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WEST VIRGINIA LEGISLATURE
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ENROLLED

Committee Substitute

SENATE BILL NO. 143

(By Mrs. Spears)

PASSED February 12, 1982

In Effect ninety days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 143
(By MRS. SPEARS)

[Passed February 12, 1982; in effect ninety days from passage.]

AN ACT to repeal section fifteen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one of said chapter; and to amend and reenact article one-e of said chapter, all relating generally to the military forces of the state; providing for a code of military justice with respect thereto; defining certain terms and phrases with respect thereto; providing for the establishment of trials by courts-martial; establishing the jurisdiction of said courts-martial; providing for the dismissal of commissioned officers with approval of the governor; establishing the territorial applicability of the provisions of said article one-e; providing for the appointment of state judge advocate officers and assistants and defining the duties of such officers and assistants; providing for the apprehension, arrest and custody of persons subject to and in violation of said military code; establishing the authority of civil officers to enforce said code; providing for the imposition of restraint based upon probable cause of persons subject to said code; providing for the issuance of arrest warrants to police officers and establishing procedures for admission to bail of persons arrested pursuant thereto; providing for the confinement of violators in civilian jails; requiring reports upon receiving of prisoners subject to said code by military and civilian personnel; prohibiting punishment prior to trial of persons subject to said code;

requiring the deliverance of such persons to civilian authorities in certain cases; establishing disciplinary punishment for minor offenses committed by persons subject to said code without intervention of court-martial and limitations and appeals relating thereto; providing for the classification of courts-martial; establishing the jurisdiction of courts-martial generally; providing for penalties and limitations of special courts-martial and the limitations thereon and the penalties to be imposed thereby; establishing the jurisdiction of summary courts-martial and the limitations thereon and penalties to be imposed thereby; providing for a written record of bad conduct discharge proceedings; requiring the confinement of persons subject to this code in lieu of fines and limitations with respect thereto; authorizing the convening of general, special and summary courts-martial and the limitations with respect thereto and the persons empowered to convene said courts-martial; providing for persons to serve on courts-martial generally and limitations thereon; providing for the appointment of a military judge to preside over special or general courts-martial in lieu of a hearing panel and eligibility therefor and limitations thereon; providing for the employment or appointment of reporters and interpreters; prohibiting the absence of a member of a general or special courts-martial without excuse; providing for the addition of new members and limitations thereon; requiring the specification of charges and the disposition thereof; prohibiting compulsory self-incrimination; providing for the investigation of charges or specifications prior to convening of a general court-martial; providing for and establishing the rights of accused violators of said code; providing for the timely forwarding of charges to persons exercising general courts-martial jurisdiction and the timely service of charges upon the accused; requiring the establishment of certain trial procedures by the governor; prohibiting the wrongful influencing of the court; the duties of trial and defense counsel in any general or special courts-martial; governing courts-martial sessions generally and continuances thereof and limitations thereon; providing for challenges to military judges and members of general or special courts-martial for cause and providing for one peremptory challenge; establishing a statute of limitations with respect to certain offenses; providing for the attachment of jeopardy; establishing the right of the accused to obtain witnesses and other evidence and the forms of various

pleas and limitations with respect thereto; providing for sanctions for refusal to appear and testify; establishing contempt of military courts by military persons and the penalty therefor; allowing the taking of depositions and notice therefor and admissibility into evidence and limitations thereon; providing for admissibility of certain records; establishing voting procedures of courts-martial; reserving rulings on questions and interlocutory matters; providing for instructions to members of courts-martial panel; providing for proceedings before military judge only; providing for conviction, sentences and other matters relating thereto; requiring courts to announce findings and sentences; requiring records of courts-martial proceedings and furnishing such records to accused in certain cases; prohibiting cruel and unusual punishment; establishing maximum limits of punishment; establishing effective date of sentences and places of confinement; providing for execution of confinement; authorizing hard labor; establishing duties of county jail officials with respect to military prisoners; providing for review of courts-martial proceedings; defining errors of law and lesser included offenses; providing reconsideration, revision and rehearing of courts-martial findings; requiring approval of sentences by convening authority; establishing review by board of review; providing for appellate counsel; defining execution, suspension and vacation of sentence; providing for petition for new trial and the remission and suspension of sentences as a result and limitations with respect thereto; establishing restoration of rights, privileges and property of persons convicted and limitations thereon; defining finality of proceedings, findings and sentences; defining principals and accessories after the fact; providing for the conviction for lesser included offenses; prescribing certain other offenses and the penalties therefor; providing for the establishment of courts of inquiry and the power to convene the same; establishing the composition of such courts and procedures relating thereto; providing for examination and availability of the military code to military personnel; requiring complaints of and redress of wrongs and redress of injuries to property; disposing of fines and penalties; establishing liabilities of public officers for nonexecution of process and penalties therefor; allowing compensation for court members and immunity for actions of a military court; providing reemployment rights for guard members; providing

for delegation of authority by the governor; and establishing uniformity of interpretation and severability of provisions of said article one-e.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article one of said chapter be amended and reenacted; and that article one-e of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. MILITARY FORCES OF THE STATE.

§15-1-1. Definitions.

1 When used in articles one, one-a, one-b, one-c, one-d, one-f
2 and one-g of this chapter, unless a different meaning is
3 plainly required by the context:

4 (a) The term "military forces of the state" shall mean the
5 organized militia, the state retired list, the honorary militia
6 and the state guard, and all other components of the militia of
7 the state which may hereafter be organized.

8 (b) The term "organized militia" shall mean the West
9 Virginia national guard, including the army national guard,
10 the air national guard and the inactive national guard, and
11 shall be deemed to include any unit, component, element,
12 headquarters, staff or cadre thereof, as well as any member or
13 members.

14 (c) "Military personnel of the national guard" shall mean
15 all the members of the organized militia.

16 (d) "Military" shall mean army or land, air or air force,
17 navy or naval.

18 (e) The term "service of the state" or "active service of the
19 state" shall mean active military duty in other than a training
20 status in or with a force of the organized militia or with the
21 adjutant general's department, upon orders of the governor.

22 (f) The term "state duty" shall mean duty in a training
23 status or other duty in the interest of the state and the
24 organized militia.

25 (g) The term "service of the United States" or "active
26 service of the United States" shall mean active military duty
27 in the armed forces of the United States except active duty for
28 training purposes.

29 (h) The term "officer" or "commissioned officer" shall be
30 deemed to include warrant officers.

ARTICLE 1E. CODE OF MILITARY JUSTICE.

PART I. GENERAL PROVISIONS.

§15-1E-1. Short title.

- 1 This article shall be known and may be cited as the “West
- 2 Virginia Code of Military Justice.”

§15-1E-2. Definitions.

- 1 The following words and phrases when used in this article
- 2 shall have, unless the context clearly indicates otherwise, the
- 3 meanings given to them in this section:
- 4 (a) “Accuser.” A person who signs and swears to charges,
- 5 any person who directs that charges nominally be signed and
- 6 sworn to by another or any person who has an interest other
- 7 than an official interest in the prosecution of the accused.
- 8 (b) “Active state duty.” Full-time duty in the active
- 9 military service of the state under an order of the governor, or
- 10 by a superior commissioned officer pursuant to law. It
- 11 includes travel to and from such duty.
- 12 (c) “Adjutant general.” The adjutant general of the state of
- 13 West Virginia.
- 14 (d) “Convening authority.” Includes, in addition to the
- 15 person who convened the court, a commissioned officer
- 16 commanding for the time being, or a successor in command.
- 17 (e) “Duty status.” Includes any periods of drill, annual
- 18 field training, active state duty and such other training, and
- 19 service as may be required under state or federal laws,
- 20 regulations, or orders, and includes travel to and from such
- 21 duty.
- 22 (f) “Enemy.” Includes, for the purposes of the punitive
- 23 provisions of this article, not only the organized forces of a
- 24 hostile nation in time of war but also any hostile body the
- 25 state military forces may be opposing, such as looters, a riot, a
- 26 rebellious mob or band of renegades or outlaws.
- 27 (g) “Enlisted person.” A person in an enlisted grade.
- 28 (h) “Federal service.” Periods of active duty other than
- 29 active state duty, but excludes active duty for training, active
- 30 duty for periods of less than thirty days, and active duty for
- 31 the purpose of attending service schools.
- 32 (i) “Grade.” A step or degree, in a graduated scale of office
- 33 or military rank, that is established and designated as a grade
- 34 by law or regulation.

35 (j) "May." Is used in a permissive sense. The words "no
36 person may . . ." means that no person is required, authorized
37 or permitted to do the act prescribed.

38 (k) "Military." Any or all of the armed forces.

39 (l) "Military court." A court-martial or a court of inquiry.

40 (m) "Military judge." An official of a general or special
41 court-martial appointed in accordance with section
42 twenty-nine of this article.

43 (n) "Officer." Commissioned or warrant officer.

44 (o) "Rank." The order of precedence among members of
45 the state military forces.

46 (p) "State judge advocate." The commissioned officer
47 responsible for supervising the administration of the military
48 justice in the state military forces. He shall be the military
49 staff judge advocate to the governor.

50 (q) "Superior commissioned officer." A commissioned
51 officer superior in rank and command.

§15-1E-3. Persons subject to article.

1 This article applies to all members of the state military
2 forces who are not in federal service.

§15-1E-4. Jurisdiction to try certain personnel.

1 (a) Each person subject to this article discharged from the
2 state military forces who is later charged with having
3 fraudulently obtained his discharge shall be, subject to
4 section forty-six of this article, subject to trial by
5 court-martial on said charge and shall after apprehension be
6 subject to this article while in the custody of the military for
7 such trial. Upon conviction of said charge he shall be subject
8 to trial by court-martial for all offenses under this article
9 committed before the fraudulent discharge.

10 (b) No person subject to this article who has deserted from
11 the state military forces shall be relieved from amenability to
12 the jurisdiction of this article by virtue of a separation from
13 any subsequent period of service.

§15-1E-5. Dismissal of commissioned officer.

1 (a) Any commissioned officer, subject to this article
2 dismissed by order of the governor, may make a written
3 application for trial by court-martial, setting forth, under
4 oath, that he has been wrongfully dismissed. In such event,
5 the governor, as soon as practicable, shall convene a general
6 court-martial to try such officer on the charges on which he
7 was dismissed. A court-martial so convened shall have

8 jurisdiction to try the dismissed officer on such charge, and
 9 he shall be considered to have waived the right to plead any
 10 statute of limitations applicable to any offense with which he
 11 is charged. The court-martial may, as part of its sentence,
 12 adjudge the affirmance of the dismissal, but if the
 13 court-martial acquits the accused or if the sentence adjudged,
 14 as finally approved or affirmed, does not include dismissal,
 15 the adjutant general shall substitute for the dismissal ordered
 16 by the governor a form of discharge authorized for
 17 administrative issue.

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

§15-1E-6. Territorial applicability.

