

ACT 171

H.B. NO. 1944-82

A Bill for an Act Relating to the Hawaii Code of Military Justice.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. Chapter 124 of the Hawaii Revised Statutes, relating to military courts-martial, was first enacted in 1894-1895 before Hawaii became a part of the United States. While it has occasionally been amended since then, it is still dated and lacking in comprehensiveness. To remedy its shortcomings, this Act replaces chapter 124, Hawaii Revised Statutes, with the Hawaii code of military justice.

The purpose of the Hawaii code of military justice is to provide a comprehensive law setting forth military judicial procedures which will apply to all members of the State's military forces, primarily National Guard units, while they are not in federal service but on duty status with the State. The Hawaii code is based on the Uniform Code of Military Justice of the National Conference of Commissioners on Uniform State Laws which in turn is based on and generally follows the United States Uniform Code of Military Justice (10 U.S.C. 801 *et seq.*; see also 32 U.S.C. 326-333), except for provisions not applicable to or suitable for state military forces not in federal service. The Hawaii code includes provisions dealing with apprehension, restraint and confinement of suspects; punishable offenses;

non-judicial punishment; state courts-martial jurisdiction, composition, and trial procedures; and sentencing and confinement.

One of the important provisions of the United States Code of Military Justice is the right of appeal, which has had a salutary effect on the administration of justice in the various branches of the military. This and other features designed to insure better protection of the rights of the individual without sacrificing command efficiency are included in the Hawaii code of military justice.

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

“CHAPTER HAWAII CODE OF MILITARY JUSTICE

PART I. GENERAL PROVISIONS

- § -1 **Definitions.** In this chapter, unless the context otherwise requires:
- (1) “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.
 - (2) “Active state duty” means duty in the active military service of the State under an order of the governor issued under authority vested in him by law, and includes travel to and from such duty.
 - (3) “Adjutant general” means the adjutant general of the State of Hawaii as defined in section 121-7.
 - (4) “Commanding officer” includes only commissioned officers.
 - (5) “Commissioned officer” includes a commissioned warrant officer.
 - (6) “Convening authority” includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.
 - (7) “Duty status other than active state duty” means any time when members and units of the state military forces assemble for drill or other equivalent training, instruction, or duty or participate in field training, encampments, maneuvers, schools, conferences, cruises, or other similar duties as may be prescribed by the laws of the United States (including but not limited to title 32 of the United States Code) or of the State and any regulations issued thereunder, and includes travel to and from such duty.
 - (8) “Enlisted member” means a person in an enlisted grade.
 - (9) “Governor” means the governor of the State of Hawaii.
 - (10) “Grade” means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.
 - (11) “Law officer” means an official of a general court-martial detailed in accordance with section -45.
 - (12) “Law specialist” means a commissioned officer of the organized militia of the State designated for special duty.

- (13) "Legal officer" means any commissioned officer of the organized militia of the State designated to perform legal duties for a command.
- (14) "Military" refers to any or all of the armed forces.
- (15) "Military court" means a court-martial, a court of inquiry, or a provost court.
- (16) "Officer" means commissioned or warrant officer.
- (17) "Rank" means the order of precedence among members of the state military forces.
- (18) "State judge advocate" means the commissioned officer responsible for supervising the administration of the military justice in the state military forces.
- (19) "State military forces" means the national guard of the State, as defined in section 101(3) of title 32, United States Code, the organized naval militia of the State, and any other military force organized under the laws of the State.
- (20) "Superior commissioned officer" means a commissioned officer superior in rank or command.

§ -2 **Persons subject to this chapter.** This chapter applies to all members of the state military forces who are not in federal service, but who are on active state duty or on duty status other than active state duty.

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

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

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

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

(c) If a discharge is substituted for a dismissal under this chapter, the governor

alone may reappoint the officer of such commissioned grade and with such rank as, in the opinion of the governor, that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

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

§ -5 Territorial applicability of the chapter. (a) This chapter applies throughout the State. It also applies to all persons otherwise subject to this chapter while they are serving outside the State, and while they are going to and returning from such service outside the State, in the same manner and to the same extent as if they were serving inside the State.

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

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

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

(c) The state judge advocate or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

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

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

PART II. APPREHENSION AND RESTRAINT

§ -11 Apprehension. (a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this chapter, or by rules issued under it, to apprehend persons subject to this chapter, any marshal of a court-martial

appointed pursuant to this chapter, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) 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.

