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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2010



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4504**

(By Delegates Iaquina and Swartzmiller)



Passed March 13, 2010

In Effect Ninety Days From Passage

HB 4504

# ENROLLED

COMMITTEE SUBSTITUTE

for

## H. B. 4504

(BY DELEGATES IAQUINTA AND SWARTZMILLER)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §15-1E-1, §15-1E-2, §15-1E-3, §15-1E-4, §15-1E-5, §15-1E-6, §15-1E-7, §15-1E-8, §15-1E-9, §15-1E-10, §15-1E-11, §15-1E-12, §15-1E-13, §15-1E-14, §15-1E-15, §15-1E-16, §15-1E-17, §15-1E-18, §15-1E-19, §15-1E-20, §15-1E-21, §15-1E-22, §15-1E-23, §15-1E-24, §15-1E-25, §15-1E-26, §15-1E-27, §15-1E-28, §15-1E-29, §15-1E-30, §15-1E-31, §15-1E-32, §15-1E-33, §15-1E-34, §15-1E-35, §15-1E-36, §15-1E-37, §15-1E-38, §15-1E-39, §15-1E-40, §15-1E-41, §15-1E-42, §15-1E-43, §15-1E-44, §15-1E-45, §15-1E-46, §15-1E-47, §15-1E-48, §15-1E-49, §15-1E-50, §15-1E-51, §15-1E-52, §15-1E-53, §15-1E-54, §15-1E-55, §15-1E-56, §15-1E-57, §15-1E-58, §15-1E-59, §15-1E-60, §15-1E-61, §15-1E-62, §15-1E-63, §15-1E-64, §15-1E-65, §15-1E-66, §15-1E-67, §15-1E-68, §15-1E-69, §15-1E-70, §15-1E-71, §15-1E-72, §15-1E-73, §15-1E-74, §15-1E-75, §15-1E-76, §15-1E-77, §15-1E-78, §15-1E-79, §15-1E-80, §15-1E-81, §15-1E-82, §15-1E-83, §15-1E-84, §15-1E-85, §15-1E-86, §15-1E-87, §15-1E-88, §15-1E-89, §15-1E-90, §15-1E-91, §15-1E-92, §15-1E-93, §15-1E-94,

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§15-1E-95, §15-1E-96, §15-1E-97, §15-1E-98, §15-1E-99, §15-1E-100, §15-1E-101, §15-1E-102, §15-1E-103, §15-1E-104, §15-1E-105, §15-1E-106, §15-1E-107, §15-1E-108, §15-1E-109, §15-1E-110, §15-1E-111, §15-1E-112, §15-1E-113, §15-1E-114, §15-1E-115, §15-1E-116, §15-1E-117, §15-1E-118, §15-1E-119, §15-1E-120, §15-1E-121, §15-1E-122, §15-1E-123, §15-1E-124, §15-1E-125, §15-1E-126, §15-1E-127, §15-1E-128, §15-1E-129, §15-1E-130, §15-1E-131, §15-1E-132, §15-1E-133, §15-1E-134, §15-1E-135, §15-1E-136, §15-1E-137 and §15-1E-138, of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto eighteen new sections, designated §15-1E-50a, §15-1E-57a, §15-1E-58a, §15-1E-58b, §15-1E-67a, §15-1E-76a, §15-1E-76b, §15-1E-112a, §15-1E-139, §15-1E-140, §15-1E-141, §15-1E-142, §15-1E-143, §15-1E-144, §15-1E-145, §15-1E-146, §15-1E-147 and §15-1E-148, all relating to adopting the Uniform State Military Code of Justice; defining terms; designating persons subject to this code and jurisdiction; noting the territorial applicability of the code; detailing apprehension and restraint procedures; establishing nonjudicial punishment authority; stating court-martial jurisdiction; prescribing appointment and composition of courts-martial; describing pretrial and trial procedure; specifying sentences after conviction; delineating post-trial procedure and review of courts-martial; establishing punitive articles; and creating miscellaneous provisions.

*Be it enacted by the Legislature of West Virginia:*

That §15-1E-1, §15-1E-2, §15-1E-3, §15-1E-4, §15-1E-5, §15-1E-6, §15-1E-7, §15-1E-8, §15-1E-9, §15-1E-10, §15-1E-11, §15-1E-12, §15-1E-13, §15-1E-14, §15-1E-15, §15-1E-16, §15-1E-17, §15-1E-18, §15-1E-19, §15-1E-20, §15-1E-21, §15-1E-22, §15-1E-23, §15-1E-24, §15-1E-25, §15-1E-26, §15-1E-27, §15-1E-28, §15-1E-29, §15-1E-30, §15-1E-31, §15-1E-32, §15-1E-33, §15-1E-34, §15-1E-35, §15-1E-36, §15-1E-37, §15-1E-38, §15-1E-39, §15-1E-40, §15-1E-41, §15-1E-42, §15-1E-43, §15-1E-44, §15-1E-45, §15-

1E-46, §15-1E-47, §15-1E-48, §15-1E-49, §15-1E-50, §15-1E-51, §15-1E-52, §15-1E-53, §15-1E-54, §15-1E-55, §15-1E-56, §15-1E-57, §15-1E-58, §15-1E-59, §15-1E-60, §15-1E-61, §15-1E-62, §15-1E-63, §15-1E-64, §15-1E-65, §15-1E-66, §15-1E-67, §15-1E-68, §15-1E-69, §15-1E-70, §15-1E-71, §15-1E-72, §15-1E-73, §15-1E-74, §15-1E-75, §15-1E-76, §15-1E-77, §15-1E-78, §15-1E-79, §15-1E-80, §15-1E-81, §15-1E-82, §15-1E-83, §15-1E-84, §15-1E-85, §15-1E-86, §15-1E-87, §15-1E-88, §15-1E-89, §15-1E-90, §15-1E-91, §15-1E-92, §15-1E-93, §15-1E-94, §15-1E-95, §15-1E-96, §15-1E-97, §15-1E-98, §15-1E-99, §15-1E-100, §15-1E-101, §15-1E-102, §15-1E-103, §15-1E-104, §15-1E-105, §15-1E-106, §15-1E-107, §15-1E-108, §15-1E-109, §15-1E-110, §15-1E-111, §15-1E-112, §15-1E-113, §15-1E-114, §15-1E-115, §15-1E-116, §15-1E-117, §15-1E-118, §15-1E-119, §15-1E-120, §15-1E-121, §15-1E-122, §15-1E-123, §15-1E-124, §15-1E-125, §15-1E-126, §15-1E-127, §15-1E-128, §15-1E-129, §15-1E-130, §15-1E-131, §15-1E-132, §15-1E-133, §15-1E-134, §15-1E-135, §15-1E-136, §15-1E-137 and §15-1E-138, of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto eighteen new sections, designated §15-1E-50a, §15-1E-57a, §15-1E-58a, §15-1E-58b, §15-1E-67a, §15-1E-76a, §15-1E-76b, §15-1E-112a, §15-1E-139, §15-1E-140, §15-1E-141, §15-1E-142, §15-1E-143, §15-1E-144, §15-1E-145, §15-1E-146, §15-1E-147 and §15-1E-148, all to read as follows:

## **ARTICLE 1E. UNIFORM STATE CODE OF MILITARY JUSTICE.**

### **PART I. GENERAL PROVISIONS.**

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

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

2 (1) The term “accuser” means a person who signs and  
3 swears to charges, any person who directs that charges

4 nominally be signed and sworn to by another, and any other  
5 person who has an interest other than an official interest in  
6 the prosecution of the accused.

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

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

19 (4) The term “code” means this article.

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

26 (6) The term “convening authority” includes, in addition  
27 to the person who convened the court, a commissioned  
28 officer commanding for the time being or a successor in  
29 command to the convening authority.

30 The term “day” means calendar day and is not  
31 synonymous with the term “unit training assembly.” Any  
32 period authorized by this section which is measured in  
33 terms of days shall, when served in a status other than annual  
34 furloughing, be construed to mean succeeding duty days.