1 (a) This article applies throughout this state. It also applies
 2 to all persons otherwise subject to the article while they are
 3 serving outside this state, and while they are going to and
 4 returning from such service outside this state, in the same
 5 manner and to the same extent as if they were serving inside
 6 this state.

7 (b) Courts-martial and courts of inquiry may be convened
 8 and held in units of the state military forces while those units
 9 are serving outside this state with the same jurisdiction and
 10 powers as to persons subject to the article as if the
 11 proceedings were held inside this state and persons subject to
 12 this article accused of committing offenses outside this state
 13 shall be subject to trial and punishment either inside or
 14 outside this state.

§15-1E-7. Judge advocates and legal officers.

1 (a) The adjutant general shall appoint a judge advocate
 2 officer of the state military forces as state judge advocate. To
 3 be eligible for appointment, such officer shall have been a
 4 member of the bar of the supreme court of appeals of West
 5 Virginia for at least five years, and shall have satisfactorily
 6 completed all educational requirements for active military
 7 service as a field grade judge advocate general corps officer.

8 (b) The adjutant general may appoint as many assistant
 9 state judge advocates as he considers necessary. To be
 10 eligible for appointment, assistant state judge advocates must
 11 be judge advocate officers of the state military forces and

12 members of the bar of the supreme court of appeals of West
13 Virginia.

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

17 (d) Convening authorities shall at all times communicate
18 directly with their staff judge advocates or legal officer in
19 matters relating to the administration of military justice; and
20 the staff judge advocate or legal officer of any command is
21 entitled to communicate directly with the staff judge
22 advocate or legal officer of a superior or subordinate
23 command, or with the state judge advocate.

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

PART II. APPREHENSION AND RESTRAINT.

§15-1E-8. Apprehension.

1 (a) Apprehension is the taking of a person subject to this
2 article into custody.

3 (b) Any person authorized by this article, or by regulations
4 issued under it, may apprehend persons subject to this article
5 upon reasonable belief that an offense under this article has
6 been committed and that the person apprehended committed
7 it.

8 (c) Officers, petty officers and noncommissioned officers
9 have authority to quell quarrels, frays, and disorders among
10 persons subject to this article and to apprehend persons
11 subject to this article who take part therein.

§15-1E-9. Apprehension of persons absent without leave.

1 Any civil officer having authority to apprehend offenders
2 under the law of the United States or of a state, territory,
3 commonwealth, or possession, or of the District of Columbia,
4 or any military officer subject to this article who has been
5 authorized by the governor by regulations may summarily
6 apprehend any person subject to this article absent without
7 leave from the state military forces and deliver him into the
8 custody of the state military forces.

§15-1E-10. Imposition of restraint.

1 (a) Arrest is the restraint of a person subject to this article
2 by an order, not imposed as a punishment for an offense,
3 directing him to remain within certain specified limits.
4 Confinement is the physical restraint of a person subject to
5 this article.

6 (b) An enlisted person subject to this article may be
7 ordered into arrest or confinement by any officer by an order,
8 oral or written, delivered in person or through other persons
9 subject to this article or through any person authorized by
10 this article to apprehend persons. A commanding officer may
11 authorize officers, petty officers, or noncommissioned
12 officers to order enlisted members of his command or subject
13 to his authority into arrest or confinement.

14 (c) An officer subject to this article may be ordered
15 apprehended or into arrest or confinement only by a
16 commanding officer to whose authority he is subject, by an
17 order, oral or written, delivered in person or by another
18 commissioned officer. The authority to order such persons
19 apprehended or into arrest or confinement may not be
20 delegated.

21 (d) No person subject to this article may be ordered
22 apprehended or into arrest or confinement except upon
23 probable cause and written record of the facts and
24 circumstances upon which probable cause was made shall be
25 recorded.

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

§15-1E-11. Restraint of persons charged with offenses.

1 (a) Any person subject to this article charged with an
2 offense under this article may be ordered into arrest or
3 confinement. When any person subject to this article is placed
4 in arrest or confinement prior to trial, immediate steps shall
5 be taken to inform him of the specific wrong of which he is
6 accused, to try him, or to dismiss the charges and release him.

7 (b) The convening authority of any court-martial shall
8 have the power to issue warrants of apprehension directed to
9 the sheriff or police officer within the proper county to
10 apprehend persons subject to this article charged with an
11 offense under this article and to deliver such persons into the
12 custody of the state military forces.

13 (c) In cases where the unit of which the accused is a
14 member is not in a status of active state duty or engaged in
15 annual field training, such accused, if apprehended or
16 ordered into confinement prior to or during trial by a military
17 court, may be admitted to bail by the officer exercising
18 special court-martial jurisdiction over him or by a superior
19 commanding officer, or the adjutant general.

§15-1E-12. Confinement in jails.

1 Persons subject to this article confined other than in a
2 military installation, whether before, during or after trial by a
3 military court, shall be confined in municipal, county, or state
4 places of confinement.

§15-1E-13. Reports and receiving of prisoners.

1 (a) No provost marshal, commander of a guard, warden,
2 keeper, or officer of a municipal, county, or state place of
3 confinement may refuse to receive or keep any prisoner
4 subject to this article, committed to his charge, when the
5 committing person furnishes a statement, signed by him, of
6 the offense charged against the prisoner.

7 (b) Every commander of a guard, warden, keeper, or
8 officer of a municipal, county, or state place of confinement to
9 whose charge a prisoner subject to this article is committed,
10 shall, within twenty-four hours after that commitment, report
11 to the commanding officer of the prisoner, report the name of
12 the prisoner, the offense charged against him, and the name
13 of the person who ordered or authorized the commitment.

§15-1E-14. Punishment prohibited before trial.

1 No person subject to this article, while being held for trial
2 or the result of trial, may be subjected to punishment or
3 penalty other than arrest or confinement upon the charges
4 pending against him, nor shall the arrest or confinement
5 imposed upon him be any more rigorous than the
6 circumstances require to insure his presence: *Provided*, That
7 such persons may be subject to the same treatment and
8 discipline as persons similarly confined under the authority
9 of the state or any political subdivision thereof.

§15-1E-15. Delivery of offenders to civil authorities.

1 (a) Under such regulations as may be prescribed under this
2 article, a person subject to this article on active state duty,
3 accused of an offense against civil authority, may be

4 delivered, upon request of such civil authority, to such civil
5 authority for trial.

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

PART III. NONJUDICIAL PUNISHMENT.

§15-1E-16. Commanding officer's nonjudicial punishment.

1 (a) Under such regulations as the governor may prescribe,
2 any commanding officer may, in addition to or in lieu of
3 admonition or reprimand, impose one of the following
4 disciplinary punishments for minor offenses without the
5 intervention of a court-martial:

6 (1) Upon an officer of his command:

7 (i) Withholding of privileges for not more than two
8 consecutive weeks;

9 (ii) Restriction to certain specified limits, with or without
10 suspension from duty, for not more than two consecutive
11 weeks; or

12 (iii) If imposed by the adjutant general, the commanding
13 officer of a division or a wing or a separate brigade or a group
14 or a similar organization, a fine or forfeiture of pay and
15 allowances of not more than one hundred fifty dollars.

16 (2) Upon other military personnel of his command:

17 (i) Withholding of privileges for not more than two
18 consecutive weeks;

19 (ii) Restriction to certain specified limits, with or without
20 suspension from duty, for not more than two consecutive
21 weeks;

22 (iii) Extra duties for not more than fourteen days, which
23 need not be consecutive, and for not more than two hours per
24 day, holidays included;

25 (iv) Reduction to next inferior grade if the grade from
26 which demoted was established by the command or an
27 equivalent or lower command; or

28 (v) If imposed by an officer exercising special
29 court-martial jurisdiction over the offender, a fine or
30 forfeiture of pay and allowances of not more than fifty dollars.

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

35 (c) A person punished under this section who considers
36 his punishment unjust or disproportionate to the offense
37 may, through the proper channel, appeal to the next superior
38 authority. The appeal shall be promptly forwarded and
39 decided. The officer who imposes the punishment, his
40 successor in command, and superior authority, may suspend,
41 set aside, or remit any part or amount of the punishment and
42 restore all rights, privileges and property affected.

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

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

57 (f) Punishment may not be imposed upon any member of
58 the state military forces under this section if the member has,
59 before the imposition of such punishment, demanded trial by
60 court-martial in lieu of such punishment.

PART IV. COURTS-MARTIAL JURISDICTION.

§15-1E-17. Courts-martial classified.

1 The three kinds of courts-martial in the state military forces
2 are:

3 (1) General courts-martial, consisting of:

4 (i) A military judge and not less than five members; or

5 (ii) Only a military judge, if before the court is assembled
6 the accused, knowing the identity of the military judge and
7 after consultation with defense counsel, requests in writing a
8 court composed only of a military judge and the military
9 judge approves.

- 10 (2) Special courts-martial, consisting of:
- 11 (i) Not less than three members;
- 12 (ii) A military judge and not less than three members; or
- 13 (iii) Only a military judge, if one has been detailed to the
- 14 court, and the accused under the same conditions as those
- 15 prescribed in paragraph (ii), subdivision (1) so requests.
- 16 (3) Summary courts-martial, consisting of one
- 17 commissioned officer.

§15-1E-18. Jurisdiction of courts-martial in general.

- 1 The army national guard and the air force national guard
- 2 each have court-martial jurisdiction over all persons subject
- 3 to this article. The exercise of jurisdiction by the army
- 4 national guard over air force personnel, or the air force
- 5 national guard over army personnel shall be in accordance
- 6 with regulations prescribed by the governor.

§15-1E-19. Jurisdiction of general courts-martial.

- 1 Subject to section eighteen of this article, general
- 2 courts-martial have jurisdiction to try persons subject to this
- 3 article for any offense made punishable by this article and
- 4 may, under such limitations as the governor may prescribe,
- 5 adjudge any of the following punishments:
- 6 (1) A fine of not more than two hundred dollars.
- 7 (2) Forfeiture of pay and allowances for a period not
- 8 exceeding six months.
- 9 (3) A reprimand.
- 10 (4) Dismissal, dishonorable discharge or bad conduct
- 11 discharge.
- 12 (5) Reduction of a noncommissioned officer to any lower
- 13 enlisted grade.
- 14 (6) Any combination of these punishments.

§15-1E-20. Jurisdiction of special courts-martial.

- 1 Subject to section eighteen of this article, special
- 2 courts-martial shall have jurisdiction to try persons subject to
- 3 this article, except commissioned officers for any offense
- 4 made punishable by this article and may, under such
- 5 limitations as the governor may prescribe, adjudge any of the
- 6 following punishments:
- 7 (1) A fine of not more than one hundred dollars.
- 8 (2) Forfeiture of pay and allowances for a period not
- 9 exceeding three months.
- 10 (3) A reprimand.

11 (4) Reduction of a noncommissioned officer to any lower
12 enlisted grade.

13 (5) A bad conduct discharge.

14 (6) Any combination of these punishments.

§15-1E-21. Jurisdiction of summary courts-martial.

