

# WEST VIRGINIA CODE: §15-1E-1

## PART I. GENERAL PROVISIONS.

### §15-1E-1. Definitions; gender neutrality.

(a) In this article, unless the context otherwise requires:

(1) The term "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 other person who has an interest other than an official interest in the prosecution of the accused.

(2) The term "cadet," "candidate," or "midshipman" means a person who is enrolled in or attending a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the state military forces.

(3) The term "classified information" means - any information or material that has been determined by an official of the United States or any state pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national or state security, and any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. §2014(y)).

(4) The term "code" means this article.

(5) The term "commanding officer" includes only commissioned officers of the state military forces and shall include officers in charge only when administering nonjudicial punishment under Section fifteen of this article. The term "commander" has the same meaning as "commanding officer" unless the context otherwise requires.

(6) The term "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 to the convening authority.

(7) The term "day" means calendar day and is not synonymous with the term "unit training assembly." Any punishment authorized by this section which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean succeeding duty days.

(8) The term "duty status other than state active duty" means any other type of duty not in federal service and not full-time duty in the active service of the state; under an order issued by authority of law and includes travel to and from such duty.

(9) The term "enlisted member" means a person in an enlisted grade.

(10) The term "judge advocate" means a commissioned officer of the organized state military forces who is an attorney licensed to practice in this state or is a member in good standing of the bar of the highest court of another state, who is admitted pro hac vice to practice in this state, and is any of the following: Certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, or the Marine Corps or designated as a law specialist as an officer of the Coast Guard, or a reserve component of one of these; or certified as an nonfederally recognized judge advocate, under regulations promulgated pursuant to this provision, by the senior judge advocate of the commander of the force in the state military forces of which the accused is a member, as competent to perform such military justice duties required by this article. If there is no such judge advocate available, then such certification may be made by such senior judge advocate of the commander of another force in the state military forces, as the convening authority directs.

(11) The term "may" is used in a permissive sense. The phrase "no person may . . ." means that no person is required, authorized, or permitted to do the act prescribed.

(12) The term "military court" means a court-martial or a court of inquiry.

(13) The term "military judge" means an official of a general or special court-martial detailed in accordance with section twenty-six of this article.

(14) The term "military offenses" means those offenses prescribed under sections seventy-seven (Principals), seventy-eight (Accessory after the fact), eighty (Attempts), eighty-one (Conspiracy), eighty-two (Solicitation), eighty-three (Fraudulent enlistment, appointment, or separation), eighty-four (Unlawful enlistment, appointment, or separation), eighty-five (Desertion), eighty-six (Absence without leave), eighty-seven (Missing movement), eighty-eight (Contempt toward officials), eighty-nine (Disrespect towards superior commissioned officer), ninety (Assaulting or willfully disobeying superior commissioned officer), ninety-one (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer), ninety-two (Failure to obey order or regulation), ninety-three (Cruelty and maltreatment), ninety-four (Mutiny or sedition), ninety-five (Resistance, flight, breach of arrest, and escape), ninety-six (Releasing prisoner without proper authority), ninety-seven (Unlawful detention), ninety-eight (Noncompliance with procedural rules), ninety-nine (Misbehavior before the enemy), one hundred (Subordinate compelling surrender), one hundred one (Improper use of countersign), one hundred two (Forcing a safeguard), one hundred three (Captured or abandoned property), one hundred four (Aiding the enemy), one hundred five (Misconduct as prisoner), one hundred seven (False official statements), one hundred eight (Military property - Loss, damage, destruction, or wrongful disposition), one hundred nine (Property other than military property - waste, spoilage, or destruction), one hundred ten (Improper hazarding of vessel), one hundred twelve (Drunk on duty), one hundred twelve-a. (Wrongful use, possession, etc, of controlled substances), one hundred thirteen (Misbehavior of sentinel), one hundred fourteen (Dueling), one hundred fifteen (Malingering), one hundred sixteen (Riot or breach of peace), one hundred seventeen (Provoking speeches or gestures), one hundred thirty-two (Frauds against the government), one hundred thirty-three (Conduct unbecoming an officer and a gentleman), and one hundred thirty-four (General) of this

article.

(15) The term "national security" means the national defense and foreign relations of the United States.

(16) The term "officer" means a commissioned or warrant officer.

(17) The term "officer in charge" means a member of the Naval Militia, the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(18) The term "record," when used in connection with the proceedings of a court-martial, means - an official written transcript, written summary, or other writing relating to the proceedings; or an official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(19) "Shall" is used in an imperative sense.

(20) "State" means one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands.

(21) "State active duty" means full-time duty in the state military forces under an order of the Governor or otherwise issued by authority of law, and paid by state funds, and includes travel to and from such duty.

(22) "Senior force judge advocate" means the senior judge advocate of the commander of the same force of the state military forces as the accused and who is that commander's chief legal advisor. To be eligible to serve as a senior force judge advocate, a judge advocate must be a member of the bar of the Supreme Court of Appeals of West Virginia for at least five years, and shall have completed all educational requirements for active military service as a field grade judge advocate general corps officer.

(23) "State military forces" means the National Guard of the state, as defined in title 32, United States Code, to include the West Virginia Army National Guard, the West Virginia Air National Guard and the inactive National Guard, and shall be deemed to include any unit, component, element, headquarters, staff or cadre thereof, as well as any member or members, when not in a status subjecting them to exclusive jurisdiction under chapter 47 of title 10, United States Code.

(24) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(25) "Senior force commander" means the commander of the same force of the state military forces as the accused.

(26) "Unit Training Assembly" means an assembly for drill or instruction which may consist

of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the commander, a series of ordered formations of those organizations.

(b) The use of the masculine gender throughout this shall also include the feminine gender.