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

40 (9) The term “enlisted member” means a person in an  
41 enlisted grade.

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

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

64 (12) The term “military court” means a court-martial or  
65 a court of inquiry.

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

69 (14) The term “military offenses” means those offenses  
70 prescribed under sections seventy-seven (Principals),  
71 seventy-eight (Accessory after the fact), eighty (Attempts),  
72 eighty-one (Conspiracy), eighty-two (Solicitation), eighty-  
73 three (Fraudulent enlistment, appointment, or separation),  
74 eighty-four (Unlawful enlistment, appointment, or  
75 separation), eighty-five (Desertion), eighty-six (Absence  
76 without leave), eighty-seven (Missing movement), eighty-  
77 eight (Contempt toward officials), eighty-nine (Disrespect  
78 towards superior commissioned officer), ninety (Assaulting  
79 or willfully disobeying superior commissioned officer),  
80 ninety-one (Insubordinate conduct toward warrant officer,  
81 noncommissioned officer, or petty officer), ninety-two  
82 (Failure to obey order or regulation), ninety-three (Cruelty  
83 and maltreatment), ninety-four (Mutiny or sedition), ninety-  
84 five (Resistance, flight, breach of arrest, and escape), ninety-  
85 six (Releasing prisoner without proper authority), ninety-  
86 seven (Unlawful detention), ninety-eight (Noncompliance  
87 with procedural rules), ninety-nine (Misbehavior before the  
88 enemy), one hundred (Subordinate compelling surrender),  
89 one hundred one (Improper use of countersign), one hundred  
90 two (Forcing a safeguard), one hundred three (Captured or  
91 abandoned property), one hundred four (Aiding the enemy),  
92 one hundred five (Misconduct as prisoner), one hundred  
93 seven (False official statements), one hundred eight (Military  
94 property - Loss, damage, destruction, or wrongful  
95 disposition), one hundred nine (Property other than military  
96 property - waste, spoilage, or destruction), one hundred ten  
97 (Improper hazarding of vessel), one hundred twelve (Drunk  
or intoxicated), one hundred twelve-a. (Wrongful use, possession,  
etc. of controlled substances), one hundred thirteen  
(Misbehavior of sentinel), one hundred fourteen (Dueling),

101 one hundred fifteen (Malingering), one hundred sixteen (Riot  
102 or breach of peace), one hundred seventeen (Provoking  
103 speeches or gestures), one hundred thirty-two (Frauds against  
104 the government), one hundred thirty-three (Conduct  
105 unbecoming an officer and a gentleman), and one hundred  
106 thirty-four (General) of this article.

107 (15) The term “national security” means the national  
108 defense and foreign relations of the United States.

109 (16) The term “officer” means a commissioned or  
110 warrant officer.

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

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

121 (19) “Shall” is used in an imperative sense.

122 (20) “State” means one of the several states, the District  
123 of Columbia, the Commonwealth of Puerto Rico, Guam, and  
124 the U.S. Virgin Islands.

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

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

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

146 (24) The term “superior commissioned officer” means a  
147 commissioned officer superior in rank or command.

148 (25) “Senior force commander” means the commander of  
149 the same force of the state military forces as the accused.

150 (26) “Unit Training Assembly” means an assembly for  
151 drill or instruction which may consist of a single ordered  
152 formation of a company, battery, squadron, or detachment,  
153 or, when authorized by the commander, a series of ordered  
154 formations of those organizations.

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

157 **Persons subject to this article; jurisdiction.**

1 a) This article applies to all members of the state military  
2 at all times.

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

### **§15-1E-3. Jurisdiction to try certain personnel.**

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

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

### **§15-1E-4. Reserved.**

### **§15-1E-5. Territorial applicability of the article.**

1 (a) This article has applicability at all times and in all  
2 places, provided that either the person subject to the article is

3 in a duty status or, if not in a duty status, that there is a nexus  
4 between the act or omission constituting the offense and the  
5 efficient functioning of the state military forces; however,  
6 this grant of military jurisdiction shall neither preclude nor  
7 limit civilian jurisdiction over an offense, which is limited  
8 only by the prohibition of double jeopardy.

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

**§15-1E-6. Judge Advocates.**

1 (a) The senior force judge advocates in each of the state's  
2 military forces or that judge advocate's delegates shall make  
3 frequent inspections in the field in supervision of the  
4 administration of military justice in that force.

5 (b) Convening authorities shall at all times communicate  
6 directly with their judge advocates in matters relating to the  
7 administration of military justice. The judge advocate of any  
8 command is entitled to communicate directly with the judge  
9 advocate of a superior or subordinate command, or with the  
10 State Judge Advocate.

11 (c) No person who has acted as member, military judge,  
12 trial counsel, defense counsel, or investigating officer, or who  
13 has been a witness, in any case may later act as a judge  
14 advocate to any reviewing authority upon the same case.

**II. APPREHENSION AND RESTRAINT.**

**§15-1E-7. Apprehension.**

1 (a) Apprehension is the taking of a person into custody.

2 (b) Any person authorized by this article or by chapter 47  
3 of title 10, United States Code, or by regulations issued under  
4 either, to apprehend persons subject to this article, any  
5 marshal of a court-martial appointed pursuant to the  
6 provisions of this article, and any peace officer or civil  
7 officer having authority to apprehend offenders under the  
8 laws of the United States or of a state, may do so upon  
9 probable cause that an offense has been committed and that  
10 the person apprehended committed it.

11 (c) Commissioned officers, warrant officers, petty  
12 officers, and noncommissioned officers have authority to  
13 quell quarrels, frays, and disorders among persons subject to  
14 this article and to apprehend persons subject to this article  
15 who take part therein.

16 (d) If an offender is apprehended outside the state, the  
17 offender's return to the area must be in accordance with  
18 normal extradition procedures or by reciprocal agreement.

19 (e) No person authorized by this section to apprehend  
20 persons subject to this article or the place where such  
21 offender is confined, restrained, held, or otherwise housed  
22 may require payment of any fee or charge for so receiving,  
23 apprehending, confining, restraining, holding, or otherwise  
24 housing a person except as otherwise provided by law.

**§15-1E-8. Reserved.**

**§15-1E-9. Imposition of restraint.**

1 (a) Arrest is the restraint of a person by an order, not  
2 imposed as a punishment for an offense, directing him or her

3 to remain within certain specified limits. Confinement is the  
4 physical restraint of a person.

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

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

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

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

#### **§15-1E-10. Restraint of persons charged with offenses.**

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

**§15-1E-11. Place of Confinement; Reports and receiving of prisoners.**

1 (a) If a person subject to this article is confined before,  
2 during, or after trial, confinement shall be in a civilian or  
3 military confinement facility.

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

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

**§15-1E-12. Confinement with enemy prisoners prohibited.**

1 No member of the state military forces may be placed in  
2 confinement in immediate association with enemy prisoners  
3 or other foreign nationals not members of the Armed Forces.

**§15-1E-13. Punishment prohibited before trial.**

1 No person, while being held for trial or awaiting a  
2 verdict, may be subjected to punishment or penalty other than  
3 arrest or confinement upon the charges pending against the  
4 person, nor shall the arrest or confinement imposed upon  
5 such person be any more rigorous than the circumstances  
6 required to insure the person's presence, but the person may

7 be subjected to minor punishment during that period for  
8 infractions of discipline.

**§15-1E-14. Delivery of offenders to civil authorities.**

1 (a) A person subject to this article accused of an offense  
2 against civil authority may be delivered, upon request, to the  
3 civil authority for trial or confinement.

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

PART III. NONJUDICIAL PUNISHMENT.

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

1 (a) Under such regulations as prescribed, any  
2 commanding officer (and for purposes of this article,  
3 officers-in-charge) may impose disciplinary punishments for  
4 minor offenses without the intervention of a court-martial  
5 pursuant to this article. The Governor, the Adjutant General,  
6 or an officer of a general or flag rank in command may  
7 delegate the powers under this section to a principal assistant  
8 who is a member of the state military forces.

