or sedition.

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

6 § -152 Offenses by sentinel or lookout. (a) Any
7 sentinel or lookout who is drunk on post, who sleeps on post, or
8 who leaves post before being regularly relieved, shall be
9 punished:

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

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

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

17 § -153 Disrespect toward sentinel or lookout. (a) Any
18 person subject to this chapter who, knowing that another person
19 is a sentinel or lookout, uses wrongful and disrespectful
20 language that is directed toward and within the hearing of the
21 sentinel or lookout, who is in the execution of duties as



1 sentinel or lookout, shall be punished as a court-martial may
2 direct.

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

9 § -154 Release of prisoner without authority; drinking
10 with prisoner. (a) Any person subject to this chapter:

11 (1) Who, without authority to do so, releases a prisoner;
12 or

13 (2) Who, through neglect or designs, allows a prisoner to
14 escape,

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

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

20 § -155 Unlawful detention. Any person subject to this
21 chapter who, except as provided by law, apprehends, arrests, or



1 confines any person shall be punished as a court-martial may
2 direct.

3 § **-156 Misconduct as prisoner.** Any person subject to
4 this chapter who, while in the hands of the enemy in time of
5 war:

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

11 (2) While in a position of authority over such persons
12 maltreats them without justifiable cause,
13 shall be punished as a court-martial may direct.

14 § **-157 Misbehavior before the enemy.** Any member of the
15 state military forces who before the presence of the enemy:

16 (1) Runs away;

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



- 1 (3) Through disobedience, neglect, or intentional
2 misconduct endangers the safety of any such command,
3 unit, 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 a court-martial may direct.



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 a court-
8 martial may direct.

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 a court-martial may
16 direct.

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

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 a court-martial may direct.

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, any thing described in subsection (c) shall be
16 punished as a court-martial may direct.

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 such 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 a court-martial may direct.

§ -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



(2) Takes a public record with the intent to alter,
conceal, remove, mutilate, obliterate, or destroy the
public record,
shall be punished as a court-martial may direct.

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

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

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

§ -166 Unlawful enlistment, appointment, or separation.

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



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

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 a court-martial
13 may direct.

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 a court-martial may direct.

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 a court-martial may direct.

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 a court-
9 martial may direct.

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 a court-martial may direct.

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



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

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

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

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

(2) wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person's uniform or civilian clothing,

shall be punished as a court-martial may direct.

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

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

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



(2) Makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(b) Any person subject to this chapter:

(1) Who takes an oath or affirmation that:

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

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

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

§ -172 (Reserved).

§ -173 **Military property; loss, damage, destruction, or wrongful disposition.** Any person subject to this chapter who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Willfully or through neglect damages, destroys, or 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 a court-martial may direct.

6 § -174 **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 a court-martial may direct.



1 § **-175 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 a court-martial may direct.

7 § **-176 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 a court-martial may direct.

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 a court-martial may direct.

17 § **-177 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 a court-martial may direct.



(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 a court-martial may direct.

§ -178 (Reserved) .

§ -179 Drunkenness and other incapacitation offenses.

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

(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 a court-martial may direct.

(c) Any person subject to this chapter who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.

§ -180 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 a court-martial may direct.

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 any such 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 § -181 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 -180;
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 a court-martial may direct.

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 may be provided under paragraph (3) for conduct on a



1 military installation that is in more than one state,
2 district, 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)(2), the blood alcohol
12 content limit with respect to alcohol concentration in a
13 person's blood is 0.08 grams of alcohol per 100 milliliters of
14 blood and with respect to alcohol concentration in a person's
15 breath is 0.08 grams of alcohol per 210 liters of breath, as
16 shown by chemical analysis.

17 § -182 **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 a court-martial may direct.

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 a court-martial may direct.

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

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 a court-martial may direct.

16 § -183 **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 a court-martial may direct.



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

(1) An explosive;

(2) A weapon of mass destruction;

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

(4) A hazardous material,

shall be punished as a court-martial may direct.

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

(1) An explosive;

(2) A weapon of mass destruction;

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

(4) A hazardous material,

shall be punished as a court-martial may direct.

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



1 § **-184 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 a court-martial may direct.

4 § **-185 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 a court-martial may direct.