1 (a) Subject to section eighteen of this article, summary
2 courts-martial shall have jurisdiction to try enlisted persons
3 subject to this article for any offense made punishable by this
4 article and may, under such limitations as the governor may
5 prescribe, adjudge any of the following punishments:

6 (1) A fine of not more than twenty-five dollars for a single
7 offense.

8 (2) Forfeiture of pay and allowances for a period not
9 exceeding one month.

10 (3) Reduction to the next lower grade.

11 (b) No person with respect to whom summary
12 courts-martial have jurisdiction may be brought to trial
13 before a summary court-martial if he objects thereto. If
14 objection to trial by summary court-martial is made by an
15 accused, trial shall be ordered by special or general
16 court-martial, as may be appropriate.

**§15-1E-22. Sentences of dismissal, dishonorable discharge or
bad conduct to be approved by the governor.**

1 In the state military forces, no sentence of dismissal,
2 dishonorable discharge, or bad conduct discharge shall be
3 executed until it is approved by the governor.

§15-1E-23. Record of bad conduct discharge proceedings.

1 A bad conduct discharge may not be adjudged by any
2 general or special court-martial unless a complete written
3 record of the proceedings and testimony before the court has
4 been made.

§15-1E-24. Confinement instead of fine.

1 In the state military forces, a court-martial may, instead of
2 imposing a fine, sentence to confinement for not more than
3 one day for each dollar of the authorized fine.

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

§15-1E-25. Who may convene general courts-martial.

1 (a) General courts-martial may be convened by any of the
2 following:

3 (1) The governor.

4 (2) The adjutant general.

5 (3) The commanding officer of a division, a separate
6 brigade, or a separate wing.

7 (4) Any other commanding officer in any of the state
8 military forces when empowered by the governor.

9 (b) When any such commanding officer is an accuser, the
10 court shall be convened by superior competent authority, and
11 may in any case be convened by such authority when deemed
12 desirable by such authority.

§15-1E-26. Who may convene special courts-martial.

1 In the state military forces any person authorized to
2 convene a general court-martial, the commanding officer of a
3 garrison, fort, post, camp, station, air base, auxiliary air base,
4 or other place where troops are on duty, or of a brigade,
5 regiment, wing, group, separate battalion, separate squadron,
6 or other detached command, may convene special
7 courts-martial. When any such officer is an accuser, the court
8 shall be convened by superior competent authority and may,
9 in any case, be convened by such authority when deemed
10 advisable by him.

§15-1E-27. Who may convene summary courts-martial.

1 (a) In the state military forces any person authorized to
2 convene a general or special court-martial, the commanding
3 officer of a garrison, fort, post, camp, station, air base,
4 auxiliary air base, or other place where troops are on duty, or
5 of a brigade, regiment, wing, group, separate battalion,
6 separate squadron, or other detached command, may
7 convene a summary court-martial.

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

§15-1E-28. Who may serve on courts-martial.

1 (a) Any commissioned officer of the state military forces is
2 eligible to serve on all courts-martial for the trial of any
3 person who may lawfully be brought before such courts for
4 trial.

5 (b) Any warrant officer of the state military forces is
6 eligible to serve on general and special courts-martial for the

7 trial of any person, other than a commissioned officer, who
8 may lawfully be brought before such courts for trial.

9 (c) (1) Any enlisted person of the state military forces who
10 is not a member of the same unit as the accused is eligible to
11 serve on general and special courts-martial for the trial of any
12 enlisted person who may lawfully be brought before such
13 courts for trial. He shall serve as a member of a court only if,
14 before the convening of the court, the accused personally has
15 requested in writing that enlisted members serve on it. After
16 such a request, the accused may not be tried by a general or
17 special court-martial, the membership of which does not
18 include enlisted persons in a number comprising at least one
19 third of the total membership of the court, unless eligible
20 members cannot be obtained on account of physical
21 conditions or military exigencies. If such members cannot be
22 obtained, the court may be convened and the trial held
23 without them, but the convening authority shall make a
24 detailed written statement, to be appended to the record,
25 stating why they could not be obtained.

26 (2) In this subsection, the word "unit" means any
27 regularly organized body of the state military forces not larger
28 in size than a company, or a corresponding body.

29 (d) (1) No person subject to this article may be tried by a
30 court-martial any member of which is junior to him in rank or
31 grade.

32 (2) When convening a court-martial, the convening
33 authority shall appoint as members thereof such members as,
34 in his opinion, are best qualified for the duty by reason of age,
35 education, training, experience, length of service, and judicial
36 temperament. No member is eligible to serve as a member of
37 a general or special court-martial when he is the accuser or a
38 witness for the prosecution or has acted as investigating
39 officer or as counsel in the same case.

§15-1E-29. Military judge of a general or special court-martial.

1 (a) The authority convening a general or special
2 court-martial shall appoint as military judge thereof a
3 commissioned officer who is a member of the bar of the
4 supreme court of appeals of West Virginia, and who is
5 certified as qualified for such duty by the state judge
6 advocate. No person shall be eligible to act as military judge
7 in a case when he is the accuser or a witness for the
8 prosecution or has acted as investigating officer or as counsel
9 in the same case.

10 (b) The military judge may not consult with the members
11 of the court, other than on the form of the findings as
12 provided in section fifty-four of this article, except in the
13 presence of the accused, trial counsel, and defense counsel.
14 He shall not vote with the members of the court.

§15-1E-30. Appointment of trial counsel and defense counsel.

1 (a) For each general and special court-martial the
2 authority convening the court shall appoint trial counsel and
3 defense counsel, and such assistants as he considers
4 appropriate. No person who has acted as investigating officer,
5 military judge or court member in any case shall act
6 subsequently as trial counsel, assistant trial counsel, or unless
7 expressly requested by the accused, as defense counsel or
8 assistant defense counsel in the same case. No person who
9 has acted for the prosecution shall act later in the same case
10 for the defense, nor shall any person who has acted for the
11 defense act later in the same case for the prosecution.

12 (b) Any person who is appointed trial counsel or defense
13 counsel in the case of a general or a special court-martial:

14 (1) Shall be a person who is a member of the bar of the
15 supreme court of appeals of West Virginia.

16 (2) Shall be certified as competent to perform such duties
17 by the state judge advocate.

§15-1E-31. Appointment or employment of reporters and interpreters.

1 Under such regulations as the governor may prescribe, the
2 convening authority of a general or special court-martial or
3 court of inquiry shall appoint or employ qualified court
4 reporters, who shall record the proceedings of and testimony
5 taken before that court. Under like regulations the convening
6 authority of a military court may appoint or employ
7 interpreters who shall interpret for the court.

§15-1E-32. Absent and additional members.

1 (a) No member of a general or special court-martial shall
2 be absent or excused after the court has been assembled for
3 the trial of the accused, except for physical disability or as the
4 result of a challenge or by order of the convening authority
5 for good cause.

6 (b) Whenever a general court-martial is reduced below five
7 members, the trial shall not proceed unless the convening
8 authority appoints new members sufficient in number to

9 provide not less than five members. When such new members
10 have been sworn, the trial may proceed after the recorded
11 evidence previously introduced before the members of the
12 court has been read to the court in the presence of the military
13 judge, the accused, and counsel for both sides.

14 (c) Whenever a special court-martial is reduced below
15 three members, the trial shall not proceed unless the
16 convening authority appoints new members sufficient in
17 number to provide not less than three members. When such
18 new members have been sworn, the trial shall proceed with
19 the new members present as if no evidence has previously
20 been introduced at the trial, unless a verbatim record of the
21 evidence previously introduced before the member of the
22 court or a stipulation thereof is read to the court in the
23 presence of the military judge, if any, the accused, and
24 counsel for both sides.

PART VI. PRETRIAL PROCEDURE.

§15-1E-33. Charges and specifications.

1 (a) Charges and specifications shall be signed by a person
2 subject to this article under oath before a person authorized
3 by this part to administer oaths and shall state:

4 (1) That the signer has personal knowledge of, or has
5 investigated, the matters set forth therein.

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

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

§15-1E-34. Compulsory self-incrimination prohibited.

1 (a) No person subject to this article shall compel any
2 person to incriminate himself or to answer any question the
3 answer to which may tend to incriminate him.

4 (b) No person subject to this article shall interrogate or
5 request any statement from an accused or a person suspected
6 of an offense without first informing him of the nature of the
7 accusation and fully advising him of his right to be
8 represented by counsel, that he does not have to make any
9 statement regarding the offense of which he is accused or
10 suspected, and that any statement made by him can and will

11 be used as evidence against him in a trial by court-martial, as
12 well as other constitutional safeguards provided for an
13 accused or a person suspected of an offense.

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

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

§15-1E-35. Investigation.

1 (a) No charge or specification shall be referred to a general
2 court-martial for trial until a thorough and impartial
3 investigation of all the matters set forth therein has been
4 made. This investigation shall include inquiry as to the truth
5 of the matter set forth in the charges, consideration of the
6 form of charges, and a recommendation as to the disposition
7 which should be made of the case in the interest of justice and
8 discipline.

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

25 (c) If an investigation of the subject matter of an offense
26 has been conducted before the accused is charged with the
27 offense, and if the accused was present at the investigation
28 and afforded the opportunities for representation,
29 cross-examination, and presentation prescribed in subsection
30 (b), no further investigation of that charge is necessary under

31 this section unless it is demanded by the accused after he is
32 informed of the charge. A demand for further investigation
33 entitles the accused to recall witnesses for further
34 cross-examination and to offer any new evidence in his own
35 behalf.

36 (d) The requirements of this section are binding on all
37 persons administering this article.

§15-1E-36. Forwarding of charges.

1 When a person is held for trial by general court-martial, the
2 commanding officer shall, within eight days after the accused
3 is ordered into arrest or confinement, if practicable, forward
4 the charges, together with the investigation and allied papers,
5 to the person exercising general court-martial jurisdiction. If
6 that is not practicable, he shall report in writing to such
7 officer the reasons for delay.

§15-1E-37. Advice of staff judge advocate and reference for trial.

1 (a) Before directing the trial of any charge by general
2 court-martial, the convening authority shall refer it to his staff
3 judge advocate for consideration and advice. The convening
4 authority shall not refer a charge to general court-martial for
5 trial unless he has found that the charge alleges an offense
6 under this article and is warranted by evidence indicated in
7 the report of the investigation.

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

§15-1E-38. Service of charges.

1 The trial counsel to whom court-martial charges are
2 referred for trial shall cause to be served upon the accused a
3 copy of the charges upon which trial is to be had. In time of
4 peace, no person shall, against his objection, be brought to
5 trial, or be required to participate by himself or counsel in a
6 session called by the military judge under section forty-two of
7 this article in a general court-martial case within a period of
8 five days after the service of the charges upon him, or in a
9 special court-martial within a period of three days after the
10 service of the charges upon him.

PART VII. TRIAL PROCEDURE.

§15-1E-39. Governor may prescribe rules.

1 (a) The procedure, including modes of proof, in cases
2 before military courts and other military tribunals may be
3 prescribed by the governor by regulations, which shall apply
4 the principles of law and the rules of evidence generally
5 recognized in the trial of criminal cases in the courts of the
6 state but which shall not be contrary to or inconsistent with
7 this article.