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

1 An admonition;

A reprimand;

13 (3) The withholding of privileges for not more than six  
14 months which need not be consecutive;

15 (4) The forfeiture of pay of not more than seven days'  
16 pay;

17 (5) A fine of not more than seven days' pay;

18 (6) A reduction to the next inferior pay grade, if the grade  
19 from which demoted is within the promotion authority of the  
20 officer imposing the reduction or any officer subordinate to  
21 the one who imposes the reduction;

22 (7) Extra duties, including fatigue or other duties, for not  
23 more than fourteen days, which need not be consecutive; and

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

27 (c) Any commanding officer of the grade of major or  
28 lieutenant commander, or above may impose upon enlisted  
29 members of the officer's command:

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

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

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

35 (4) A reduction to the lowest or any intermediate pay  
36 grade, if the grade from which demoted is within the  
37 promotion authority of the officer imposing the reduction or  
38 any officer subordinate to the one who imposes the reduction,

39 but an enlisted member in a pay grade above E-4 may not be  
40 reduced more than two pay grades;

41 (5) Extra duties, including fatigue or other duties, for not  
42 more than forty-five days which need not be consecutive; and

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

46 (d) The Governor, the Adjutant General, an officer  
47 exercising general court-martial convening authority, or an  
48 officer of a general or flag rank in command may impose:

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

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

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

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

56 (e) Whenever any of those punishments are combined to  
57 run consecutively, the total length of the combined  
58 punishment cannot exceed the authorized duration of the  
59 longest punishment in the combination, and there must be an  
60 apportionment of punishments so that no single punishment  
61 in the combination exceeds its authorized length under this  
62

63 Prior to the offer of judicial punishment, the  
64 commanding officer shall determine whether arrest in  
65 quarters or restriction shall be considered as punishments.

66 Should the commanding officer determine that the  
67 punishment options may include arrest in quarters or  
68 restriction, the accused shall be notified of the right to  
69 demand trial by court-martial. Should the commanding  
70 officer determine that the punishment options will not include  
71 arrest in quarters or restriction, the accused shall be notified  
72 that there is no right to trial by courts-martial in lieu of  
73 nonjudicial punishment

74 (g) The officer who imposes the punishment, or the  
75 successor in command, may, at any time, suspend, set aside,  
76 mitigate, or remit any part or amount of the punishment and  
77 restore all rights, privileges, and property affected. The  
78 officer also may:

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

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

81 (3) Mitigate extra duties to restriction.

82 The mitigated punishment shall not be for a greater  
83 period than the punishment mitigated. When mitigating  
84 reduction in grade to forfeiture of pay, the amount of the  
85 forfeiture shall not be greater than the amount that could have  
86 been imposed initially under this section by the officer who  
87 imposed the punishment mitigated.

88 (h) A person punished under this section who considers  
89 the punishment unjust or disproportionate to the offense may,  
90 through the proper channel, appeal to the next superior  
91 authority within fifteen days after the punishment is either  
92 announced or sent to the accused, as the commander may  
93 determine. The appeal shall be promptly forwarded and  
94 decided, but the person punished may in the meantime be  
95 required to undergo the punishment adjudged. The superior

96 authority may exercise the same powers with respect to the  
97 punishment imposed as may be exercised under subsection  
98 (g) by the officer who imposed the punishment. Before  
99 acting on an appeal from a punishment, the authority that is  
100 to act on the appeal may refer the case to a judge advocate for  
101 consideration and advice.

102 (i) The imposition and enforcement of disciplinary  
103 punishment under this section for any act or omission is not  
104 a bar to trial by court-martial or a civilian court of competent  
105 jurisdiction for a serious crime or offense growing out of the  
106 same act or omission and not properly punishable under this  
107 article; but the fact that a disciplinary punishment has been  
108 enforced may be shown by the accused upon trial and, when  
109 so shown, it shall be considered in determining the measure  
110 of punishment to be adjudged in the event of a finding of  
111 guilty.

112 (j) Whenever a punishment of forfeiture of pay is  
113 imposed under this article, the forfeiture may apply to pay  
114 accruing before, on, or after the date that punishment is  
115 imposed.

116 (k) Regulations may prescribe the form of records to be  
117 kept of proceedings under this section and may prescribe that  
118 certain categories of those proceedings shall be in writing.

#### PART IV. COURT-MARTIAL JURISDICTION.

### **§15-1E-16. Courts-martial classified.**

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

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

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

5 (B) 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 orally on the  
8 record or in writing a court composed only of a military  
9 judge and the military judge approves;

10 (2) Special courts-martial, consisting of:

11 (A) A military judge and not less than three members; or

12 (B) Only a military judge, if one has been detailed to the  
13 court, and the accused under the same conditions as those  
14 prescribed in subdivision (1) of this section so requests; and

15 (3) Summary courts-martial, consisting of one  
16 commissioned officer.

**§15-1E-17. Jurisdiction of courts-martial in general.**

1 Each component of the state military forces has court-  
2 martial jurisdiction over all members of the particular  
3 component who are subject to this article. Additionally, the  
4 Army and Air National Guard state military forces have  
5 court-martial jurisdiction over all members subject to this  
6 article.

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

1 Subject to section seventeen 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 punishment not forbidden by this article.

**§15-1E-19. Jurisdiction of special courts-martial.**

1 Subject to section seventeen, special courts-martial have  
2 jurisdiction to try persons subject to this article for any

3 offense made punishable by this article, and may, under such  
4 limitations as the Governor may prescribe, adjudge any  
5 punishment not forbidden by this article except dishonorable  
6 discharge, dismissal, confinement for more than one year,  
7 forfeiture of pay exceeding two-thirds pay per month, or  
8 forfeiture of pay for more than one year.

**§15-1E-20. Jurisdiction of summary courts-martial.**

1 (a) Subject to section seventeen of this article, summary  
2 courts-martial have jurisdiction to try persons subject to this  
3 article, except officers, cadets, candidates, and midshipmen,  
4 for any offense made punishable by this article under such  
5 limitations as the Governor may prescribe.

6 (b) No person with respect to whom summary courts-  
7 martial have jurisdiction may be brought to trial before a  
8 summary court-martial if that person objects thereto. If  
9 objection to trial by summary court-martial is made by an  
10 accused, trial by special or general court-martial may be  
11 ordered, as may be appropriate. Summary courts-martial  
12 may, under such limitations as the Governor may prescribe,  
13 adjudge any punishment not forbidden by this article except  
14 dismissal, dishonorable or bad-conduct discharge,  
15 confinement for more than one month, restriction to specified  
16 limits for more than two months, or forfeiture of more than  
17 two-thirds of one month's pay.

**§15-1E-21. Reserved.**

PART V. APPOINTMENT AND COMPOSITION OF  
COURTS-MARTIAL.

**-22. § may convene general courts-martial.**

(a) General courts-martial may be convened by:

2 (1) The Governor;

3 (2) The Adjutant General;

4 (3) The commanding officer of a force of the state  
5 military forces;

6 (4) The commanding officer of a division or a separate  
7 brigade; or

8 (5) The commanding officer of a separate wing.

9 (b) If 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 superior authority if  
12 considered desirable by such authority.

**§15-1E-23. Who may convene special courts-martial.**

1 (a) Special courts-martial may be convened by:

2 (1) Any person who may convene a general court-martial;

3 (2) The commanding officer of a garrison, fort, post,  
4 camp, station, Air National Guard base, or naval base or  
5 station;

6 (3) The commanding officer of a brigade, regiment,  
7 detached battalion, or corresponding unit of the Army;

8 (4) The commanding officer of a wing, group, separate  
9 squadron, or corresponding unit of the Air Force; or

10 (5) The commanding officer or officer in charge of any  
11 other command when empowered by The Adjutant General.

12 (b) If any such officer is an accuser, the court shall be  
13 convened by superior competent authority and may in any  
14 case be convened by such superior authority if considered  
15 desirable by such authority.