8 § **-186 (Reserved) .**

9 § **-187 (Reserved) .**

10 § **-188 (Reserved) .**

11 § **-189 (Reserved) .**

12 § **-190 (Reserved) .**

13 § **-191 (Reserved) .**

14 § **-192 (Reserved) .**

15 § **-193 (Reserved) .**

16 § **-194 (Reserved) .**

17 § **-195 (Reserved) .**

18 § **-196 (Reserved) .**

19 § **-197 (Reserved) .**

20 § **-198 (Reserved) .**

21 § **-199 (Reserved) .**



1 § **-200 Offenses concerning government computers.** (a)

2 Any person subject to this chapter who:

3 (1) Knowingly accesses a government computer, with an
4 unauthorized purpose, and by doing so obtains
5 classified information, with reason to believe such
6 information could be used to the injury of the United
7 States, or to the advantage of any foreign nation, and
8 intentionally communicates, delivers, transmits, or
9 causes to be communicated, delivered, or transmitted
10 such information to any person not entitled to receive
11 it;

12 (2) Intentionally accesses a government computer, with an
13 unauthorized purpose, and thereby obtains classified
14 or other protected information from any such
15 government computer; or

16 (3) Knowingly causes the transmission of a program,
17 information, code, or command, and as a result of such
18 conduct, intentionally causes damage without
19 authorization, to a government computer,

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

21 (b) In this section:



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

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

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

§ -201 (Reserved) .

§ -202 **Fraud against the government.** Any person subject to this chapter:

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

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

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

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



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

3 (B) Makes any oath or affirmation to any fact or to
4 any writing or other paper knowing the oath or
5 affirmation to be false; or

6 (C) Forges or counterfeits any signature upon any
7 writing or other paper, or uses any such
8 signature knowing it to be forged or
9 counterfeited;

10 (3) Who, having charge, possession, custody or control of
11 any money, or other property of the United States or
12 the State, furnished or intended for the armed forces
13 of the United States or the state military forces,
14 knowingly delivers to any person having authority to
15 receive it, an amount thereof less than that for which
16 a certificate or receipt is received; or

17 (4) Who, being authorized to make or deliver any paper
18 certifying the receipt of any property of the United
19 States furnished or intended for the armed forces
20 thereof, makes or delivers to any person such writing
21 without having full knowledge of the truth of the



1 statements therein contained and with intent to
2 defraud the United States or the State,
3 shall, upon conviction, be punished as a court-martial may
4 direct.

5 § -203 (Reserved) .

6 § -204 (Reserved) .

7 § -205 (Reserved) .

8 § -206 (Reserved) .

9 § -207 (Reserved) .

10 § -208 (Reserved) .

11 § -209 (Reserved) .

12 § -210 (Reserved) .

13 § -211 (Reserved) .

14 § -212 (Reserved) .

15 § -213 **Perjury.** Any person subject to this chapter who
16 in a judicial proceeding or in a course of justice conducted
17 under this chapter willfully and corruptly:

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



(2) In any declaration, certificate, verification, or statement under penalty of perjury as permitted under title 28 United States Code section 1746, subscribes any false statement material to the issue or matter of inquiry, is guilty of perjury and shall be punished as a court-martial may direct.

§ -214 **Subornation of perjury.** (a) Any person subject to this chapter who induces and procures another person:

(1) To take an oath or affirmation; and
(2) To falsely testify, depose, or state upon the oath or affirmation, shall, if the conditions specified in subsection (b) are satisfied, be punished as a court-martial may direct.

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

(1) The oath or affirmation is administered with respect to a matter for which such oath or affirmation is required or authorized by law;
(2) The oath or affirmation is administered by a person having authority to do so;



1 (3) Upon the oath or affirmation, the other person

2 willfully makes or subscribes a statement;

3 (4) The statement is material;

4 (5) The statement is false; and

5 (6) When the statement is made or subscribed, the person

6 subject to this chapter and the other person do not

7 believe that the statement is true.

8 § -215 **Obstructing justice.** Any person subject to this
9 chapter who engages in conduct in the case of a certain person
10 against whom the accused had reason to believe there were or
11 would be criminal or disciplinary proceedings pending, with
12 intent to influence, impede, or otherwise obstruct due
13 administration of justice shall be punished as a court-martial
14 may direct.

15 § -216 **Misprision of serious offense.** Any person
16 subject to this chapter:

17 (1) Who knows that another person has committed a serious
18 offense; and

19 (2) Wrongfully conceals the commission of the offense and
20 fails to make the commission of the offense known to
21 civilian or military authorities as soon as possible,



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

2 § **-217 Wrongful refusal to testify.** Any person subject
3 to this chapter who, in the presence of a court-martial, a board
4 of officers, a court of inquiry, preliminary hearing, or an
5 officer taking a deposition, of or for the State or for the
6 United States, wrongfully refuses to qualify as a witness or to
7 answer a question after having been directed to do so by the
8 person presiding shall be punished as a court-martial may
9 direct.