§ -12 **Apprehension of deserters.** Any civil officer having authority to apprehend 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 a deserter from the state military forces and deliver him into the custody of the state military forces. If an offender is apprehended outside the State, his return to the area shall be in accordance with normal extradition procedures or reciprocal agreement.

§ -13 **Imposition of restraint.** (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter or through any person authorized by this chapter to apprehend persons. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

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

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

§ -14 **Restraint of persons charged with offenses.** Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

§ -15 **Confinement in jails.** Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in state correctional facilities designated by the governor or by such person as he may authorize to act.

§ -16 **Reports and receiving of prisoners.** (a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a state correctional facility designated under section -15, may refuse to receive or keep any

prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper, or officer of a state correctional facility designated under section -15, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

§ -17 **Punishment prohibited before trial.** Subject to section -83, no person, while being held for trial or as the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

§ -18 **Delivery of offenders to civil authorities.** (a) Under such rules as may be adopted under this chapter, a person subject to this chapter who is on active state duty or on duty status other than active state duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

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

PART III. NON-JUDICIAL PUNISHMENT

§ -21 **Commanding officer's non-judicial punishment.** (a) Under such rules as the governor may adopt, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

- (1) Upon an officer of his command:
 - (A) Withholding of privileges for not more than two consecutive weeks;
 - (B) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or
 - (C) If imposed by the governor, the commanding officer of a force of the state military forces, or the commanding general of a division, a fine or forfeiture of pay and allowances of not more than \$75;
- (2) Upon other military personnel of his command:
 - (A) Withholding of privileges for not more than two consecutive weeks;
 - (B) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;
 - (C) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours a day, holidays included;
 - (D) Reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower

command;

- (E) If imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days; or
- (F) If imposed by an officer exercising special court-martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than \$10.

(b) The governor may, by rule, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

(c) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the governor may by rule specifically prescribe, as provided in subsections (a) and (b) of this section.

(d) A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected.

(e) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(f) Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after the date that punishment is imposed and to any pay and allowances accrued before that date.

PART IV. COURTS-MARTIAL JURISDICTION

§ -31 Courts-martial of state military forces not in federal service; composition; jurisdiction; powers and proceedings. (a) In the state military forces not in federal service, there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

(b) The three kinds of courts-martial are:

- (1) General courts-martial, consisting of a law officer and not less than five members;
- (2) Special courts-martial, consisting of not less than three members; and
- (3) Summary courts-martial, consisting of one commissioned officer.

§ -32 Jurisdiction of courts-martial in general. Each force of the state military forces has court-martial jurisdiction over all persons subject to this chapter.

The exercise of jurisdiction by one force over personnel of another force shall be in accordance with rules adopted by the governor.

§ -33 **Jurisdiction of general courts-martial.** Subject to section -32, general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than \$200;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of these punishments.

§ -34 **Jurisdiction of special courts-martial.** Subject to section -32, special courts-martial have jurisdiction to try persons subject to this chapter for any offense for which they may be punished under this chapter. A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than \$100 for a single offense.

§ -35 **Jurisdiction of summary courts-martial.** (a) Subject to section -32, summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, for any offense made punishable by this chapter.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto, unless under section -21 he has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section -21, trial shall be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than \$25 for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks.

§ -36 **Sentences of dismissal or dishonorable discharge to be approved by the governor.** In the organized militia not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor.

§ -37 **Complete record of proceedings and testimony if dishonorable discharge, bad conduct discharge, or dismissal adjudged.** A dishonorable discharge, bad conduct discharge, or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made.

§ -38 **Confinement instead of fine.** In the state military forces not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine.

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

§ -41 **Who may convene general courts-martial.** In the state military forces not in federal service, general courts-martial may be convened by the governor or by the adjutant general.

§ -42 **Special courts-martial of state military forces not in federal service; who may convene.** (a) In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

(b) A special court-martial may not try a commissioned officer.

§ -43 **Summary courts-martial of state military forces not in federal service; who may convene.** (a) In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

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

§ -44 **Who may serve on courts-martial.** (a) Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer of or on duty with the state military forces is eligible to serve on general or special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c) Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

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

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

(f) When convening a court-martial, the convening authority shall detail as members thereof such members as, in his opinion, are best qualified for the duty by

reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the highest court of the State and of appropriate rank and grade, the convening authority shall appoint him as president of a special court-martial. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction.