**§15-1E-24. Who may convene summary courts-martial.**

1 (a) Summary courts-martial may be convened:

2 (1) By any person who may convene a general or special  
3 court-martial;

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

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

8 (4) The commanding officer or officer in charge of any  
9 other command when empowered by The Adjutant General.

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

**§15-1E-25. Who may serve on courts-martial.**

1 (a) Any commissioned officer of the state military forces  
2 is eligible to serve on all courts-martial for the trial of any  
3 person subject to this article.

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

6 trial of any person subject to this article, other than a  
7 commissioned officer.

8 (c) Any enlisted member of the state military forces who  
9 is not a member of the same unit as the accused is eligible to  
10 serve on general and special courts-martial for the trial of any  
11 enlisted member subject to this article, but that member shall  
12 serve as a member of a court only if, before the conclusion of  
13 a session called by the military judge under subsection (a),  
14 section thirty-nine of this article prior to trial or, in the  
15 absence of such a session, before the court is assembled for  
16 the trial of the accused, the accused personally has requested  
17 orally on the record or in writing that enlisted members serve  
18 on it. After such a request, the accused may not be tried by  
19 a general or special court-martial the membership of which  
20 does not include enlisted members in a number comprising  
21 at least one third of the total membership of the court, unless  
22 eligible enlisted members cannot be obtained on account of  
23 physical conditions or military exigencies. If such members  
24 cannot be obtained, the court may be assembled and the trial  
25 held without them, but the convening authority shall make a  
26 detailed written statement, to be appended to the record,  
27 stating why they could not be obtained. In this section, "unit"  
28 means any regularly organized body of the state military  
29 forces not larger than a company, a squadron, a division of  
30 the naval militia, or a body corresponding to one of them.

31 (d) When it can be avoided, no person subject to this  
32 article may be tried by a court-martial any member of which  
33 is junior to the accused in rank or grade.

34 (e) When convening a court-martial, the convening  
35 authority shall detail as members thereof such members of  
36 the state military forces as, in the convening authority's  
37 opinion, are best qualified for the duty by reason of age,  
38 education, training, experience, length of service, and judicial

39 temperament. No member of the state military forces is  
40 eligible to serve as a member of a general or special court-  
41 martial when that member is the accuser, a witness, or has  
42 acted as investigating officer or as counsel in the same case.

43 (f) Before a court-martial is assembled for the trial of a  
44 case, the convening authority may excuse a member of the  
45 court from participating in the case. The convening authority  
46 may delegate the authority under this subsection to a judge  
47 advocate or to any other principal assistant.

**§15-1E-26. Military judge of a general or special court-martial.**

1 (a) A military judge shall be detailed to each general and  
2 special court-martial. The military judge shall preside over  
3 each open session of the court-martial to which the military  
4 judge has been detailed.

5 (b) A military judge shall be:

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

8 (2) A member in good standing of the bar of the highest  
9 court of a state or a member of the bar of a federal court for  
10 at least five years; and

11 (3) Certified as qualified for duty as a military judge by  
12 the senior force judge advocate which is the same force as the  
13 accused.

14 (c) In the instance when a military judge is not a member  
15 of the bar of the highest court of the state, the military judge  
16 shall be deemed admitted pro hac vice, subject to filing a  
17 certificate with the senior force judge advocate which is the

18 same force as the accused setting forth such qualifications  
19 provided in subsection (b).

20 (d) The military judge of a general or special court-  
21 martial shall be designated by the senior force judge advocate  
22 which is the same force as the accused, or a designee, for  
23 detail by the convening authority. Neither the convening  
24 authority nor any staff member of the convening authority  
25 shall prepare or review any report concerning the  
26 effectiveness, fitness, or efficiency of the military judge so  
27 detailed, which relates to performance of duty as a military  
28 judge.

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

32 (f) The military judge of a court-martial may not consult  
33 with the members of the court except in the presence of the  
34 accused, trial counsel, and defense counsel nor vote with the  
35 members of the court.

#### **§15-1E-27. Detail of trial counsel and defense counsel.**

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

12 (b) Except as provided in subsection (c), trial counsel or  
13 defense counsel detailed for a general or special court-martial  
14 must be a judge advocate as defined in section one of this  
15 article and in the case of trial counsel, a member in good  
16 standing of the bar of the Supreme Court of Appeals of West  
17 Virginia.

18 (c) In the instance when a defense counsel is not a  
19 member of the bar of the highest court of the state, the  
20 defense counsel shall be deemed admitted pro hac vice,  
21 subject to filing a certificate with the military judge setting  
22 forth the qualifications that counsel is:

23 (1) A commissioned officer of the Armed Forces of the  
24 United States or a component thereof; and

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

27 (3) A certified as a judge advocate in the Judge Advocate  
28 General's Corps of the Army, Air Force, Navy, or the Marine  
29 Corps; or

30 (4) A judge advocate as defined in section one of this  
31 article.

**§15-1E-28. Detail or employment of reporters and interpreters.**

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

**§15-1E-29. Absent and additional members.**

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

7 (b) Whenever a general court-martial, other than a  
8 general court-martial composed of a military judge only, is  
9 reduced below five members, the trial may not proceed  
10 unless the convening authority details new members  
11 sufficient in number to provide not less than the applicable  
12 minimum number of five members. The trial may proceed  
13 with the new members present after the recorded evidence  
14 previously introduced before the members of the court has  
15 been read to the court in the presence of the military judge,  
16 the accused, and counsel for both sides.

17 (c) Whenever a special court-martial, other than a special  
18 court-martial composed of a military judge only, is reduced  
19 below three members, the trial may not proceed unless the  
20 convening authority details new members sufficient in  
21 number to provide not less than three members. The trial  
22 shall proceed with the new members present as if no evidence  
23 had been introduced previously at the trial, unless a verbatim  
24 record of the evidence previously introduced before the  
25 members of the court or a stipulation thereof is read to the  
26 court in the presence of the military judge, the accused, and  
27 counsel for both sides.

28 (d) If the military judge of a court-martial composed of  
29 a military judge only is unable to proceed with the trial  
30 because of physical disability, as a result of a challenge, or  
31 for other good cause, the trial shall proceed, subject to any  
32 applicable conditions of paragraph (b), subdivision (1) or  
33 paragraph (b), subdivision (2) of section sixteen of this

34 article, after the detail of a new military judge as if no  
35 evidence had previously been introduced, unless a verbatim  
36 record of the evidence previously introduced or a stipulation  
37 thereof is read in court in the presence of the new military  
38 judge, the accused, and counsel for both sides.

## PART VI. PRETRIAL PROCEDURE.

### **§15-1E-30. Charges and specifications.**

1 (a) Charges and specifications shall be signed by a person  
2 subject to this article under oath before a commissioned  
3 officer authorized by subsection (a), section one hundred  
4 thirty-six of this article to administer oaths and shall state:

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

7 (2) That they are true in fact to the best of the signer's  
8 knowledge and belief.

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

### **§15-1E-31. Compulsory self-incrimination prohibited.**

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

5 (b) No person subject to this article may interrogate or  
6 request any statement from an accused or a person suspected

7 of an offense without first informing that person of the nature  
8 of the accusation and advising that person that the person  
9 does not have to make any statement regarding the offense of  
10 which the person is accused or suspected and that any  
11 statement made by the person may be used as evidence  
12 against the person in a trial by court-martial.

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

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

#### **§15-1E-32. Investigation.**

1 (a) No charge or specification may be referred to a  
2 general 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  
8 and discipline.

9 (b) The accused shall be advised of the charges against  
10 the accused and of the right to be represented at that  
11 investigation by counsel. The accused has the right to be  
12 represented at that investigation as provided in section thirty-  
13 eight of this article and in regulations prescribed under this  
14 article. At that investigation, full opportunity shall be given  
15 to the accused to cross-examine witnesses against the  
16 accused, if they are available, and to present anything the

17 accused may desire in the accused's own behalf, either in  
18 defense or mitigation, and the investigating officer shall  
19 examine available witnesses requested by the accused. If the  
20 charges are forwarded after the investigation, they shall be  
21 accompanied by a statement of the substance of the testimony  
22 taken on both sides and a copy thereof shall be given to the  
23 accused.