10 § **-218 Prevention of authorized seizure of property.**
11 Any person subject to this chapter who, knowing that one or more
12 persons authorized to make searches and seizures are seizing,
13 are about to seize, or are endeavoring to seize property,
14 destroys, removes, or otherwise disposes of the property with
15 intent to prevent the seizure thereof shall be punished as a
16 court-martial may direct.

17 § **-219 Noncompliance with procedural rules.** Any person
18 subject to this chapter who:

- 19 (1) Is responsible for unnecessary delay in the
20 disposition of any case of a person accused of an
21 offense under this chapter; or



(2) Knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused,

shall be punished as a court-martial may direct.

§ -220 Wrongful interference with adverse administrative proceeding. Any person subject to this chapter who, having reason to believe that an adverse administrative proceeding is pending against any person subject to this chapter, wrongfully acts with the intent:

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

(2) To otherwise obstruct the due administration of justice,

shall be punished as a court-martial may direct.

§ -221 Retaliation. (a) Any person subject to this chapter who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication:



1 (1) Wrongfully takes or threatens to take an adverse
2 personnel action against any person; or
3 (2) Wrongfully withholds or threatens to withhold a
4 favorable personnel action with respect to any person,
5 shall be punished as a court-martial may direct.

6 (b) In this section:

7 (1) The term "protected communication" means the
8 following:

9 (A) A lawful communication to a Member of Congress or
10 an Inspector General; or

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

17 (i) A violation of law or regulation, including
18 a law or regulation prohibiting sexual
19 harassment or unlawful discrimination; or



(ii) Gross mismanagement, a gross waste of funds,
an abuse of authority, or a substantial and
specific danger to public health or safety;

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

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

§ -222 **Conduct unbecoming an officer.** Any commissioned
officer who is convicted of conduct unbecoming an officer shall
be punished as a court-martial may direct.

§ -223 **General article.** Though not specifically
mentioned in this chapter, all disorders and neglects to the
prejudice of good order and discipline in the state military
forces, all conduct of a nature to bring discredit upon the
state military forces, offenses specified by the governor or the
adjutant general by rule, and crimes and offenses not capital,
of which persons subject to this chapter may be guilty, shall be
taken cognizance of by a general, special, or summary court-



1 martial, according to the nature and degree of the offense, and
2 shall be punished at the discretion of that court. Where a
3 crime constitutes an offense that violates both this chapter and
4 the criminal laws of the state where the offense occurs or
5 criminal laws of the United States, jurisdiction of the military
6 court shall be determined in accordance with section -2(b).

7 **PART XI. MISCELLANEOUS PROVISIONS**

8 § -231 **Courts of inquiry.** (a) Courts of inquiry to
9 investigate any matter may be convened by any person authorized
10 to convene a general court-martial or by any other person
11 designated by the governor or the adjutant general for that
12 purpose, whether or not the persons involved have requested such
13 an inquiry.

14 (b) A court of inquiry consists of three or more
15 commissioned officers. For each court of inquiry, the convening
16 authority shall also appoint counsel for the court.

17 (c) Any person subject to this chapter whose conduct is
18 subject to inquiry shall be designated as a party.

19 (d) Any person who is subject to this chapter or employed
20 by the state department of defense, and who has a direct



1 interest in the subject of the inquiry has the right to be
2 designated as a party upon request to the court.

3 (e) Any person designated as a party shall be given due
4 notice and has the right to be present, to be represented by
5 counsel, to cross examine witnesses, and to introduce evidence.

6 (f) Members of a court of inquiry may be challenged by a
7 party, but only for cause stated to the court.

8 (g) The members, counsel, reporter, and interpreters of
9 courts of inquiry shall take an oath or affirmation to
10 faithfully perform their duties.

11 (h) Witnesses may be summoned to appear and testify and be
12 examined before courts of inquiry, as provided for courts-
13 martial.

14 (i) Courts of inquiry shall make findings of fact but may
15 not express opinions or make recommendations unless required to
16 do so by the convening authority.

17 (j) Each court of inquiry shall keep a record of its
18 proceedings, which shall be authenticated by the signatures of
19 the president and counsel for the court and forwarded to the
20 convening authority. If the record cannot be authenticated by
21 the president, it shall be signed by a member in lieu of the



1 president. If the record cannot be authenticated by the counsel
2 for the court, it shall be signed by a member in lieu of the
3 counsel.