§ -45 **Law officer of a general court-martial.** (a) The authority convening a general court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of the highest court of the State, or a member of the bar of a federal court, and who is certified to be qualified for such duty by the state judge advocate. No person is eligible to act as law officer in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer may not consult with the members of the court, other than on the form of the findings as provided in section -64, except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

§ -46 **Detail of trial counsel and defense counsel.** (a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, law officer, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial:

- (1) Must be a person who is a member of the bar of the highest court of the State, or a member of the bar of a federal court;
- (2) Must be certified as competent to perform such duties by the state judge advocate.

(c) In the case of a special court-martial:

- (1) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and
- (2) If the trial counsel is a member of the bar of the highest court of the State, the defense counsel detailed by the convening authority must be one of the foregoing.

§ -47 **Detail or employment of reporters and interpreters.** Under such rules as the governor may adopt, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. Under like rules the convening authority of a military court may detail or employ inter-

preters who shall interpret for the court.

§ -48 **Absent and additional members.** (a) No member of a general or special court-martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

PART VI. PRE-TRIAL PROCEDURE

§ -51 **Charges and specifications.** (a) Charges and specifications shall be signed by a person subject to this chapter under oath before a person authorized by this chapter to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

§ -52 **Compulsory self-incrimination prohibited.** (a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial 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 him.

(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 him in a trial by court-martial.

§ -53 **Investigation.** (a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the

matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this section are binding on all persons administering this chapter but failure to follow them does not divest a military court of jurisdiction.

§ -54 **Forwarding of charges.** When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the governor. If that is not practicable, he shall report in writing to the governor the reasons for delay.

§ -55 **Advice of state judge advocate and reference for trial.** (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this chapter and is warranted by evidence indicated in the report of the investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

§ -56 **Service of charges.** The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial before a general court-martial within a period of five days after the service of the charges upon him, or before a special court-martial within a period of three days after the service of the charges upon him.

PART VII. TRIAL PROCEDURE

§ -61 **Governor to adopt rules.** Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial and other military tribunals, and procedures for courts of inquiry, shall be prescribed by the governor by rules, which shall apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State, but which may not be contrary to or inconsistent with this chapter.

§ -62 **Unlawfully influencing action of court.** No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

§ -63 **Duties of trial counsel and defense counsel.** (a) The trial counsel of a general or special court-martial shall prosecute in the name of the State, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section -46. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section -46, perform any duty imposed by law, rule, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section -46, perform any duty imposed by law, rule, or the custom of the service upon counsel for the accused.

§ -64 **Sessions.** Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the

record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in general court-martial cases, the law officer.

§ -65 **Continuances.** A court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

§ -66 **Challenges.** (a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel is entitled to one preemptory challenge, but the law officer may not be challenged except for cause.

§ -67 **Oaths.** (a) The law officer, interpreters, and, in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(b) Each witness before a military court shall be examined on oath or affirmation.

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

(b) Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under section -151 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

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

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

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

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

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section.

§ -70 **Pleas of the accused.** If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or

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

§ -71 **Opportunity to obtain witnesses and other evidence.** (a) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such rules as the governor may adopt.

(b) The president of a court-martial or a summary court officer may:

- (1) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;
- (2) Issue subpoenas duces tecum and other subpoenas;
- (3) Enforce by attachment the attendance of witnesses and the production of books and papers; and
- (4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the State.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the State and shall be executed by civil officers as prescribed by the laws of the State.

§ -72 **Refusal to appear or testify.** Any person not subject to this chapter who:

- (1) Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before such a court;
- (2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the circuit court; and
- (3) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

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

§ -73 **Contempts.** A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for thirty days or a fine of \$100, or both.

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

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

(c) Depositions may be taken before and authenticated by any military or

civil officer authorized by the laws of the State or by the laws of the place where the deposition is taken to administer oaths.

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

- (1) That the witness resides or is beyond the county in which the court-martial or court of inquiry is ordered to sit;
- (2) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or
- (3) That the present whereabouts of the witness is unknown.