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

35 (d) If evidence adduced in an investigation under this  
36 section indicates that the accused committed an uncharged  
37 offense, the investigating officer may investigate the subject  
38 matter of that offense without the accused having first been  
39 charged with the offense if the accused:

40 (1) Is present at the investigation;

41 (2) Is informed of the nature of each uncharged offense  
42 investigated; and

43 (3) Is afforded the opportunities for representation, cross-  
44 examination, and presentation prescribed in subsection (b).

45 (e) The requirements of this section are binding on all  
46 persons administering this article but failure to follow them  
47 does not constitute jurisdictional error.

**§15-1E-33. Forwarding of charges.**

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

**§15-1E-34. Advice of 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 a judge  
3 advocate for consideration and advice. The convening  
4 authority may not refer a specification under a charge to a  
5 general court-martial for trial unless the convening authority  
6 has been advised in writing by a judge advocate that:

7           (1) The specification alleges an offense under this article;

8           (2) The specification is warranted by the evidence  
9 indicated in the report of investigation under section thirty-  
10 two of this article, if there is such a report; and

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

13           (b) The advice of the judge advocate under subsection (a)  
14 with respect to a specification under a charge shall include a  
15 written and signed statement by the judge advocate:

16           (1) Expressing conclusions with respect to each matter set  
17 forth in subsection (a); and

18           (2) Recommending action that the convening authority  
19 take regarding the specification.

20 If the specification is referred for trial, the  
21 recommendation of the judge advocate shall accompany the  
22 specification.

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

**§15-1E-35. Service of charges.**

1 The trial counsel shall serve or caused to be served upon  
2 the accused a copy of the charges. No person may, against  
3 the person's objection, be brought to trial before a general  
4 court-martial case within a period of five days after the  
5 service of charges upon the accused, or in a special court-  
6 martial, within a period of three days after the service of  
7 charges upon the accused.

PART VII. TRIAL PROCEDURE.

**§15-1E-36. Governor or the Adjutant General may prescribe rules.**

1 Pretrial, trial, and post-trial procedures, including modes  
2 of proof, for courts-martial cases arising under this article,  
3 and for courts of inquiry, may be prescribed by the Governor  
4 or the Adjutant General by regulations, or as otherwise  
5 provided by law, which shall apply the principles of law and  
6 the rules of evidence generally recognized in military  
7 criminal cases in the courts of the Armed Forces but which  
8 may not be contrary to or inconsistent with this article.

**§15-1E-37. Unlawfully influencing action of court.**

1 (a) No authority convening a general, special, or  
2 summary court-martial, nor any other commanding officer,  
3 or officer serving on the staff thereof, may censure,  
4 reprimand, or admonish the court or any member, the  
5 military judge, or counsel thereof, with respect to the findings  
6 or sentence adjudged by the court or with respect to any other  
7 exercise of its or their functions in the conduct of the  
8 proceedings. No person subject to this article may attempt to  
9 coerce or, by any unauthorized means, influence the action of  
10 a court-martial or court of inquiry or any member thereof, in  
11 reaching the findings or sentence in any case, or the action of  
12 any convening, approving, or reviewing authority with  
13 respect to their judicial acts. The foregoing provisions of the  
14 subsection shall not apply with respect to: (1) General  
15 instructional or informational courses in military justice if  
16 such courses are designed solely for the purpose of  
17 instructing members of a command in the substantive and  
18 procedural aspects of courts-martial; or (2) to statements and  
19 instructions given in open court by the military judge,  
20 summary court-martial officer, or counsel.

21 (b) In the preparation of an effectiveness, fitness, or  
22 efficiency report, or any other report or document used, in  
23 whole or in part, for the purpose of determining whether a  
24 member of the state military forces is qualified to be  
25 advanced in grade, or in determining the assignment or  
26 transfer of a member of the state military forces, or in  
27 determining whether a member of the state military forces  
28 should be retained on active status, no person subject to this  
29 article may, in preparing any such report: (1) Consider or  
30 evaluate the performance of duty of any such member as a  
31 member of a court-martial or witness therein; or (2) Give a  
32 less favorable rating or evaluation of any counsel of the  
33 accused because of zealous representation before a court-  
34 martial.

**§15-1E-38. Duties of trial counsel and defense counsel.**

1 (a) The trial counsel of a general or special court-martial  
2 shall be a member in good standing of the State Bar and shall  
3 prosecute in the name of the state, and shall, under the  
4 direction of the court, prepare the record of the proceedings.

5 (b) (1) The accused has the right to be represented in  
6 defense before a general or special court-martial or at an  
7 investigation under section thirty-two of this article as  
8 provided in this subsection.

9 (2) The accused may be represented by civilian counsel  
10 at the provision and expense of the accused.

11 (3) The accused may be represented:

12 (A) By military counsel detailed under section twenty-  
13 seven of this article; or

14 (B) By military counsel of the accused's own selection if  
15 that counsel is reasonably available as determined under  
16 subdivision (7).

17 (4) If the accused is represented by civilian counsel,  
18 military counsel detailed or selected under subdivision (3)  
19 shall act as associate counsel unless excused at the request of  
20 the accused.

21 (5) Except as provided under subdivision (6), if the  
22 accused is represented by military counsel of his or her own  
23 selection under paragraph (B), subdivision (3), any military  
24 counsel detailed under paragraph (A), subdivision (3), shall  
25 be excused.

26 (6) The accused is not entitled to be represented by more  
27 than one military counsel. However, the person authorized

28 under regulations prescribed under section twenty-seven of  
29 this article to detail counsel, in that person's sole discretion:

30 (A) May detail additional military counsel as assistant  
31 defense counsel; and

32 (B) If the accused is represented by military counsel of  
33 the accused's own selection under paragraph (B), subdivision  
34 (3), may approve a request from the accused that military  
35 counsel detailed under paragraph (A), subdivision (3), act as  
36 associate defense counsel.

37 (7) The senior force judge advocate of the same force of  
38 which the accused is a member, shall determine whether the  
39 military counsel selected by an accused is reasonably  
40 available.

41 (c) In any court-martial proceeding resulting in a  
42 conviction, the defense counsel:

43 (1) May forward for attachment to the record of  
44 proceedings a brief of such matters as counsel determines  
45 should be considered in behalf of the accused on review,  
46 including any objection to the contents of the record which  
47 counsel considers appropriate;

48 (2) May assist the accused in the submission of any  
49 matter under section sixty of this article; and

50 (3) May take other action authorized by this article.

**§15-1E-39. 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 section thirty-five 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  
8 of 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 article, whether or  
11 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  
14 the accused; and

15 (4) Performing any other procedural function which does  
16 not require the presence of the members of the court under  
17 this article.

18 (b) These proceedings shall be conducted in the presence  
19 of the accused, the defense counsel, and the trial counsel and  
20 shall be made a part of the record. These proceedings may be  
21 conducted notwithstanding the number of court members and  
22 without regard to section twenty-nine.

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

**§15-1E-40. Continuances.**

1 The military judge of a court-martial or a summary court-  
2 martial 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-41. Challenges.**

1 (a)(1) The military judge and members of a general or  
2 special court-martial may be challenged by the accused or the  
3 trial counsel for cause stated to the court. The military judge  
4 or the court shall determine the relevancy and validity of  
5 challenges for cause and may 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 (2) If exercise of a challenge for cause reduces the court  
10 below the minimum number of members required by section  
11 sixteen of this article, all parties shall, notwithstanding  
12 section twenty-nine of this article, either exercise or waive  
13 any challenge for cause then apparent against the remaining  
14 members of the court before additional members are detailed  
15 to the court. However, peremptory challenges shall not be  
16 exercised at that time.

17 (b)(1) Each accused and the trial counsel are entitled  
18 initially to one peremptory challenge of members of the  
19 court. The military judge may not be challenged except for  
20 cause.