8 (b) All rules and regulations made pursuant to the
9 provisions of this section shall be uniform insofar as
10 practicable among the state military forces.

§15-1E-40. Unlawfully influencing action of court.

1 (a) No authority convening a general, special, or summary
2 court-martial nor any other commanding officer, or officer
3 serving on the staff thereof, shall censure, reprimand, or
4 admonish the court or any member, military judge or counsel
5 thereof, with respect to the finding or sentence adjudged by
6 the court, or with respect to any other exercise of its or his
7 functions in the conduct of the proceeding. No person subject
8 to this article shall attempt to coerce, or by any unauthorized
9 means, influence, the action of the court-martial or any other
10 military tribunal or any member thereof, in reaching the
11 findings or sentence in any case, or the action of any
12 convening, approving, reviewing authority with respect to his
13 judicial acts.

14 (b) In the preparation of an effectiveness, fitness or
15 efficiency report or any other report or document used in
16 whole or in part for the purpose of determining whether a
17 member of the state military forces is qualified to be
18 advanced, in grade, or in determining the assignment or
19 transfer of a member of the state military forces, no person
20 subject to this article may, in preparing any such report:

21 (1) Consider or evaluate the performance of duty of any
22 such member as a member of a court-martial; or

23 (2) Give a less favorable rating or evaluation of any
24 member of the state military forces because of the zeal with
25 which such member, as counsel, represented any accused
26 before a court-martial.

§15-1E-41. Duties of trial counsel and defense counsel.

1 (a) The trial counsel of a general or special court-martial
2 shall prosecute in the name of the state of West Virginia, and
3 shall, under the direction of the court, prepare the record of
4 the proceedings.

5 (b) The accused has the right to be represented in his
6 defense before a general or special court-martial by civilian
7 counsel if provided by him, or by military counsel of his own
8 selection if reasonably available, or by the defense counsel
9 appointed under section thirty of this article.

10 Should the accused have counsel of his own selection, the
11 defense counsel, and assistant defense counsel, if any, who
12 were appointed, shall, if the accused so desires, act as his
13 associate counsel; otherwise they shall be excused by the
14 military judge or by the president of a court-martial without a
15 military judge.

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

22 (d) An assistant trial counsel of a general court-martial
23 may, under the direction of the trial counsel or when he is
24 qualified to be a trial counsel as required by section thirty of
25 this article, perform any duty imposed by law, regulation, or
26 the custom of the service upon the trial counsel of the court.
27 An assistant trial counsel of a special court-martial may
28 perform any duty of the trial counsel.

29 (e) An assistant defense counsel of a general or special
30 court-martial may, under the direction of the defense counsel
31 or when he is qualified to be the defense counsel as required
32 by section thirty of this article, perform any duty imposed by
33 law, regulations, or the custom of the service upon counsel for
34 the accused.

§15-1E-42. Sessions.

1 (a) At any time after the service of charges which have
2 been referred for trial to a court-martial composed of a
3 military judge and members, the military judge may, subject
4 to section thirty-eight of this article, call the court into session
5 without the presence of the members for the purpose of:

6 (1) Hearing and determining motions raising defenses or
7 objections which are capable of determination without trial of
8 the issues raised by a plea of not guilty;

9 (2) Hearing and ruling upon any matter which may be
10 ruled upon by the military judge under this section, whether
11 or not the matter is appropriate for later consideration or
12 decision by the members of the court;

13 (3) Holding the arraignment and receiving the pleas of the
14 accused; and

15 (4) Performing any other procedural function which may
16 be performed by the military judge under this part or under
17 rules prescribed pursuant to section thirty-nine of this article,
18 and which does not require the presence of the members of
19 the court. In the absence of a military judge, the presiding
20 officer of the court-martial may make such ruling.

21 These proceedings shall be conducted in the presence of
22 the accused, the defense counsel, and the trial counsel and
23 shall be made a part of the record.

24 (b) When the members of a court-martial deliberate or
25 vote, only the members may be present. All other
26 proceedings, including any other consultation of the court
27 with counsel or the military judge, shall be made a part of the
28 record and shall be in the presence of the accused, the
29 defense counsel, the trial counsel, and, in cases in which a
30 military judge has been detailed to the court, the military
31 judge.

§15-1E-43. Continuances.

1 The military judge or a court-martial without a military
2 judge may, for reasonable cause, grant a continuance to any
3 party for such time, and as often, as may appear to be just.

§15-1E-44. Challenges.

1 (a) The military judge and members of a general or special
2 court-martial may be challenged by the accused or the trial
3 counsel for cause stated to the court. The military judge, or if
4 none, the court, shall determine the relevancy and validity of
5 challenges for cause, and shall not receive a challenge to more
6 than one person at a time. Challenges by the trial counsel
7 shall ordinarily be presented and decided before those by the
8 accused are offered.

9 (b) Each accused and the trial counsel is entitled to one

10 peremptory challenge, but the military judge may not be
11 challenged except for cause.

§15-1E-45. Oaths.

1 (a) Before performing their respective duties, military
2 judges, members of general and special courts-martial, trial
3 counsel, assistant trial counsel, defense counsel, assistant
4 defense counsel, reporters and interpreters shall take an oath
5 to perform their duties faithfully. The form of the oath, the
6 time and place of the taking thereof, the manner of recording
7 the same, and whether the oath shall be taken for all cases in
8 which these duties are to be performed or for a particular
9 case, shall be in accordance with regulations prescribed by
10 the governor. These regulations may provide that an oath to
11 perform faithfully duties as a military judge, trial counsel,
12 assistant trial counsel, defense counsel, or assistant defense
13 counsel may be taken at any time by any judge advocate, or
14 other person certified to be qualified or competent for the
15 duty, and if such an oath is taken it need not again be taken at
16 the time the judge advocate or other person is detailed to that
17 duty.

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

§15-1E-46. Statute of limitations.

1 (a) A person subject to this article, charged with desertion
2 or absence without leave in time of war or with aiding the
3 enemy or with mutiny may be tried and punished at any time
4 without limitation.

5 (b) Except as otherwise provided in this section, a person
6 subject to this part charged with desertion in time of peace or
7 with the offense punishable under section one hundred
8 eighteen of this article shall not be liable to be tried by
9 court-martial if the offense was committed more than three
10 years before the receipt of sworn charges and specifications
11 by an officer exercising summary court-martial jurisdiction
12 over the command.

13 (c) Except as otherwise provided in this section, a person
14 subject to this article charged with any offense is not liable to
15 be tried by court-martial or punished under section sixteen of
16 this article, if the offense was committed more than two years
17 before the receipt of sworn charges and specifications by an

18 officer exercising summary court-martial jurisdiction over
19 the command or before the imposition of punishment under
20 section sixteen of this article.

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

§15-1E-47. Former jeopardy.

1 (a) No person subject to this article shall, without his
2 consent, be tried a second time for the same offense in a
3 military court convened under this article. Prosecution under
4 this article shall not bar prosecution by civil authorities for a
5 crime or offense growing out of the same act or omission
6 committed in violation of the laws of the civil jurisdiction,
7 unless prohibited by res judicata or double jeopardy.

8 (b) No proceeding in which an accused has been found
9 guilty by a court-martial upon any charge or specification is a
10 trial in the sense of this section until the finding of guilty has
11 become final after review of the case has been fully
12 completed. However, a proceeding which, after the
13 introduction of evidence but before a finding, is dismissed or
14 terminated by the convening authority, or on motion of the
15 prosecution for failure of available evidence or witnesses
16 without any fault of the accused, is a trial in the sense of this
17 section.

§15-1E-48. Pleas of the accused.

1 (a) A plea of not guilty shall be entered in the record, and
2 the court shall proceed as though the accused had pleaded
3 not guilty, if after arraignment before a court-martial:

4 (1) An accused makes an irregular pleading;

5 (2) After a plea of guilty an accused sets up a matter
6 inconsistent with the plea;

7 (3) It appears that an accused has entered a plea of guilty
8 improvidently or through lack of understanding of its
9 meaning or effect; or

10 (4) An accused fails or refuses to plead.

11 (b) With respect to any charge or specification to which a
12 plea of guilty has been made by the accused and accepted by
13 the military judge or by a court-martial without a military
14 judge, a finding of guilty of the charge or specification may be
15 entered immediately without vote. This finding shall

16 constitute the finding of the court unless the plea of guilty is
17 withdrawn prior to announcement of the sentence, in which
18 event the proceedings shall continue as though the accused
19 had pleaded not guilty.

§15-1E-49. Opportunity to obtain witnesses and other evidence.

1 (a) The trial counsel, the defense counsel, and the
2 court-martial shall have equal opportunity to obtain
3 witnesses and other evidence in accordance with such
4 regulations as the governor may prescribe.

5 (b) Process issued in court-martial cases to compel
6 witnesses to appear and testify and to compel the production
7 of other evidence shall be similar to that which the courts of
8 this state having criminal jurisdiction may lawfully issue and
9 shall run to any part of the state and to any other state or
10 territory, district or possession in which the court-martial
11 may be sitting.

§15-1E-50. Refusal to appear or testify.

1 Any person not subject to this article who has been duly
2 subpoenaed to appear as a witness or to produce books and
3 records before a military court or before any military or civil
4 officer designated to take a deposition to be read in evidence
5 before such a court and who willfully neglects or refuses to
6 appear, or refuses to qualify as a witness or to testify or to
7 produce any evidence which that person may have been
8 legally subpoenaed to produce is guilty of an offense against
9 the state and a military court may punish him in the same
10 manner as the civil courts of this state.

§15-1E-51. Contempts.

1 A military court may punish for contempt any member of
2 the national guard who uses any menacing word, sign, or
3 gesture in its presence, or who disturbs its proceedings by
4 any riot or disorder. The punishment may not exceed
5 confinement for thirty days or a fine of one hundred dollars,
6 or both. Any person other than a member of the national
7 guard who shall resort to disorderly, contemptuous or
8 insolent behavior in, or use any insulting or indecorous
9 language or expressions to or before, any military court, or
10 any member of either of such courts, in open court, to
11 interrupt the proceedings or to impair the authority of such
12 courts, shall be guilty of a misdemeanor and may be arrested
13 by the order of the president of the court, and at once

14 delivered to the civil authorities; and such person, if found
15 guilty, shall be fined not less than five nor more than fifty
16 dollars, or imprisoned in the county jail not exceeding thirty
17 days, or both fined and imprisoned.

§15-1E-52. Depositions.

1 (a) At any time after charges have been signed, as
2 provided in section thirty-three of this article, any party may
3 take oral or written depositions unless the military judge or
4 court-martial without a military judge hearing the case, or if
5 the case is not being heard, an authority competent to
6 convene a court-martial for the trial of those charges forbids it
7 for good cause. If a deposition is to be taken before charges
8 are referred for trial, such an authority may designate
9 commissioned officers to represent the prosecution and the
10 defense and may authorize those officers to take the
11 deposition of any witness.