§ -75 **Admissibility of records of courts of inquiry.** (a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

§ -76 **Voting and rulings.** (a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial or by the president of a special court-martial upon any interlocutory questions other than a motion for a finding of not guilty, or the question of accused's sanity, is final and constitutes the ruling of the court. However, the law officer or president may change the ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section -77 beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

- (1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;
- (2) That in the case being considered, if there is a reasonable doubt as to the

guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

- (3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and
- (4) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the State.

§ -77 **Number of votes required.** (a) No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time that the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

§ -78 **Court to announce action.** A court-martial shall announce its findings and sentence to the parties as soon as determined.

§ -79 **Record of trial.** (a) Each court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signatures of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable, the record shall be authenticated by two members. A record of the proceedings of a trial in which the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial shall contain a verbatim account of the proceedings and testimony before the court. All other records of trial shall contain such matter and be authenticated in such manner as the governor may by rule prescribe.

(b) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. If a verbatim record of trial by general court-martial is not required by subsection (a), but has been made, the accused may buy such a record under such rules as the governor may adopt.

PART VIII. SENTENCES

§ -81 **Cruel and unusual punishments prohibited.** Cruel or unusual punishment may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

§ -82 **Maximum limits.** The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this chapter.

§ -83 **Effective date of sentences.** (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the

convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement. Rules adopted by the governor may provide that sentences of confinement may not be executed until approved by designated officers.

(c) All other sentences of courts-martial are effective on the date ordered executed.

§ -84 **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 any state correctional facility designated for that purpose. Persons so confined in a state correctional facility are subject to the same discipline and treatment as persons confined or committed to a state correctional facility by the courts of the State.

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

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

PART IX. REVIEW OF COURTS-MARTIAL

§ -91 **Execution of sentence; suspension of sentence.** Except as provided in sections -37 and -97, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence as approved by him.

§ -92 **Initial action on the record.** After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the governor.

§ -93 **General court-martial records; opinion by staff judge advocate.** The convening authority shall refer the record of each general court-martial to the staff judge advocate who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

§ -94 **Reconsideration and revision.** (a) If a specification before a court-

martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

- (1) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;
- (2) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this chapter; or
- (3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

§ -95 **Rehearings.** (a) If the convening authority disapproves the findings and sentence of a court-martial, he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

§ -96 **Approval by the convening authority.** In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

§ -97 **Review of records; disposition.** (a) If the convening authority is the governor, his action on the review of any record of trial is final, subject only to an appeal for judicial review pursuant to section -105.

(b) In all other cases not covered by subsection (a), if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate or legal officer of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate or legal officer shall then be sent to the state judge advocate for review.

(c) All other special and summary court-martial records shall be sent to the law specialist or legal officer of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by rules

adopted by the governor; provided that any final disposition of any special court-martial under this subsection is subject to appeal for judicial review pursuant to section -105.

(d) The state judge advocate shall review the record of trial in each case sent to him for review as provided under subsection (b). If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

(e) The state judge advocate shall take final action in any case reviewable by him, subject only to an appeal for judicial review pursuant to section -105.

(f) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(g) In a case reviewable by the state judge advocate under this section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(h) The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the state military forces, each of whom must be a member of the bar of the highest court of the State. Each board of review shall review the record of any trial by special court-martial, including a sentence to a bad-conduct discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section.

§ -98 **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 so much of the finding as includes a lesser included offense.

§ -99 **Review counsel.** (a) Upon the final review of a sentence of a general court-martial or of a sentence to a bad-conduct discharge, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate or legal officer, as the case may be, and before the state judge advocate.

(b) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section -46, if available, to represent the accused before the reviewing authority, before the staff judge advocate or legal officer, as the case may be, and before the state judge advocate, in the review of

cases specified in subsection (a) of this section.

(c) If provided by him, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate or legal officer, as the case may be, and before the state judge advocate.

§ -100 **Vacation of suspension.** (a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

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

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

§ -101 **Petition for a new trial.** At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal, dishonorable or bad-conduct discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.

§ -102 **Remission and suspension.** (a) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

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

§ -103 **Restoration.** (a) Under such rules as the governor may adopt, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

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

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all

purposes, including the right to pay and allowances.