21 (2) If exercise of a peremptory challenge reduces the  
22 court below the minimum number of members required by  
23 section sixteen of this article, the parties shall,  
24 notwithstanding section twenty-nine of this article, either  
25 exercise or waive any remaining peremptory challenge, not  
26 previously waived, against the remaining members of the  
27 court before additional members are detailed to the court.

28 (3) Whenever additional members are detailed to the  
29 court, and after any challenges for cause against such  
30 additional members are presented and decided, each accused

31 and the trial counsel are entitled to one peremptory challenge  
32 against members not previously subject to peremptory  
33 challenge.

**§15-1E-42. Oaths or Affirmations.**

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

18 (b) Each witness before a court-martial shall be examined  
19 under oath or affirmation.

**§15-1E-43. Statute of limitations.**

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

9 (b) Periods in which the accused is absent without  
10 authority or fleeing from justice shall be excluded in  
11 computing the period of limitation prescribed in this article.

12 (c) Periods in which the accused was absent from  
13 territory in which the state has the authority to apprehend him  
14 or her, or in the custody of civil authorities, or in the hands of  
15 the enemy, shall be excluded in computing the period of  
16 limitation prescribed in this article.

17 (d) When the United States is at war, the running of any  
18 statute of limitations applicable to any offense under this  
19 article:

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

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

26 (3) Committed in connection with the negotiation,  
27 procurement, award, performance, payment, interim financing,  
28 cancellation, or other termination or settlement, of any  
29 contract, subcontract, or purchase order which is connected  
30 with or related to the prosecution of the war, or with any  
31 disposition of termination inventory by any war contractor or  
32 government agency; is suspended until two years after the  
33 termination of hostilities as proclaimed by the President or by  
34 a joint resolution of Congress.

35 (e)(1) If charges or specifications are dismissed as  
36 defective or insufficient for any cause and the period  
37 prescribed by the applicable statute of limitations:

38 (A) Has expired or will expire.

39 (B) Will expire within one hundred eighty days after the  
40 date of dismissal of the charges and specifications, trial and  
41 punishment under new charges and specifications are not  
42 barred by the statute of limitations if the conditions specified  
43 in subdivision (2) are met.

44 (2) The conditions referred to in subdivision (1) are that  
45 the new charges and specifications must:

46 (A) Be received by an officer exercising summary court-  
47 martial jurisdiction over the command within one hundred  
48 eighty days after the dismissal of the charges or  
49 specifications; and

50 (B) Allege the same acts or omissions that were alleged  
51 in the dismissed charges or specifications or allege acts or  
52 omissions that were included in the dismissed charges or  
53 specifications.

**§15-1E-44. Former jeopardy.**

1 (a) No person may, without his or her consent, be tried a  
2 second time for the same offense.

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

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

**§15-1E-45. Pleas of the accused.**

1 (a) If an accused after arraignment makes an irregular  
2 pleading, or after a plea of guilty sets up matter inconsistent  
3 with the plea, or if it appears that the accused has entered the  
4 plea of guilty improvidently or through lack of understanding  
5 of its meaning and effect, or if the accused fails or refuses to  
6 plead, a plea of not guilty shall be entered in the record, and  
7 the court shall proceed as though the accused had pleaded not  
8 guilty.

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

**§15-1E-46. Opportunity to obtain witnesses and other evidence.**

1 The trial counsel, the defense counsel, and the court-  
2 martial shall have equal opportunity to obtain witnesses and  
3 other evidence as prescribed by regulations and provided by  
4 law. Process issued in court-martial cases to compel  
5 witnesses to appear and testify and to compel the production  
6 of other evidence shall apply the principles of law and the  
7 rules of courts-martial generally recognized in military  
8 criminal cases in the courts of the Armed Forces of the  
9 United States, but which may not be contrary to or  
10 inconsistent with this article. Process shall run to any part of  
11 the United States, or the Territories, Commonwealths, and  
12 possessions, and may be executed by civil officers as  
13 prescribed by the laws of the place where the witness or  
14 evidence is located or of the United States.

**§15-1E-47. Refusal to appear or testify.**

1 (a) Any person not subject to this article who:

2 (1) Has been duly subpoenaed to appear as a witness or  
3 to produce books and records before a court-martial or court  
4 of inquiry, or before any military or civil officer designated  
5 to take a deposition to be read in evidence before such a  
6 court;

7 (2) Has been duly paid or tendered the fees and mileage  
8 of a witness at the rates allowed to witnesses attending a  
9 criminal court of the state; and

10 (3) Willfully neglects or refuses to appear, or refuses to  
11 qualify as a witness or to testify or to produce any evidence  
12 which that person may have been legally subpoenaed to  
13 produce; may be punished by the military court in the same  
14 manner as a criminal court of the state.

15 (b) The fees and mileage of witnesses shall be advanced  
16 or paid out of the appropriations for the compensation of  
17 witnesses.

**§15-1E-48. Contempts.**

1 A military judge or summary court-martial officer may  
2 punish for contempt any person who uses any menacing  
3 word, sign, or gesture in its presence, or who disturbs its  
4 proceedings by any riot or disorder.

5 (1) A person subject to this article may be punished for  
6 contempt by confinement not to exceed thirty days or a fine  
7 of \$100, or both.

8 (2) A person not subject to this article may be punished  
9 for contempt by a military court in the same manner as a  
10 criminal court of the state.

**§15-1E-49. Depositions.**

1 (a) At any time after charges have been signed as  
2 provided in section thirty of this article, any party may take  
3 oral or written depositions unless the military judge or  
4 summary court-martial officer hearing the case or, if the case  
5 is not being heard, an authority competent to convene a  
6 court-martial for the trial of those charges forbids it for good  
7 cause.

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

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

15 (d) A duly authenticated deposition taken upon  
16 reasonable notice to the other parties, so far as otherwise  
17 admissible under the rules of evidence, may be read in  
18 evidence or, in the case of audiotape, videotape, digital image  
19 or file, or similar material, may be played in evidence before  
20 any military court, if it appears:

21 (1) That the witness resides or is beyond the state in  
22 which the court is ordered to sit, or beyond one hundred  
23 miles from the place of trial or hearing;

24 (2) That the witness by reason of death, age, sickness,  
25 bodily infirmity, imprisonment, military necessity, non

26 amenability to process, or other reasonable cause, is unable  
27 or refuses to appear and testify in person at the place of trial  
28 or hearing; or

29 (3) That the present whereabouts of the witness is  
30 unknown.

**§15-1E-50. Admissibility of records of courts of inquiry.**

1 (a) In any case not extending to the dismissal of a  
2 commissioned officer, the sworn testimony, contained in the  
3 duly authenticated record of proceedings of a court of  
4 inquiry, of a person whose oral testimony cannot be obtained,  
5 may, if otherwise admissible under the rules of evidence, be  
6 read in evidence by any party before a court-martial if the  
7 accused was a party before the court of inquiry and if the  
8 same issue was involved or if the accused consents to the  
9 introduction of such evidence.

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

13 (c) Such testimony may also be read in evidence before  
14 a court of inquiry.

**§15-1E-50a. Defense of lack of mental responsibility.**

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

7 (b) The accused has the burden of proving the defense of  
8 lack of mental responsibility by clear and convincing  
9 evidence.

10 (c) Whenever lack of mental responsibility of the accused  
11 with respect to an offense is properly at issue, the military  
12 judge shall instruct the members of the court as to the defense  
13 of lack of mental responsibility under this section and charge  
14 them to find the accused:

15 (1) Guilty;

16 (2) Not guilty; or

17 (3) Not guilty only by reason of lack of mental  
18 responsibility.

19 (d) Subsection (c) does not apply to a court-martial  
20 composed of a military judge only. In the case of a court-  
21 martial composed of a military judge only or a summary  
22 court-martial officer, whenever lack of mental responsibility  
23 of the accused with respect to an offense is properly at issue,  
24 the military judge or summary court-martial officer shall find  
25 the accused:

26 (1) Guilty;

27 (2) Not guilty; or

28 (3) Not guilty only by reason of lack of mental  
29 responsibility.