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

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

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

24 (1) That the witness resides or is beyond the state in which
25 the court is ordered to sit, or beyond the distance of one
26 hundred miles from the place of trial or hearing;

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

32 (3) That the present whereabouts of the witness is
33 unknown.

§15-1E-53. Admissibility of records of courts of inquiry.

1 (a) The sworn testimony, contained in the duly
2 authenticated record of proceedings of a court of inquiry, of a
3 person whose oral testimony cannot be obtained, may, if

4 otherwise admissible under the rules of evidence, be read in
5 evidence by any party before a court-martial if the accused
6 was a party before the court of inquiry and if the same issue
7 was involved or if the accused consents to the introduction of
8 such evidence.

9 (b) Such testimony may also be read in evidence before a
10 court of inquiry or a military board by either party.

§15-1E-54. Voting and rulings.

1 (a) Voting by members of a general or special
2 court-martial on the findings and on the sentence and by
3 members of a court-martial without a military judge upon
4 questions of challenge shall be by secret written ballot. The
5 junior member of the court shall count the votes. The count
6 shall be checked by the president, who shall forthwith
7 announce the result of the ballot to the members of the court.

8 (b) The military judge and, except for questions of
9 challenge, the presiding officer of a court-martial without a
10 military judge shall rule upon all questions of law and all
11 interlocutory questions arising during the proceedings. Any
12 such ruling made by the military judge upon any question of
13 law or any interlocutory question other than the factual issue
14 of mental responsibility of the accused, or by the presiding
15 officer of a court-martial without a military judge upon any
16 question of law other than a motion for a finding of not guilty,
17 constitutes the ruling of the court.

18 (c) Before a vote is taken on the findings, the military
19 judge or the president of a court-martial without a military
20 judge shall, in the presence of the accused and counsel,
21 instruct the members of the court as to the elements of the
22 offense and charge them:

23 (1) That the accused must be presumed to be innocent
24 until his guilt is established by legal and competent evidence
25 beyond reasonable doubt;

26 (2) That in the case being considered, if there is a
27 reasonable doubt as to the guilt of the accused, the doubt
28 shall be resolved in favor of the accused and he shall be
29 acquitted;

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

33 (4) That the burden of proof of establishing the guilt of the
34 accused beyond reasonable doubt is upon the prosecution.

35 (d) Subsections (a), (b) and (c) do not apply to a
 36 court-martial composed of a military judge only. The military
 37 judge of such a court-martial shall determine all questions of
 38 law and fact arising during the proceedings and, if the
 39 accused is convicted, adjudge an appropriate sentence. The
 40 military judge of such a court-martial shall make a general
 41 finding and shall in addition on request find the facts
 42 specially. If an opinion or memorandum of decision is filed, it
 43 will be sufficient if the findings of fact appear therein.

§15-1E-55. Number of votes required.

1 (a) No person subject to this article shall be convicted of
 2 any offense, except as provided in subsection (b), section
 3 forty-eight of this article, or by the concurrence of two thirds
 4 of the members present at the time the vote is taken.

5 (b) All sentences shall be determined by the concurrence
 6 of two thirds of the members present at the time the vote is
 7 taken: *Provided*, That whenever two thirds of the court does
 8 not consist of an integral number, the next higher number
 9 shall be construed to represent two thirds of the court.

10 (c) All other questions to be decided by the members of a
 11 general or special court-martial shall be determined by a
 12 majority vote but a determination to reconsider a finding of
 13 guilty or to reconsider a sentence, with a view toward
 14 decreasing it, may be made by any lesser vote which indicates
 15 that the reconsideration is not opposed by the number of
 16 votes required for that finding or sentence. A tie vote on a
 17 challenge disqualifies the member challenged. A tie vote on a
 18 motion for a finding of not guilty or on a motion relating to
 19 the question of the accused's sanity is a determination against
 20 the accused. A tie vote on any other question is a
 21 determination in favor of the accused.

§15-1E-56. Court to announce action.

1 Every court-martial shall announce its findings and
 2 sentence to the parties as soon as determined.

§15-1E-57. Record of trial.

1 (a) Each general court-martial shall keep a separate record
 2 of the proceedings in each case brought before it, and the
 3 record shall be authenticated by the signatures of the military
 4 judge. If the record cannot be authenticated by the military
 5 judge by reason of his death, disability or absence, it shall be
 6 authenticated by the signature of the trial counsel or by that

7 of a member if the trial counsel is unable to authenticate it by
8 reason of his death, disability or absence. If the proceedings
9 have resulted in an acquittal of all charges and specifications
10 or in a sentence not including discharge and not in excess of
11 that which may otherwise be adjudged by a special
12 court-martial, the record need not contain a verbatim account
13 of the proceedings and testimony before the court, but shall
14 contain such matters as the governor may by regulation
15 prescribe.

16 (b) Each special and summary courts-martial shall keep a
17 separate record of the proceedings in each case, which record
18 shall contain such matter and shall be authenticated in such
19 manner as the governor may by regulation prescribe.

20 (c) A copy of the record of the proceedings of each general
21 and special court-martial shall be given to the accused as soon
22 as authenticated. If a verbatim record of trial by general
23 court-martial is not required by subsection (a) of this section,
24 but has been made, the accused may buy such a record under
25 such regulations as the governor may prescribe.

PART VIII. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED.

§15-1E-58. Cruel and unusual punishments prohibited.

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

§15-1E-59. Maximum limits.

1 The punishment which a court-martial may direct for any
2 offense may not exceed such limits as the governor may
3 prescribe for that offense subject to the limits prescribed by
4 this article.

§15-1E-60. Effective date of sentences.

1 (a) Whenever a sentence of a court-martial as lawfully
2 adjudged and approved includes a forfeiture of pay or
3 allowances in addition to confinement not suspended, the
4 forfeiture may apply to pay or allowances accrued before that
5 date.

6 (b) Any period of confinement included in a sentence of a
7 court-martial begins to run from the date the sentence is
8 adjudged by the court-martial but any period of time prior to

9 execution of sentence shall be excluded in computing the
10 service of the term of confinement. Regulations prescribed by
11 the governor may provide that sentences of confinement may
12 not be executed until approved by the designated officers.
13 (c) All other sentences of courts-martial are effective on
14 the date ordered executed.

§15-1E-61. Execution of confinement.

1 (a) A sentence of confinement adjudged by a military
2 court, whether or not the sentence includes discharge or
3 dismissal, and whether or not the discharge or dismissal has
4 been executed, may be carried into execution by confinement
5 in any place of confinement under the control of any of the
6 forces of the state military forces or in any county or state jail,
7 prison or other place of confinement. Persons so confined in a
8 jail or prison are subject to the same discipline and treatment
9 as persons confined or committed to the jail or prison by the
10 courts of this state or of any political subdivision thereof.

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

16 (c) The keepers, officers and wardens of county jails or
17 prisons under section twelve of this article shall receive
18 persons ordered into confinement before trial and persons
19 committed to confinement by a military court and shall
20 confine them according to law. Any such keeper may require
21 payment of a reasonable fee for so receiving or confining a
22 person, to be paid upon requisition of the office of the
23 adjutant general after confinement.

PART IX. REVIEW OF COURTS-MARTIAL.

§15-1E-62. Error of law; lesser included offense.

1 (a) A finding or sentence of court-martial shall not be held
2 incorrect on the ground of an error of law unless the error
3 materially prejudices the substantial rights of the accused.

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

§15-1E-63. Initial action on the record.

1 After a trial by court-martial the record shall be forwarded
2 to the convening authority, as reviewing authority, and action

3 thereon may be taken by the person who convened the court,
4 a commissioned officer commanding for the time being, in
5 the absence of the convening authority, a successor in
6 command, or by any officer exercising general court-martial
7 jurisdiction.

§15-1E-64. Action on general court-martial records.

1 The convening authority shall refer the record of each
2 general court-martial to his staff judge advocate or legal
3 officer who shall submit his written opinion thereon to the
4 convening authority. If there is no qualified staff judge
5 advocate or legal officer available, the state judge advocate
6 shall assign a judge advocate officer for such purpose. If the
7 final action of the court has resulted in an acquittal of all
8 charges and specifications, the opinion shall be limited to
9 questions of jurisdiction.

§15-1E-65. Reconsideration and revision.

1 (a) If a specification before a court-martial has been
2 dismissed on motion and the ruling does not amount to a
3 finding of not guilty, the convening authority may return the
4 record to the court for reconsideration of the ruling and any
5 further appropriate action.

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

13 (1) For reconsideration of a finding of not guilty of any
14 specification or a ruling which amounts to a finding of not
15 guilty;

16 (2) For reconsideration of a finding of not guilty of any
17 charge, unless the record shows a finding of guilty under a
18 specification laid under that charge, which sufficiently
19 alleges a violation of some section of this article; or

20 (3) For increasing the severity of the sentence unless the
21 sentence prescribed for the offense is mandatory.

§15-1E-66. Rehearings.

1 (a) If the convening authority disapproves the findings
2 and sentence of a court-martial he may, except where there is
3 lack of sufficient evidence in the record to support the

4 findings, order a rehearing, in which case he shall state the
5 reasons for disapproval. If he disapproves the findings and
6 sentence and does not order a rehearing, he shall dismiss the
7 charges.

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

§15-1E-67. Approval by the convening authority.

1 In acting on the findings and sentence of a court-martial,
2 the convening authority shall approve only such findings of
3 guilty, and the sentence or such part or amount of the
4 sentence, as he finds correct in law and fact and as he in his
5 discretion determines should be approved. Unless he
6 indicates otherwise, approval of the sentence shall constitute
7 approval of the findings and sentence.

§15-1E-68. Disposition of records after review by the convening authority.

1 (a) When the governor has taken final action in a
2 court-martial case in which he is the convening authority,
3 there shall be no further review.

4 (b) When a convening authority other than the governor
5 has taken final action in a general court-martial case, he shall
6 forward the entire record, including his action thereon and
7 the opinion or opinions of the staff judge advocate or legal
8 officer, to the state judge advocate.

9 (c) Where the sentence of a special court-martial as
10 approved by the convening authority includes a bad-conduct
11 discharge, whether or not suspended, the record shall be
12 forwarded to the officer exercising general court-martial
13 jurisdiction over the command to be reviewed in the same
14 manner as a record of trial by a general court-martial. If the
15 sentence as approved by an officer exercising general
16 court-martial jurisdiction includes a bad-conduct discharge,
17 whether or not suspended, the record shall be forwarded to
18 the state judge advocate.

19 (d) All other special and summary court-martial records
20 shall be reviewed by a judge advocate of the army national
21 guard or air national guard and shall be transmitted and
22 disposed of as the adjutant general may prescribe by
23 regulations.

§15-1E-69. Review in the office of the state judge advocate.

1 Every record of trial by general court-martial in which there
2 has been a finding of guilty and a sentence, and every record
3 of trial by special court-martial in which the sentence as
4 approved by an officer exercising general court-martial
5 jurisdiction includes a bad-conduct discharge, shall be
6 examined in the office of the state judge advocate. If the state
7 judge advocate so directs, the record shall be reviewed by a
8 board of review in accordance with section seventy of this
9 article.