§ -104 **Finality of proceedings, findings, and sentences.** The proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this chapter, are final and conclusive, subject only to an appeal for judicial review pursuant to section -105. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the State, subject only to action upon a petition for a new trial as provided in section -101 or upon an appeal for judicial review pursuant to section -105.

§ -105 **Judicial review by state supreme court.** (a) An accused, who was tried by a special or general court-martial and who still deems himself aggrieved after he has exhausted all of his rights of review under this part, shall be entitled to appeal the judgment or sentence of the special or general court-martial, as may have been modified on review under this part prior to judicial review under this section, to the state supreme court, subject to chapter 602, in the manner and within the time provided by the Hawaii Rules of Penal Procedure. All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.

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

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

(d) Upon the request of the accused, the state judge advocate shall appoint a lawyer, who is a member of the bar of the highest court of the State and who has been certified under section -45, to represent the accused in his appeal of the court-martial judgment or sentence to the supreme court. If the accused wishes to be represented by civilian counsel, rather than by appointed military counsel, he may do so at his own expense.

PART X. PUNITIVE ARTICLES

§ -111 **Persons to be tried or punished; offenses subject to jurisdiction; conflicts over jurisdiction with civil authority or courts.** (a) No person may be tried or punished for any offense provided for in sections -112 to -155 of this chapter, unless it was committed while he was in a duty status.

(b) The jurisdiction of courts-martial and the imposition of disciplinary punishment by a commanding officer for minor offenses without the intervention

of a court-martial shall be limited to violations of the punitive articles (sections 112 to 155) of this chapter, including violations of any rules adopted by the governor, under section 155, specifying or defining "disorders and neglects to the prejudice of good order and discipline in the state military forces". Jurisdiction over crimes or offenses not enumerated in or covered by the punitive articles of this chapter is reserved to civil authority and the civil courts. Conflicts or doubts over jurisdiction shall be resolved in favor of civil jurisdiction.

The delivery to civil authority of any person subject to this chapter who is on active state duty or on duty status other than active state duty and accused of an offense against civil authority shall be governed by section 18.

§ -112 **Principals.** Any person subject to this chapter who:

- (1) Commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or
- (2) Causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

§ -113 **Accessory after the fact.** Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

§ -114 **Conviction of lesser included offense.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

§ -115 **Attempts.** (a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

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

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

§ -116 **Conspiracy.** Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

§ -117 **Solicitation.** (a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 120 or mutiny in violation of section 129 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 134 or sedition in violation of section 129 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall

be punished as a court-martial may direct.

§ -118 **Fraudulent enlistment, appointment, or separation.** Any person who:

- (1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or
- (2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

§ -119 **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 him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, rule, or order shall be punished as a court-martial may direct.

§ -120 **Desertion.** (a) Any member of the state military forces who:

- (1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;
- (2) Quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or
- (3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated;

is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his 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 as a court-martial may direct.

§ -121 **Absence without leave.** Any person subject to this chapter who, without authority:

- (1) Fails to go to his appointed place of duty at the time prescribed;
- (2) Goes from that place; or
- (3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

§ -122 **Missing movement.** Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

§ -123 **Contempt towards officials.** Any person subject to this chapter who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving, shall be punished as a court-martial may direct.

§ -124 **Disrespect towards superior commissioned officer.** Any person subject to this chapter who behaves with disrespect towards his superior commissioned officer shall be punished as a court-martial may direct.

§ -125 **Assaulting or wilfully disobeying superior commissioned officer.** Any person subject to this chapter who:

- (1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of this office; or
- (2) Wilfully disobeys a lawful command of his superior commissioned officer;

shall be punished as a court-martial may direct.

§ -126 **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 his office;
- (2) Wilfully disobeys a lawful order of a warrant officer, noncommissioned officer, or petty officer; or
- (3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

§ -127 **Failure to obey order or regulation.** Any person subject to this chapter who:

- (1) Violates or fails to obey any lawful general order or regulation;
- (2) Having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or
- (3) Is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

§ -128 **Cruelty and maltreatment.** Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

§ -129 **Mutiny or sedition.** (a) Any person subject to this chapter who:

- (1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;
- (2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;
- (3) Fails to do this utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

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

§ -130 **Resistance, breach of arrest, and escape.** Any person subject to this

chapter who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

§ -131 **Releasing prisoner without proper authority.** Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

§ -132 **Unlawful detention of another.** Any person subject to this chapter who, except as provided by law or rule, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

§ -133 **Noncompliance with procedural rules.** Any person subject to this chapter who:

- (1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an 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.