30 (e) Notwithstanding the provisions of section fifty-two of  
31 this article, the accused shall be found not guilty only by  
32 reason of lack of mental responsibility if:

33 (1) A majority of the members of the court-martial  
34 present at the time the vote is taken determines that the  
35 defense of lack of mental responsibility has been established;  
36 or

37 (2) In the case of a court-martial composed of a military  
38 judge only or a summary court-martial officer, the military  
39 judge or summary court-martial officer determines that the  
40 defense of lack of mental responsibility has been established.

**§15-1E-51. Voting and rulings.**

1 (a) Voting by members of a general or special court-  
2 martial on the findings and on the sentence shall be by secret  
3 written ballot. The junior member of the court shall count the  
4 votes. The count shall be checked by the president, who shall  
5 forthwith announce the result of the ballot to the members of  
6 the court.

7 (b) The military judge shall rule upon all questions of law  
8 and all interlocutory questions arising during the proceedings.  
9 Any such ruling made by the military judge upon any  
10 question of law or any interlocutory question other than the  
11 factual issue of mental responsibility of the accused is final  
12 and constitutes the ruling of the court. However, the military  
13 judge may change the ruling at any time during the trial.  
14 Unless the ruling is final, if any member objects thereto, the  
15 court shall be cleared and closed and the question decided by  
16 a voice vote as provided in section fifty-two of this article,  
17 beginning with the junior in rank.

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

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

25 (2) That in the case being considered, if there is a or  
26 reasonable doubt as to the guilt of the accused, the doubt

27 must be resolved in favor of the accused and the accused  
28 must be acquitted;

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

32 (4) That the burden of proof to establish the guilt of the  
33 accused beyond reasonable doubt is upon the state.

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

**§15-1E-52. Number of votes required.**

1 (a) No person may be convicted of an offense except as  
2 provided in section forty-two of this article or by the  
3 concurrence of two thirds of the members present at the time  
4 the vote is taken.

5 (b) All other questions to be decided by the members of  
6 a general or special court-martial shall be determined by a  
7 majority vote, but a determination to reconsider a finding of  
8 guilty or to reconsider a sentence, with a view toward  
9 decreasing it, may be made by any lesser vote which  
10 indicates that the reconsideration is not opposed by the  
11 number of votes required for that finding or sentence. A tie  
12 vote on a challenge disqualifies the member challenged. A  
13 tie vote on a motion relating to the question of the accused's

14 sanity is a determination against the accused. A tie vote on  
15 any other question is a determination in favor of the accused.

**§15-1E-53. Court to announce action.**

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

**§15-1E-54. Record of trial.**

1 (a) Each general and special court-martial shall keep a  
2 separate record of the proceedings in each case brought  
3 before it, and the record shall be authenticated by the  
4 signature of the military judge. If the record cannot be  
5 authenticated by the military judge by reason of his or her  
6 death, disability, or absence, it shall be authenticated by the  
7 signature of the trial counsel or by that of a member, if the  
8 trial counsel is unable to authenticate it by reason of his or  
9 her death, disability, or absence. In a court-martial consisting  
10 of only a military judge, the record shall be authenticated by  
11 the court reporter under the same conditions which would  
12 impose such a duty on a member under this subsection.

13 (b) (1) A complete verbatim record of the proceedings  
14 and testimony shall be prepared in each general and special  
15 court-martial case resulting in a conviction.

16 (2) In all other court-martial cases, the record shall  
17 contain such matters as may be prescribed by regulations.

18 (c) Each summary court-martial shall keep a separate  
19 record of the proceedings in each case, and the record shall  
20 be authenticated in the manner as may be prescribed by  
21 regulations.

22 (d) A copy of the record of the proceedings of each  
23 general and special court-martial shall be given to the  
24 accused as soon as it is authenticated.

## PART VIII. SENTENCES.

**§15-1E-55. Cruel and unusual punishments prohibited.**

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

**§15-1E-56. Maximum limits.**

1 (a) The punishment which a court-martial may direct for  
2 an offense may not exceed such limits as prescribed by this  
3 article, but in no instance may a sentence exceed more than  
4 ten years for a military offense, nor shall a sentence of death  
5 be adjudged. A conviction by general court-martial of any  
6 military offense for which an accused may receive a sentence  
7 of confinement for more than one year is a felony offense.  
8 Except for convictions by a summary court-martial, all other  
9 military offenses are misdemeanors. Any conviction by a  
10 summary court-martial is not a criminal conviction.

11 (b) The limits of punishment for violations of the punitive  
12 articles prescribed herein shall be lesser of the sentences  
13 prescribed by the manual for courts-martial of the United  
14 States in effect on January 1, 2004, and the state manual for  
15 courts-martial, but in no instance shall any punishment  
16 exceed that authorized by this article.

**§15-1E-57. 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 becoming due on  
5 or after the date the sentence is approved by the convening  
6 authority. No forfeiture may extend to any pay or allowances  
7 accrued before that date.

8 (b) Any period of confinement included in a sentence of  
9 a court-martial begins to run from the date the sentence is  
10 adjudged by the court-martial, but periods during which the  
11 sentence to confinement is suspended or deferred shall be  
12 excluded in computing the service of the term of  
13 confinement.

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

**§15-1E-57a. Deferment of sentences.**

1 (a) On application by an accused who is under sentence  
2 to confinement that has not been ordered executed, the  
3 convening authority or, if the accused is no longer under that  
4 person's jurisdiction, the person exercising general court-  
5 martial jurisdiction over the command to which the accused  
6 is currently assigned, may in that person's sole discretion  
7 defer service of the sentence to confinement. The deferment  
8 shall terminate when the sentence is ordered executed. The  
9 deferment may be rescinded at any time by the person who  
10 granted it or, if the accused is no longer under that person's  
11 jurisdiction, by the person exercising general court-martial  
12 jurisdiction over the command to which the accused is  
13 currently assigned.

14 (b)(1) In any case in which a court-martial sentences an  
15 accused referred to in subdivision (2) of this subsection, to  
16 confinement, the convening authority may defer the service  
17 of the sentence to confinement, without the consent of the  
18 accused, until after the accused has been permanently

19 released to the state military forces by a state, the United  
20 States, or a foreign country referred to in that subdivision.

21 (2) Subdivision (1) of this subsection applies to a person  
22 subject to this article who:

23 (A) While in the custody of a state, the United States, or  
24 a foreign country is temporarily returned by that state, the  
25 United States, or a foreign country to the state military forces  
26 for trial by court-martial; and

27 (B) After the court-martial, is returned to that state, the  
28 United States, or a foreign country under the authority of a  
29 mutual agreement or treaty, as the case may be.

30 (3) In this subsection, the term “state” includes the  
31 District of Columbia and any Commonwealth, Territory, or  
32 possession of the United States.

33 (c) In any case in which a court-martial sentences an  
34 accused to confinement and the sentence to confinement has  
35 been ordered executed, but in which review of the case under  
36 subsection (a), section sixty-seven of this article is pending,  
37 the Adjutant General may defer further service of the  
38 sentence to confinement while that review is pending.

**§15-1E-58. Execution of confinement.**

1 (a) A sentence of confinement adjudged by a court-  
2 martial, 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 authorized by this article. Persons so confined  
6 are subject to the same discipline and treatment as persons  
7 regularly confined or committed to that place of confinement.

8 (b) The omission of “hard labor” as a sentence authorized  
9 under this article does not deprive the state confinement  
10 facility from employing it, if it otherwise is within the  
11 authority of that facility to do so.

12 (c) No place of confinement may require payment of any  
13 fee or charge for so receiving or confining a person except as  
14 otherwise provided by law.

**§15-1E-58a. Sentences: reduction in enlisted grade upon approval.**

1 (a) A court-martial sentence of an enlisted member in a  
2 pay grade above E-1, as approved by the convening  
3 authority, that includes:

4 (1) a dishonorable or bad-conduct discharge; or

5 (2) confinement; reduces that member to pay grade E-1,  
6 effective on the date of that approval.