§15-1E-70. Review by a board of review.

1 (a) The state judge advocate may constitute one or more
2 boards of review, each composed of not less than three
3 commissioned officers, each of whom shall be a member of
4 the bar of the supreme court of appeals of West Virginia, and
5 one of whom shall be a judge advocate of the army or air
6 national guard.

7 (b) In a case referred to it, the board of review may act only
8 with respect to the findings and sentence as approved by the
9 convening authority. It may affirm only such findings of
10 guilty, and the sentence or such part or amount of the
11 sentence, as it finds correct in law and fact and determines, on
12 the basis of the entire record, should be approved. In
13 considering the record it shall have authority to weigh the
14 evidence, judge the credibility of witnesses, and determine
15 controverted questions of fact, recognizing that the trial court
16 saw and heard the witnesses.

17 (c) If the board of review sets aside the findings and
18 sentence, it may, except where the setting aside is based on
19 lack of sufficient evidence in the record to support the
20 findings, order a rehearing. If it sets aside the findings and
21 sentence and does not order a rehearing, it shall order that the
22 charges be dismissed.

23 (d) The state judge advocate shall, unless there is to be
24 further action by the governor, instruct the convening
25 authority to take action in accordance with the decision of the
26 board of review. If the board of review has ordered a

27 rehearing but the convening authority finds a rehearing
28 impracticable, he may dismiss the charges.

29 (e) In the event one or more boards of review are
30 constituted in accordance with this section, the state judge
31 advocate shall prescribe uniform rules of procedure for
32 proceedings in and before such board or boards of review.

§15-1E-71. Appellate counsel.

1 Upon review of the record of trial by general court-martial
2 in which there has been a finding of guilty and a sentence and
3 upon review of the record of trial by special court-martial in
4 which the sentence as approved by an officer exercising
5 general court-martial jurisdiction includes a bad-conduct
6 discharge, the accused shall have the right to be represented
7 before the state judge advocate or the board of review, as the
8 case may be, by military counsel if requested by him or by
9 civilian counsel if provided by him. Appellate military
10 counsel shall be a commissioned officer of the state military
11 forces and shall be a member of the bar of the supreme court
12 of appeals of West Virginia.

§15-1E-72. Execution of sentence; suspension of sentence.

1 (a) No sentence extending to the dismissal of a
2 commissioned officer or dishonorable discharge or
3 bad-conduct discharge shall be executed until approved by
4 the governor. He shall approve the sentence or such part,
5 amount, or commuted form of the sentence as he sees fit, and
6 may suspend the execution of the sentence or any part of the
7 sentence, as approved by him.

8 (b) All other court-martial sentences, unless suspended,
9 may be ordered executed by the convening authority when
10 approved by him. The convening authority may suspend the
11 execution of any sentence.

§15-1E-73. Vacation of suspension.

1 (a) Prior to the vacation of the suspension of a special
2 court-martial sentence which as approved includes a
3 bad-conduct discharge, or of any general court-martial
4 sentence, the officer having special court-martial jurisdiction
5 over the probationer shall hold a hearing on the alleged
6 violation of probation. The probationer shall be represented
7 at the hearing by counsel if he so desires.

8 (b) The record of the hearing and the recommendation of
9 the officer having special court-martial jurisdiction shall be

10 forwarded for action to the officer exercising general
11 court-martial jurisdiction. If he vacates the suspension, any
12 unexecuted part of the sentence except a dismissal shall be
13 executed.

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

§15-1E-74. Petition for a new trial.

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

§15-1E-75. Remission and suspension.

1 (a) A convening authority may remit or suspend any part
2 or amount of the unexecuted part of any sentence, including
3 all uncollected forfeitures, other than a sentence approved by
4 the governor.

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

§15-1E-76. Restoration.

1 (a) Under such regulations as the governor may prescribe,
2 all rights, privileges, and property affected by an executed
3 portion of a court-martial sentence which has been set aside
4 or disapproved, except an executed dismissal or discharge,
5 shall be restored unless a new trial or rehearing is ordered and
6 such executed portion is included in a sentence imposed
7 upon a new trial or rehearing.

8 (b) When a previously executed sentence of dishonorable
9 discharge or bad-conduct discharge is not sustained on a new
10 trial, the adjutant general shall substitute therefor a form of
11 discharge authorized for administrative issuance unless the
12 accused is to serve out the remainder of his enlistment.

13 (c) When a previously executed sentence of dismissal is
14 not sustained on a new trial, the adjutant general shall
15 substitute therefor a form of discharge authorized for
16 administrative issue.

§15-1E-77. Finality of proceedings, findings and sentences.

1 The proceedings, findings and sentences of courts-martial
2 as reviewed and approved, as required by this article, and all
3 dismissals and discharges carried into execution under
4 sentences by courts-martial following review and approval, as
5 required by this article, shall be final and conclusive. Orders
6 publishing the proceedings of courts-martial and all action
7 taken pursuant to those proceedings are binding upon all
8 departments, courts, agencies, and officers of the state
9 subject only to action upon a petition for a new trial as
10 provided in section seventy-four of this article, and to action
11 by the governor as provided in section seventy-five of this
12 article.

PART X. PUNITIVE SECTIONS.

§15-1E-78. Principals.

1 Any person subject to this article who:
2 (1) Commits an offense punishable by this article, or aids,
3 abets, counsels, commands, or procures its commission; or
4 (2) Causes an act to be done which if directly performed
5 by him would be punishable by this article; is a principal.

§15-1E-79. Accessory after the fact.

1 Any person subject to this article who, knowing that an
2 offense punishable by this article has been committed,
3 receives, comforts, or assists the offender in order to hinder or
4 prevent his apprehension, trial, or punishment shall be
5 punished as a court-martial may direct.

§15-1E-80. Conviction of lesser included offense.

1 An accused may be found guilty of an offense necessarily
2 included in the offense charged or of an attempt to commit
3 either the offense charged or an offense necessarily included
4 therein.

§15-1E-81. Attempts.

1 (a) An act, done with specific intent to commit an offense
2 under this article, amounting to more than mere preparation
3 and tending even though failing to effect its commission, is an
4 attempt to commit that offense.
5 (b) Any person subject to this article who attempts to
6 commit any offense punishable by this article shall be
7 punished as a court-martial may direct, unless otherwise
8 specifically prescribed.

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

§15-1E-82. Conspiracy.

1 Any person subject to this article who conspires with any
2 other person to commit an offense under this article shall, if
3 one or more of the conspirators does an act to effect the object
4 of the conspiracy, be punished as a court-martial may direct.

§15-1E-83. Solicitation.

1 (a) Any person subject to this article who solicits or
2 advises another or others to desert in violation of section
3 eighty-six of this article, or mutiny in violation of section
4 ninety-five of this article, shall, if the offense solicited or
5 advised is attempted or committed, be punished with the
6 punishment provided for the commission of the offense, but,
7 if the offense solicited or advised is not committed or
8 attempted, he shall be punished as a court-martial may direct.

9 (b) Any person subject to this article who solicits or
10 advises another or others to commit an act of misbehavior
11 before the enemy in violation of section one hundred of this
12 article, or sedition in violation of section ninety-five shall, if
13 the offense solicited or advised is committed, be punished
14 with the punishment provided for the commission of the
15 offense, but, if the offense solicited or advised is not
16 committed, he shall be punished as a court-martial may
17 direct.

§15-1E-84. Fraudulent enlistment, appointment or separation.

1 Any person who:

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

7 (2) Procures his own separation from the state military
8 forces by knowingly false representation or deliberate
9 concealment as to his eligibility for that separation; shall be
10 punished as a court-martial may direct.

§15-1E-85. Unlawful enlistment, appointment or separation.

1 Any person subject to this article who effects an enlistment
2 or appointment in or a separation from the state military
3 forces of any person who is known to him to be ineligible for

4 that enlistment, appointment, or separation because it is
5 prohibited by law, regulation, or order shall be punished as a
6 court-martial may direct.

§15-1E-86. Desertion.

- 1 (a) Any member of the state military forces who:
- 2 (1) Without authority goes or remains absent from his unit,
- 3 organization or place of duty with intent to remain away
- 4 therefrom permanently;
- 5 (2) Quits his unit, organization or place of duty with intent
- 6 to avoid hazardous duty or to shirk important service; or
- 7 (3) Without being regularly separated from one of the state
- 8 military forces enlists or accepts an appointment in the same
- 9 or another one of the state military forces, or in one of the
- 10 armed forces of the United States, without fully disclosing
- 11 the fact that he has not been regularly separated; is guilty of
- 12 desertion.
- 13 (b) Any commissioned officer of the state military forces
- 14 who, after tender of his resignation and before notice of its
- 15 acceptance, quits his post or proper duties without leave and
- 16 with intent to remain away therefrom permanently is guilty of
- 17 desertion.
- 18 (c) Any person found guilty of desertion or attempt to
- 19 desert shall be punished as a court-martial may direct.

§15-1E-87. Absence without leave.

- 1 Any person subject to this article who, without authority:
- 2 (1) Fails to go to his appointed place of duty at the time
- 3 prescribed;
- 4 (2) Goes from that place; or
- 5 (3) Absents himself or remains absent from his unit,
- 6 organization, or place of duty at which he is required to be at
- 7 the time prescribed; shall be punished as a court-martial may
- 8 direct.

§15-1E-88. Missing movement.

- 1 Any person subject to this article who through neglect or
- 2 design misses the movement of ship, aircraft, or unit with
- 3 which he is required in the course of duty to move shall be
- 4 punished as a court-martial may direct.

§15-1E-89. Contempt toward officials.

- 1 Any person subject to this article who uses contemptuous
- 2 words against the president of the United States, vice
- 3 president of the United States, Congress, secretary of

4 defense, or a secretary of a department, the governor of the
5 state of West Virginia, the West Virginia Legislature or the
6 adjutant general of the state of West Virginia, the governor or
7 the legislature of any state, territory or other possession of the
8 United States in which he is on duty or present shall be
9 punished as a court-martial may direct.

§15-1E-90. Disrespect toward superior commissioned officer.

1 Any person subject to this article who behaves with
2 disrespect toward his superior commissioned officer shall be
3 punished as a court-martial may direct.

**§15-1E-91. Assaulting or willfully disobeying superior
commissioned officer.**

1 Any person subject to this article who:
2 (1) Strikes his superior commissioned officer or draws or
3 lifts up any weapon or offers any violence against him while
4 he is in the execution of his office; or
5 (2) Willfully disobeys a lawful command of his superior
6 commissioned officer; shall be punished as a court-martial
7 may direct.

**§15-1E-92. Insubordinate conduct toward warrant officer,
noncommissioned officer.**

1 Any warrant officer or enlisted member who:
2 (1) Strikes or assaults a warrant officer, noncommissioned
3 officer, while that officer is in the execution of his office;
4 (2) Willfully disobeys the lawful order of a warrant officer;
5 noncommissioned officer; or
6 (3) Treats with contempt or is disrespectful in language or
7 deportment toward a warrant officer, noncommissioned
8 officer, while that officer is in the execution of his office; shall
9 be punished as a court-martial may direct.