§ -134 **Misbehavior before the enemy.** Any person subject to this chapter who before or in the presence of the enemy;

- (1) Runs away;
- (2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;
- (3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
- (4) Casts away his arms or ammunition;
- (5) Is guilty of cowardly conduct;
- (6) Quits his place of duty to plunder or pillage;
- (7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces;
- (8) Wilfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or
- (9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the State, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

§ -135 **Subordinate compelling surrender.** Any person subject to this chapter who compels or attempts to compel the commander of any of the state military forces of the State, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

§ -136 **Improper use of countersign.** Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he

was authorized and required to give, shall be punished as a court-martial may direct.

§ -137 **Forcing a safeguard.** Any person subject to this chapter who forces a safeguard shall be punished as a court-martial may direct.

§ -138 **Captured or abandoned property.** (a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who:

- (1) Fails to carry out the duties prescribed in subsection (a);
- (2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
- (3) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

§ -139 **Aiding the enemy.** Any person subject to this chapter 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.

§ -140 **Misconduct of a prisoner.** Any person subject to this chapter who, while in the hands of the enemy in time of war:

- (1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or rule, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or
- (2) While in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

§ -141 **False official statements.** Any person subject to this chapter, who, with intent to deceive, signs any false record, return, rule, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

§ -142 **Military property; loss, damage, destruction, of wrongful disposition.** Any person subject to this chapter who, without proper authority:

- (1) Sells or otherwise disposes of;
- (2) Wilfully or through neglect damages, destroys, or loses; or
- (3) Wilfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States or of the State shall be punished as a court-martial may direct.

§ -143 **Property other than military property; waste, spoilage, or destruction.** Any person subject to this chapter who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any

property other than military property of the United States or of the State shall be punished as a court-martial may direct.

§ **-144 Improper hazarding of vessel.** (a) Any person subject to this chapter who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces 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 of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

§ **-145 Drunken or reckless driving.** Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

§ **-146 Drunk on duty; sleeping on post; leaving post before relief.** Any person subject to this chapter who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

§ **-147 Dueling.** Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

§ **-148 Malingering.** Any person subject to this chapter who for the purpose of avoiding work, duty or service in the state military forces:

- (1) Feigns illness, physical disablement, mental lapse or derangement; or
- (2) Intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

§ **-149 Riot or breach of peace.** Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

§ **-150 Provoking speeches or gestures.** Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

§ **-151 Perjury.** Any person subject to this chapter who in a judicial proceeding or in a court of justice conducted under this chapter wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

§ **-152 Frauds against the government.** Any person subject to this chapter:

- (1) Who, knowing it to be false or fraudulent:
 - (A) Makes any claim against the United States, the State, or any officer thereof; or
 - (B) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the State, or any officer thereof;
- (2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the State, or any officer thereof:
 - (A) Makes or uses any writing or other paper knowing it to contain any

false or fraudulent statements;

- (B) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or
- (C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;
- (3) Who, having charge, possession, custody, or control of any money, or other property of the United States or the State, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or
- (4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the State, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the State; shall,

upon conviction, be punished as a court-martial may direct.

§ -153 **Larceny and wrongful appropriation.** (a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

- (1) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or
- (2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

§ -154 **Conduct unbecoming an officer.** Any commissioned officer who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.

§ -155 **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 as shall be specified or defined by the governor by rules, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

PART XI. MISCELLANEOUS PROVISIONS

§ -161 **Courts of inquiry.** (a) Courts of inquiry to investigate any matter may be convened by the governor or by any other person designated by the governor for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed in the department of defense, who has a direct interest in the subject of inquiry has the right to be designated as party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

§ -162 **Authority to administer oaths.** (a) The following members of the state military forces may administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

- (1) The state judge advocate and all assistant state judge advocates;
- (2) All law specialists;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (5) All commanding officers of the naval militia;
- (6) All legal officers;
- (7) The president, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (8) The president and the counsel for the court of any court of inquiry;
- (9) All officers designated to take a deposition;
- (10) All persons detailed to conduct an investigation; and
- (11) All other persons designated by rules of the governor.