4 § -232 **Authority to administer oaths or affirmations.**

5 (a) The following members of the state military forces may
6 administer oaths or affirmations for the purposes of military
7 administration, including military justice, and affidavits may
8 be taken for those purposes before persons having the general
9 powers of a notary public:

- 10 (1) All judge advocates;
11 (2) All summary courts-martial;
12 (3) All adjutants, assistant adjutants, acting adjutants,
13 and personnel adjutants;
14 (4) All commanding officers;
15 (5) All staff judge advocates and legal officers, and
16 acting or assistant staff judge advocates and legal
17 officers;
18 (6) The president, military judge, trial counsel, and
19 assistant trial counsel for all general and special
20 courts-martial;



1 (7) The president and counsel for the court of any court
2 of inquiry;

3 (8) All officers designated to take a deposition;

4 (9) All persons detailed to conduct an investigation; and

5 (10) All other persons designated by regulations of the
6 armed forces, rules adopted by the governor or the
7 adjutant general, or by law.

8 (b) Officers of the state military forces may not be
9 authorized to administer oaths or affirmations as provided in
10 this section unless they are on active duty in or with those
11 forces under orders of the governor as prescribed in this
12 chapter.

13 (c) The signature without seal of any such person,
14 together with the title of the person's office, is prima facie
15 evidence of the person's authority.

16 § -233 **Articles to be explained.** (a) The procedures
17 and provisions of this chapter shall be explained at least once
18 every three years to each unit of the state military forces.

19 (b) The procedures and provisions of this chapter shall be
20 carefully explained to every enlisted member at the time of the
21 member's enlistment or transfer or induction into, or at the



1 time of the member's order to duty in or with any of the state
2 military forces or within ninety days thereafter.

3 (c) Under rules adopted by the governor or the adjutant
4 general, officers with the authority to convene courts-martial
5 or to impose non-judicial punishment shall receive periodic
6 training regarding the purposes and administration of this
7 chapter.

8 (d) A complete text of this chapter and of the rules
9 adopted by the governor or the adjutant general thereunder shall
10 be made available in either hard copy or in an electronic format
11 to any member of the state military forces by the member's
12 commander, upon the member's request, for the member's personal
13 examination.

14 § -234 **Complaints of wrongs.** Any member of the state
15 military forces who has a complaint against the member's
16 commanding officer, and who, upon due application to that
17 commanding officer, is refused redress, may complain to any
18 superior commissioned officer, who shall forward the complaint
19 to the officer exercising general court-martial jurisdiction
20 over the officer against whom it is made. The officer
21 exercising general court-martial jurisdiction shall examine into



1 the complaint and take proper measures for redressing the wrong
2 complained of, and shall, as soon as possible, send to the
3 governor or the adjutant general a true statement of that
4 complaint, with the proceedings had thereon.

5 § **-235 Redress of injuries to property.** (a) Whenever a
6 complaint is made to any commanding officer that willful damage
7 has been done to the property of any person or that the person's
8 property has been wrongfully taken by members of the state
9 military forces, the commanding officer may, subject to such
10 rules as the governor or the adjutant general may adopt, convene
11 a board to investigate the complaint. The board shall consist
12 of from one to three commissioned officers, and, for the purpose
13 of that investigation, it has power to summon witnesses and
14 examine them upon oath or affirmation, to receive depositions or
15 other documentary evidence, and to assess the damages sustained
16 against the responsible parties. The assessment of damages made
17 by the board is subject to the approval of the commanding
18 officer, and the amount approved by the commanding officer shall
19 be charged against the pay of the offenders. The order of the
20 commanding officer directing charges herein authorized is
21 conclusive, except as provided in subsection (c), on any



1 disbursing officer for the payment by the disbursing officer to
2 the injured parties of the damages so assessed and approved.

3 (b) If the offenders cannot be ascertained, but the
4 organization or detachment to which they belong is known,
5 charges totaling the amount of damages assessed and approved may
6 be made in such proportion as may be considered just upon the
7 individual members thereof who are shown to have been present at
8 the scene at the time the damages complained of were inflicted,
9 as determined by the approved findings of the board.

10 Alternatively, if the offenders cannot be ascertained, but the
11 organization or detachment to which they belong is known,
12 charges totaling the amount of damages assessed and approved may
13 be paid to the injured parties from the military funds of the
14 units of the state military forces to which the offenders
15 belonged.

16 (c) Any person subject to this chapter who is accused of
17 causing willful damage to property has the right to be
18 represented by counsel, to summon witnesses in the person's
19 behalf, and to cross-examine those appearing against the person.
20 The person has the right of appeal to the next higher commander.



1 § **-236 Delegation of authority by the governor;**

2 **rulemaking authority of the governor.** (a) The governor may
3 delegate any authority vested in the governor under this chapter
4 to the adjutant general and may provide for the sub delegation
5 of any such authority as appropriate.