§15-1E-93. Failure to obey order or regulation.

1 Any person subject to this article who:
2 (1) Violates or fails to obey any lawful general order or
3 regulation; or
4 (2) Having knowledge of any other lawful order issued by
5 a member of the state military forces, which it is his duty to
6 obey, fails to obey the order; or
7 (3) Is derelict in the performance of his duties; shall be
8 punished as a court-martial may direct.

§15-1E-94. Cruelty and maltreatment.

1 Any person subject to this article who is guilty of cruelty
2 toward, or oppression or maltreatment of, any person subject
3 to his orders shall be punished as a court-martial may direct.

§15-1E-95. Mutiny or sedition.

1 (a) Any person subject to this article who:

2 (1) With intent to usurp or override lawful military
3 authority refuses, in concert with any other person, to obey
4 orders or otherwise to do his duty or creates any violence or
5 disturbance is guilty of mutiny;

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

10 (3) Fails to do his utmost to prevent and suppress a mutiny
11 or sedition being committed in his presence, or fails to take all
12 reasonable means to inform his superior commissioned
13 officer or commanding officer of a mutiny or sedition which
14 he knows or has reason to believe is taking place, is guilty of a
15 failure to suppress or report a mutiny or sedition.

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

§15-1E-96. Resistance, breach of arrest, and escape.

1 Any person subject to this article who resists apprehension
2 or breaks arrest or who escapes from custody, restraint, or
3 confinement imposed under this part shall be punished as a
4 court-martial may direct.

§15-1E-97. Releasing prisoner without proper authority.

1 Any person subject to this article who, without proper
2 authority, releases any prisoner committed to his charge, or
3 who through neglect or design suffers any such prisoner to
4 escape, shall be punished as a court-martial may direct.

§15-1E-98. Unlawful detention of another.

1 Any person subject to this article who, except as provided
2 by law or regulation, apprehends, arrests, restrains, or
3 confines any person shall be punished as a court-martial may
4 direct.

§15-1E-99. Noncompliance with procedural rules.

1 Any person subject to this article who:

- 2 (1) Is responsible for unnecessary delay in the disposition
3 of any case of a person accused of an offense under this
4 article; or
- 5 (2) Knowingly and intentionally fails to enforce or comply
6 with any provision of this article regulating the proceedings
7 before, during, or after trial of an accused; shall be punished
8 as a court-martial may direct.

§15-1E-100. Misbehavior before the enemy.

- 1 Any person subject to this article who before or in the
2 presence of the enemy:
 - 3 (1) Runs away;
 - 4 (2) Shamefully abandons, or surrenders any command,
5 unit, place, or military property which it is his duty to defend;
 - 6 (3) Through disobedience, neglect, or intentional
7 misconduct endangers the safety of any such command, unit,
8 place, or military property;
 - 9 (4) Casts away his arms or ammunition;
 - 10 (5) Is guilty of cowardly conduct;
 - 11 (6) Quits his place of duty to plunder or pillage;
 - 12 (7) Causes false alarms in any command, unit, or place
13 under control of the armed forces of the United States or the
14 state military forces;
 - 15 (8) Willfully fails to do his utmost to encounter, engage,
16 capture, or destroy any enemy troops, combatants, vessels,
17 aircraft, or any other thing, which it is his duty so to
18 encounter, engage, capture, or destroy; or
 - 19 (9) Does not afford all practicable relief and assistance to
20 any troops, combatants, vessels, or aircraft of the armed
21 forces belonging to the United States or their allies, to the
22 state when engaged in battle or in suppressing civil disorders;
23 shall be punished as a court-martial may direct.

§15-1E-101. Subordinate compelling surrender.

- 1 Any person subject to this article who compels or attempts
2 to compel a commander of any place, vessel, aircraft, or other
3 military property, or of any body of members of the state
4 military forces to give it up to an enemy or to abandon it, or
5 who strikes the colors or flag to an enemy without proper
6 authority, shall be punished as a court-martial may direct.

§15-1E-102. Improper use of countersign.

- 1 Any person subject to this article who discloses the parole
2 or countersign to any person not entitled to receive it, or who

3 gives to another who is entitled to receive and use the parole
4 or countersign a different parole or countersign from that
5 which, to his knowledge, he was authorized and required to
6 give, shall be punished as a court-martial may direct.

§15-1E-103. Forcing a safeguard.

1 Any person subject to this article who forces a safeguard
2 shall be punished as a court-martial may direct.

§15-1E-104. Captured or abandoned property.

1 (a) *Duty to secure property.*—All persons subject to this
2 article shall secure all public property taken from the enemy
3 for the service of the United States or the state, and shall give
4 notice and turn over to the proper authority without delay all
5 captured or abandoned property in their possession, custody,
6 or control.

7 (b) *Offenses defined and punishment.*—Any person
8 subject to this article who:

9 (1) Fails to carry out the duties prescribed in subsection
10 (a);

11 (2) Buys, sells, trades, or in any way deals in or disposes of
12 captured or abandoned property, whereby he receives or
13 expects any profit, benefit, or advantage to himself or another
14 directly or indirectly connected with himself; or

15 (3) Engages in looting or pillaging; shall be punished as a
16 court-martial may direct.

§15-1E-105. Aiding the enemy.

1 Any person subject to this article who:

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

4 (2) Without proper authority, knowingly harbors or
5 protects or gives intelligence to, or communicates or
6 corresponds with or holds any intercourse with the enemy,
7 either directly or indirectly; shall be punished as a
8 court-martial may direct.

§15-1E-106. Misconduct of a prisoner.

1 Any person subject to this article who, while in the hands of
2 the enemy:

3 (1) For the purpose of securing favorable treatment by his
4 captors acts without proper authority in a manner contrary to
5 law, custom, or regulation, to the detriment of others held by
6 the enemy as civilian or military prisoners; or

7 (2) While in a position of authority over such persons
8 maltreats them without justifiable cause; shall be punished as
9 a court-martial may direct.

§15-1E-107. False official statements.

1 Any person subject to this article who, with intent to
2 deceive, signs any false record, return, regulation, order, or
3 other official document, knowing the same to be false, or
4 makes any other false official statement knowing the same to
5 be false, shall be punished as a court-martial may direct.

**§15-1E-108. Loss, damage, destruction or wrongful disposition
of military property.**

1 Any person subject to this article who without proper
2 authority:
3 (1) Sells or otherwise disposes of;
4 (2) Willfully or through neglect damages, destroys, or
5 loses; or
6 (3) Willfully or through neglect suffers to be lost,
7 damaged, destroyed, sold, or wrongfully disposed of; any
8 military property of the United States or of the state; shall be
9 punished as a court-martial may direct.

**§15-1E-109. Waste, spoilage, or destruction of nonmilitary
property.**

1 Any person subject to this article who, while in a duty
2 status, willfully or recklessly wastes, spoils, or otherwise
3 willfully and wrongfully destroys or damages any property
4 other than military property belonging to the United States or
5 of the state shall be punished as a court-martial may direct.

§15-1E-110. Improper hazarding of vessel.

1 (a) *Willful conduct*.—Any person subject to this article
2 who willfully and wrongfully hazards or suffers to be
3 hazarded any vessel of the armed forces of the United States
4 or of the state military forces shall be punished as a
5 court-martial may direct.

6 (b) *Negligent conduct*.—Any person subject to this article
7 who negligently hazards or suffers to be hazarded any vessel
8 of the armed forces of the United States or of the state
9 military forces shall be punished as a court-martial may
10 direct.

§15-1E-111. Drunken or reckless driving.

1 Any person subject to this article who while in a duty status

2 operates any vehicle while drunk, or in a reckless or wanton
3 manner, shall be punished as a court-martial may direct.

**§15-1E-112. Drunk on duty, sleeping on post and leaving post
before relief.**

1 Any person subject to this article who is found drunk on
2 duty or sleeping upon his post, or who leaves his post before
3 he is regularly relieved, shall be punished as a court-martial
4 may direct.

§15-1E-113. Dueling.

1 Any person subject to this article who, while in a duty
2 status, fights or promotes, or is concerned in or connives at
3 fighting a duel, or who, having knowledge of a challenge sent
4 or about to be sent, fails to report the fact promptly to the
5 proper authority, shall be punished as a court-martial may
6 direct.

§15-1E-114. Malingering.

1 Any person subject to this article who for the purpose of
2 avoiding work, duty or service in the state military forces:
3 (1) Feigns illness, physical disablement, mental lapse or
4 derangement; or
5 (2) Intentionally inflicts self-injury; shall be punished as a
6 court-martial may direct.

§15-1E-115. Riot or breach of peace.

1 Any person subject to this article who while in a duty status
2 causes or participates in any riot or breach of the peace shall
3 be punished as a court-martial may direct.

§15-1E-116. Provoking speeches or gestures.

1 Any person subject to this article who while in a duty status
2 uses provoking or reproachful words or gestures toward any
3 other person subject to this article shall be punished as a
4 court-martial may direct.

§15-1E-117. Perjury.

1 Any person subject to this article who in a judicial
2 proceeding or in a course of justice conducted under this
3 article willfully and corruptly gives, upon a lawful oath or in
4 any form allowed by law to be substituted for an oath, any
5 false testimony material to the issue or matter of inquiry is
6 guilty of perjury and shall be punished as a court-martial may
7 direct.

§15-1E-118. Frauds against the government.

- 1 Any person subject to this article (1) who, knowing it to be
2 false or fraudulent:
 - 3 (i) Makes any claim against the United States, the state, or
4 any officer thereof; or
 - 5 (ii) Presents to any person in the civil or military service
6 thereof, for approval or payment, any claim against the
7 United States, the state, or any officer thereof; or
- 8 (2) Who, for the purpose of obtaining the approval,
9 allowance, or payment of any claim against the United States,
10 the state, or any officer thereof:
 - 11 (i) Makes or uses any writing or other paper knowing the
12 same to contain any false or fraudulent statements;
 - 13 (ii) Makes any oath to any fact or to any writing or other
14 paper knowing such oath to be false; or
 - 15 (iii) Forges or counterfeits any signature upon any writing
16 or other paper, or uses any such signature knowing the same
17 to be forged or counterfeited; or
- 18 (3) Who, having charge, possession, custody, or control of
19 any money, or other property of the United States or the state
20 of West Virginia, furnished or intended for the armed forces
21 of the United States or the state military forces, knowingly
22 delivers to any person having authority to receive the same,
23 any amount thereof less than that for which he receives a
24 certificate or receipt; or
- 25 (4) Who, being authorized to make or deliver any paper
26 certifying the receipt of any property of the United States or
27 the state of West Virginia, furnished or intended for the
28 armed forces of the United States or the state military forces,
29 makes or delivers to any person such writing without having
30 full knowledge of the truth of the statements therein
31 contained and with intent to defraud the United States or the
32 state; shall, upon conviction, be punished as a court-martial
33 may direct.