(b) Officers of the state military forces may not be authorized to administer oaths as provided in this section unless they are on active duty in or with those forces under orders of the governor as prescribed in this chapter.

(c) The signature without seal of any such person, together with the title of his office, is prima facie evidence of his authority.

§ -163 **Sections to be explained.** Sections -2, -3, -11, -21,

-44, -46, -62, -81, -111 to -153, and -163 to -165 shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the state military forces or within thirty days thereafter. They shall also be explained annually to each unit of the state military forces. A complete text of this chapter and of the rules adopted by the governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

§ -164 **Complaints of wrongs.** Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general.

§ -165 **Redress of injuries to property.** (a) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may, subject to such rules as the governor may adopt, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

(c) Any person subject to this chapter who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. He has the right of appeal to the next higher commander.

§ -166 **Execution of process and sentence.** In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the State.

§ -167 **Process of military courts.** (a) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the State and the witnesses, books, and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, 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 prescribed 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.

§ -168 **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 him, until the fine is liquidated. Any sum so deducted shall be returned to the military court which imposed the fine. The officer collecting a fine or penalty imposed by a military court upon an officer or enlisted man shall pay it within thirty days to the director of finance to the credit of the state general fund.

§ -169 **Immunity for action of military courts.** No accused may bring an action or proceeding against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.

§ -170 **Presumption of jurisdiction.** The jurisdiction of the military courts and boards established by this chapter shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

§ -171 **Delegation of authority by the governor; rule-making authority of governor.** (a) The governor may delegate any authority vested in him under this chapter, and may provide for the subdelegation of any such authority, except the power given him by sections -36 and -41.

(b) The governor, in accordance with chapter 91, may adopt such rules as he may deem necessary to administer and implement this chapter. Any rules required to be adopted by any provision in this chapter shall be adopted in accordance with chapter 91. Chapter 91 shall apply notwithstanding section 121-5 or any other contrary provision of law.

§ -172 **Uniformity of interpretation.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and, so far as practical, to make that law uniform with the law of the United States."

SECTION 3. Section 121-31, Hawaii Revised Statutes, is amended to read as follows:

"§121-31 [Regulations for United States Army and Air Force] Hawaii Code of Military Justice to apply. Whenever any portion of the militia, including the army or air national guard, is on active service pursuant to the order of the governor, or is on duty or ordered to assemble for duty in time of war, insurrection, invasion, public danger, or to aid the civil authorities on account of any breach of the peace, tumult, riot, resistance to the process of the State, or imminent danger thereof, or while engaged in disaster relief or for any other cause, the [Uniform] Hawaii Code of Military Justice and [regulations governing the army and air force of the United States as far as the code and regulations are consistent with the laws of

this State,] rules adopted to administer and implement that Code, shall be enforced and regarded as a part of this chapter until the forces are relieved from duty. [As to offenses committed when the Uniform Code of Military Justice is in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment here vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under the Uniform Code of Military Justice or the regulations or laws governing the United States army or air force, or the customs and usages thereof, subject to the limitations prescribed by this chapter and chapter 124. Any violation of the Uniform Code of Military Justice which constitutes a felony under the laws of the State shall be prosecuted in the courts of the State.]”

SECTION 4. Section 122-10, Hawaii Revised Statutes, is amended to read as follows:

“§122-10 [Uniform] Hawaii Code of Military Justice; freedom from arrest; jury duty. Whenever the Hawaii state guard or any part thereof is ordered out for active service[,] pursuant to the order of the governor, the [Uniform] Hawaii Code of Military Justice [of the United States] applicable to members of the national guard of this State in relation to courts-martial, their jurisdiction and the limits of punishment, and the rules and regulations prescribed thereunder shall be in full force and effect with respect to the Hawaii state guard.

No officer or enlisted man of the Hawaii state guard shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he is ordered to attend for military duty. Every officer and enlisted man of the Hawaii state guard shall, during his service, be exempt from service upon any posse comitatus and from jury duty.”

SECTION 5. Section 121-32, Hawaii Revised Statutes, is repealed.

SECTION 6. Chapter 124, Hawaii Revised Statutes, is repealed.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 9. This Act shall take effect upon its approval; provided that this Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

(Approved June 5, 1982.)

Note

1. Edited pursuant to HRS §23G-16.5