6 (b) The governor or the adjutant general, in accordance
7 with chapter 91, shall adopt such rules necessary to administer
8 and implement this chapter. Any rules required to be adopted by
9 any provision in this chapter shall be adopted in accordance
10 with chapter 91. Chapter 91 shall apply notwithstanding section
11 121-5 or any other contrary provision of law.

12 § **-237 Case management; data collection and**

13 **accessibility.** The adjutant general shall prescribe uniform
14 standards and criteria for conduct of each of the following
15 functions at all stages of the military justice system,
16 including pretrial, trial, post-trial, and appellate processes,
17 using, insofar as practicable, the best practices of federal and
18 state courts:

- 19 (1) Collection and analysis of data concerning substantive
20 offenses and procedural matters in a manner that
21 facilitates case management and decision making within



1 the military justice system, and that enhances the
2 quality of periodic reviews;

3 (2) Case processing and management;

4 (3) Timely, efficient, and accurate production and
5 distribution of records of trial within the military
6 justice system; and

7 (4) Facilitation of access to docket information, filings,
8 and records, taking into consideration restrictions
9 appropriate to judicial proceedings and military
10 records.

11 § -238 **Execution of process and sentence.** In the state
12 military forces not in federal service, the processes and
13 sentences of its courts-martial shall be executed by the civil
14 officers prescribed by the laws of the State.

15 § -239 **Process of military courts.** (a) Military courts
16 may issue any process or mandate necessary to carry into effect
17 their powers. Such a court may issue subpoenas and subpoenas
18 duces tecum and enforce by attachment attendance of witnesses
19 and production of books and records, when it is sitting within
20 the State and the witnesses, books, and records sought are also
21 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 marshals of the military court or any peace officer and shall be in such form as may be adopted by rules issued under this chapter.

(c) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this chapter, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

§ -240 Payment of fines and disposition thereof. Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of such fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due the delinquent, until the fine is liquidated. Any sum so deducted shall be returned to the military court that imposed the fine. The officer collecting a fine or penalty imposed by a



1 military court upon an officer or enlisted person shall pay it
2 within thirty days to the director of finance to the credit of
3 the state general fund.

4 § -241 **Immunity for action of military courts or**
5 **nonjudicial punishment.** No accused may bring an action or
6 proceeding against:

7 (1) The convening authority or a member of a military
8 court or officer or person acting under its authority
9 or reviewing its proceedings because of the approval,
10 imposition, or execution of any sentence or the
11 imposition or collection of a fine or penalty, or the
12 execution of any process or mandate of a military
13 court; or

14 (2) A commanding officer for imposing any authorized
15 nonjudicial punishment.

16 § -242 **Presumption of jurisdiction.** The jurisdiction of
17 the military courts and boards established by this chapter shall
18 be presumed and the burden of proof rests on any person seeking
19 to oust those courts or boards of jurisdiction in any action or
20 proceeding.



1 § **-243 Uniformity of interpretation.** This chapter shall
2 be so construed as to effectuate its general purpose to make
3 uniform the law of those states that enact it and, so far as
4 practical, to make that law uniform with the law of the United
5 States.

6 § **-244 Severability.** The provisions of this chapter are
7 hereby declared to be severable and if any provision of this
8 chapter or the application of such provision to any person or
9 circumstance is declared invalid for any reason, such
10 declaration shall not affect the validity of the remaining
11 portions of this chapter."

12 SECTION 3. Section 122A-6, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) When in the active service of the Hawaii state
15 defense force, members of the Hawaii state defense force are
16 subject to chapter [~~124A-~~] _____. Members are deemed to be in the
17 active service of the Hawaii state defense force from the date
18 and time specified in any order lawfully calling them into such
19 service."

20 SECTION 4. Section 122A-16, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~{}~~§122A-16~~{}~~ Courts-martial; nonjudicial punishment.

2 Any limitations in chapter ~~[124A]~~ ____ to the contrary
3 notwithstanding, whenever this chapter specifically authorizes
4 an act to be punished by court-martial or nonjudicial
5 punishment, the court-martial may be convened or nonjudicial
6 punishment imposed and punishment administered as though the act
7 complained of were a violation of the punitive articles of
8 chapter ~~[124A.]~~ ____."

9 SECTION 5. Section 657D-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "person in the military
11 service" and "persons in the military service of the State" to
12 read as follows:

13 ""Person in the military service" and "persons in the
14 military service of the State" include all members of any of the
15 state military forces, as defined in section ~~[124A-1.]~~ ____-1."

16 SECTION 6. Chapter 124A, Hawaii Revised Statutes, is
17 repealed.

18 SECTION 7. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 3000.

4



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 7/1/3000. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