§15-1E-119. Larceny and wrongful appropriation.

- 1 (a) *Offenses defined.*—Any person subject to this article
2 who while in a duty status wrongfully takes, obtains, or
3 withholds, by any means whatever, from the possession of
4 the true owner or of any other person, any money, personal
5 property, or article of value of any kind:
 - 6 (1) With intent permanently to deprive or defraud another
7 person of the use and benefit of property or to appropriate the

8 same to his own use or the use of any person other than the
9 true owner, is guilty of wrongful appropriation.

10 (2) With intent temporarily to deprive or defraud another
11 person of the use and benefit of property or to appropriate the
12 same to his own use or the use of any person other than the
13 true owner, is guilty of wrongful appropriation.

14 (b) *Punishment*.—Any person found guilty of larceny or
15 wrongful appropriation shall be punished as a court-martial
16 may direct.

§15-1E-120. Assault.

1 Any person subject to this article who while in a duty status
2 attempts or offers with unlawful force or violence to do bodily
3 harm to another person, whether or not the attempt or offer is
4 consummated, is guilty of assault and shall be punished as a
5 court-martial may direct.

§15-1E-121. Conduct unbecoming an officer and a gentleman.

1 Any commissioned officer who is convicted of conduct
2 unbecoming of an officer and a gentleman shall be punished
3 as a court-martial may direct.

§15-1E-122. General article.

1 Though not specifically mentioned in this article, all
2 disorders and neglects to the prejudice of good order and
3 discipline in the state military forces, and all conduct of a
4 nature to bring discredit upon the state military forces, of
5 which persons subject to this article may be guilty, shall be
6 taken cognizance of by a general, special or summary
7 court-martial, according to the nature and degree of the
8 offense, and shall be punished at the discretion of such court.
9 However, jurisdiction shall not be extended to crimes not
10 included herein, and within the jurisdiction of the civil courts
11 of this state.

§15-1E-123. Embezzlement.

1 Any person subject to this article who shall embezzle,
2 misapply or convert to his own use, without authority, any
3 moneys received by or entrusted to him for disbursement or
4 articles of military equipment shall be punished as a
5 court-martial may direct.

§15-1E-124. Purchasing and receiving military property in pawn.

1 If any person shall knowingly and willfully purchase, or
2 receive in pawn or pledge any military property of the state of

3 West Virginia or of the United States in use by the state of
4 West Virginia, he shall be punished as a court-martial may
5 direct.

PART XI. MISCELLANEOUS PROVISIONS.

§15-1E-125. Courts of inquiry.

- 1 (a) Courts of inquiry to investigate any matter may be
2 convened by any person authorized to convene a general
3 court-martial or by any other person designated by the
4 governor for that purpose, whether or not the persons
5 involved have requested such an inquiry.
- 6 (b) A court of inquiry consists of three or more
7 commissioned officers. For each court of inquiry the
8 convening authority shall also appoint counsel for the court.
- 9 (c) Any person subject to this article whose conduct is
10 subject to inquiry shall be designated as a party. Any person
11 subject to this article or employed in the office of state
12 adjutant general who has a direct interest in the subject of
13 inquiry shall have the right to be designated as a party upon
14 request to the court. Any person designated as a party shall be
15 given due notice and has the right to be present, to be
16 represented by counsel, to cross-examine witnesses, and to
17 introduce evidence.
- 18 (d) Members of a court of inquiry may be challenged by a
19 party, but only for cause stated to the court.
- 20 (e) The members, counsel, the reporter, and interpreters of
21 courts of inquiry shall take an oath or affirmation to faithfully
22 perform their duties.
- 23 (f) Witnesses may be summoned to appear and testify and
24 be examined before courts of inquiry, as provided for
25 courts-martial.
- 26 (g) Courts of inquiry shall make findings of fact but shall
27 not express opinions or make recommendations unless
28 required to do so by the convening authority.
- 29 (h) Each court of inquiry shall keep a record of its
30 proceedings, which shall be authenticated by the signatures
31 of the president and counsel for the court and forwarded to
32 the convening authority. In case the record cannot be
33 authenticated by the president, it shall be signed by a
34 member in lieu of the president. In case the record cannot be
35 authenticated by the counsel for the court, it shall be signed
36 by a member in lieu of the counsel.

§15-1E-126. Authority to administer oaths.

- 1 (a) The following members of the state military forces may
- 2 administer oaths for the purposes of military administration,
- 3 including military justice:
 - 4 (1) The state judge advocate and all assistant state judge
 - 5 advocates.
 - 6 (2) All summary courts-martial.
 - 7 (3) All adjutants, assistant adjutants, acting adjutants, and
 - 8 personnel adjutants.
 - 9 (4) All staff judge advocates and legal officers.
 - 10 (5) All other persons designated by law or regulation.
- 11 (b) The following persons in the state military forces shall
- 12 have authority to administer oaths necessary in the
- 13 performance of their duties:
 - 14 (1) The president, military judge, trial counsel, and
 - 15 assistant trial counsel for all general and special
 - 16 courts-martial.
 - 17 (2) The president and the counsel for the court of any
 - 18 court of inquiry.
 - 19 (3) All officers designated to take a deposition.
 - 20 (4) All persons detailed to conduct an investigation.
 - 21 (5) All other persons designated by law or regulation.
- 22 (c) The signature without seal of any such person, together
- 23 with the title of his office, is prima facie evidence of his
- 24 authority.

§15-1E-127. Text of article to be available.

- 1 A complete text of this article and of the regulations
- 2 prescribed by the governor thereunder shall be made
- 3 available to any member of the state military forces, upon his
- 4 request, for his personal examination.

§15-1E-128. Complaints of wrongs.

- 1 Any member of the state military forces who believes
- 2 himself wronged by his commanding officer, and who, upon
- 3 due application to such commander, is refused redress, may
- 4 complain to any superior commissioned officer, who shall
- 5 forward the complaint to the officer exercising general
- 6 court-martial jurisdiction over the officer against whom it is
- 7 made. That officer shall examine into said complaint and take
- 8 proper measures for redressing the wrong.

§15-1E-129. Redress of injuries to property.

- 1 (a) Whenever complaint is made to any commanding
- 2 officer that willful damage has been done to the property of

3 any person or that his property has been wrongfully taken by
4 members of the state military forces, he may, subject to such
5 regulations as the governor may prescribe, convene a board
6 to investigate the complaint. The board shall consist of from
7 one to three commissioned officers and shall have, for the
8 purpose of such investigation, power to summon witnesses
9 and examine them upon oath or affirmation, to receive
10 depositions or other documentary evidence, and to assess the
11 damages sustained against the responsible parties. The
12 assessment of damages made by such board is subject to the
13 approval of the commanding officer, and in the amount
14 approved by him and may be charged against the pay of the
15 offenders. The order of such commanding officer directing
16 charges herein authorized shall be conclusive, except as
17 provided in subsection (b) on any disbursing officer for the
18 payment by him to the injured parties of the damages so
19 assessed and approved.

20 (b) Any person subject to this article who is accused of
21 causing willful damage to property has the right to be
22 represented by counsel, to summon witnesses in his behalf,
23 and to cross-examine those appearing against him. He has the
24 right of appeal to the next higher commander.

§15-1E-130. Execution of process and sentence.

1 In the state military forces, the processes and sentences of
2 its courts-martial shall be executed by the civil officers
3 prescribed by the laws of this state or by the officers of the
4 state military forces as the circumstances may require. Fees
5 for serving processes provided for in this article shall be the
6 same as prescribed by law for similar processes of a civil
7 nature, and shall upon proper vouchers being filed, be paid
8 by the adjutant general in the usual manner.

§15-1E-131. Disposition of fines and penalties.

1 All fines and penalties imposed and collected through the
2 sentence of courts-martial shall be forwarded to the adjutant
3 general who shall deposit the same in the state treasury, to be
4 credited to the state school fund in the same manner as other
5 fines which accrue to the state.

§15-1E-132. Liability of public officers for nonexecution of process.

1 The neglect or refusal of any sheriff, police officer, jail
2 warden or magistrate to execute any process, or to make
3 proper return of all fines and penalties collected, or to receive

4 in custody any prisoner, shall be deemed a misdemeanor and
 5 shall subject the offender to a prosecution by the proper
 6 county prosecuting attorney, and to a penalty, upon
 7 conviction of each such offense, of five hundred dollars to the
 8 use of the state.

§15-1E-133. Compensation of court.

1 Military judges, military counsel and members of
 2 courts-martial and courts of inquiry shall be allowed
 3 transportation and per diem pay as per military grade for time
 4 actually employed in the duties assigned them.
 5 Transportation shall be furnished to all prosecutors,
 6 prisoners, witnesses, sheriffs, police officers to and from the
 7 place or places designated for the meetings of said courts. The
 8 per diem pay for civilian witnesses shall be the same as in
 9 civil courts of law and for military personnel the amount as
 10 provided by law and regulation. The fees of sheriffs for
 11 serving the processes provided for in this article shall be the
 12 same as prescribed by law for similar processes of a civil
 13 nature and shall, upon proper vouchers being filed, be paid
 14 by the adjutant general in the usual manner.

§15-1E-134. Immunity for action of military courts.

1 No accused may bring an action or proceeding against the
 2 convening authority or a member of a military court or officer
 3 or person acting under its authority or reviewing its
 4 proceedings because of the approval, imposition, or
 5 execution of any sentence or the imposition or collection of a
 6 fine or penalty, or the execution of any process or mandate of
 7 a military court.

§15-1E-135. Entitlement to reemployment rights.

1 Members of the state military forces of this state who are
 2 ordered to active state duty by the governor shall, upon being
 3 relieved from such duty, be entitled to the same
 4 reemployment rights provided by Title 38, Section 2021 of the
 5 United States Code on the effective date of this section for
 6 persons inducted into the armed forces of the United States.

§15-1E-136. Delegation of authority by the governor.

1 The governor may delegate any authority vested in him
 2 under this article, and may provide for the subdelegation of
 3 any such authority, except the power given him by sections
 4 twenty-one and twenty-two of this article.

§15-1E-137. Uniformity on interpretation.

1 This article shall be so construed as to effectuate its general
2 purpose to make uniform the law of this state, so far as
3 practical, with the law of the United States, especially as
4 embodied in the Uniform Code of Military Justice.

§15-1E-138. Provisions of article severable.

1 Each section of this article and every part thereof is hereby
2 declared to be an independent section or part of a section, and
3 if any section, subsection, sentence, clause or phrase of this
4 article shall for any reason be held unconstitutional, the
5 validity of the remaining phrases, clauses, sentences,
6 subsections and sections of this article shall not be affected
7 thereby.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baylo
Chairman Senate Committee

Tony E. Whitton
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

David C. Wilks
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Warren R. McInnis
President of the Senate

Walter H. Lee, Jr.
Speaker House of Delegates

The within is approved this the 24
day of February, 1982.

John D. Roper
Governor

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SECY. OF STATE