7 (b) If the sentence of a member who is reduced in pay  
8 grade under subsection (a) is set aside or disapproved, or, as  
9 finally approved, does not include any punishment named in  
10 subsection (a), the rights and privileges of which the person  
11 was deprived because of that reduction shall be restored,  
12 including pay and allowances.

**§15-1E-58b. Sentences: forfeiture of pay and allowances during confinement.**

1 (a)(1) A court-martial sentence described in subdivision  
2 (2) of this subsection shall result in the forfeiture of pay, or  
3 of pay and allowances, due that member during any period of  
4 confinement or parole. The forfeiture pursuant to this section  
5 shall take effect on the date determined under subsection (a),

6 section fifty-seven of this article and may be deferred as  
7 provided by that section. The pay and allowances forfeited,  
8 in the case of a general court-martial, shall be all pay and  
9 allowances due that member during such period and, in the  
10 case of a special court-martial, shall be two-thirds of all pay  
11 due that member during such period.

12 (2) A sentence covered by this section is any sentence  
13 that includes:

14 (A) Confinement for more than six months; or

15 (B) Confinement for six months or less and a  
16 dishonorable or bad-conduct discharge or dismissal.

17 (b) In a case involving an accused who has dependents,  
18 the convening authority or other person acting under section  
19 sixty of this article may waive any or all of the forfeitures of  
20 pay and allowances required by subsection (a) for a period  
21 not to exceed six months. Any amount of pay or allowances  
22 that, except for a waiver under this subsection, would be  
23 forfeited shall be paid, as the convening authority or other  
24 person taking action directs, to the dependents of the accused.

25 (c) If the sentence of a member who forfeits pay and  
26 allowances under subsection (a) is set aside or disapproved  
27 or, as finally approved, does not provide for a punishment  
28 referred to in subdivision (2), subsection (a), the member  
29 shall be paid the pay and allowances which the member  
30 would have been paid, except for the forfeiture, for the period  
31 during which the forfeiture was in effect.

#### PART IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL.

#### **§15-1E-59. Error of law; lesser included offense.**

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

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

**§15-1E-60. Action by the convening authority.**

1 (a) The findings and sentence of a court-martial shall be  
2 reported promptly to the convening authority after the  
3 announcement of the sentence.

4 (b)(1) The accused may submit to the convening  
5 authority matters for consideration by the convening  
6 authority with respect to the findings and the sentence. Any  
7 such submission shall be in writing. Except in a summary  
8 court-martial case, such a submission shall be made within  
9 ten days after the accused has been given an authenticated  
10 record of trial and, if applicable, the recommendation of a  
11 judge advocate under subsection (d). In a summary court-  
12 martial case, such a submission shall be made within seven  
13 days after the sentence is announced.

14 (2) If the accused shows that additional time is required  
15 for the accused to submit such matters, the convening  
16 authority or other person taking action under this section, for  
17 good cause, may extend the applicable period under  
18 subdivision (1) for not more than an additional twenty days.

19 (3) In a summary court-martial case, the accused shall be  
20 promptly provided a copy of the record of trial for use in  
21 preparing a submission authorized by subdivision (1).

22 (4) The accused may waive the right to make a  
23 submission to the convening authority under subdivision (1).  
24 Such a waiver must be made in writing and may not be  
25 revoked. For the purposes of subdivision (2), subsection (c),  
26 the time within which the accused may make a submission  
27 under this subsection shall be deemed to have expired upon  
28 the submission of such a waiver to the convening authority.

29 (c)(1) The authority under this section to modify the  
30 findings and sentence of a court-martial is a matter of  
31 command prerogative involving the sole discretion of the  
32 convening authority. If it is impractical for the convening  
33 authority to act, the convening authority shall forward the  
34 case to a person exercising general court-martial jurisdiction  
35 who may take action under this section.

36 (2) Action on the sentence of a court-martial shall be  
37 taken by the convening authority or by another person  
38 authorized to act under this section. Such action may be  
39 taken only after consideration of any matters submitted by  
40 the accused under subsection (b) or after the time for  
41 submitting such matters expires, whichever is earlier. The  
42 convening authority or other person taking such action, in  
43 that person's sole discretion may approve, disapprove,  
44 commute, or suspend the sentence in whole or in part.

45 (3) Action on the findings of a court-martial by the  
46 convening authority or other person acting on the sentence is  
47 not required. However, such person, in the person's sole  
48 discretion may:

49 (A) Dismiss any charge or specification by setting aside  
50 a finding of guilty thereto; or

51 (B) Change a finding of guilty to a charge or specification  
52 to a finding of guilty to an offense that is a lesser included  
53 offense of the offense stated in the charge or specification.

54 (d) Before acting under this section on any general or  
55 special court-martial case in which there is a finding of guilt,  
56 the convening authority or other person taking action under  
57 this section shall obtain and consider the written  
58 recommendation of a judge advocate. The convening  
59 authority or other person taking action under this section  
60 shall refer the record of trial to the judge advocate, and the  
61 judge advocate shall use such record in the preparation of the  
62 recommendation. The recommendation of the judge  
63 advocate shall include such matters as may be prescribed by  
64 regulation and shall be served on the accused, who may  
65 submit any matter in response under subsection (b). Failure  
66 to object in the response to the recommendation or to any  
67 matter attached to the recommendation waives the right to  
68 object thereto.

69 (e)(1) The convening authority or other person taking  
70 action under this section, in the person's sole discretion, may  
71 order a proceeding in revision or a rehearing.

72 (2) A proceeding in revision may be ordered if there is an  
73 apparent error or omission in the record or if the record  
74 shows improper or inconsistent action by a court-martial with  
75 respect to the findings or sentence that can be rectified  
76 without material prejudice to the substantial rights of the  
77 accused. In no case, however, may a proceeding in revision:

78 (A) Reconsider a finding of not guilty of any  
79 specification or a ruling which amounts to a finding of not  
80 guilty;

81 (B) Reconsider a finding of not guilty of any charge,  
82 unless there has been a finding of guilty under a specification  
83 laid under that charge, which sufficiently alleges a violation  
84 of some section of this article; or

85 (C) Increase the severity of the sentence unless the  
86 sentence prescribed for the offense is mandatory.

87 (3) A rehearing may be ordered by the convening  
88 authority or other person taking action under this section if  
89 that person disapproves the findings and sentence and states  
90 the reasons for disapproval of the findings. If such person  
91 disapproves the findings and sentence and does not order a  
92 rehearing, that person shall dismiss the charges. A rehearing  
93 as to the findings may not be ordered where there is a lack of  
94 sufficient evidence in the record to support the findings. A  
95 rehearing as to the sentence may be ordered if the convening  
96 authority or other person taking action under this subsection  
97 disapproves the sentence.

#### **§15-1E-61. Withdrawal of appeal.**

1 (a) In each case subject to appellate review under this  
2 article, the accused may file with the convening authority a  
3 statement expressly withdrawing the right of the accused to  
4 such appeal. Such a withdrawal shall be signed by both the  
5 accused and his or her defense counsel and must be filed in  
6 accordance with appellate procedures as provided by law.

7 (b) The accused may withdraw an appeal at any time in  
8 accordance with appellate procedures as provided by law.

#### **§15-1E-62. Appeal by the state.**

1 (a)(i) In a trial by court-martial in which a punitive  
2 discharge may be adjudged, the state may appeal the

3 following, other than a finding of not guilty with respect to  
4 the charge or specification by the members of the court-  
5 martial, or by a judge in a bench trial so long as it is not made  
6 in reconsideration:

7 (A) An order or ruling of the military judge which  
8 terminates the proceedings with respect to a charge or  
9 specification.

10 (B) An order or ruling which excludes evidence that is  
11 substantial proof of a fact material in the proceeding.

12 (C) An order or ruling which directs the disclosure of  
13 classified information.

14 (D) An order or ruling which imposes sanctions for  
15 nondisclosure of classified information.

16 (E) A refusal of the military judge to issue a protective  
17 order sought by the state to prevent the disclosure of  
18 classified information.

19 (F) A refusal by the military judge to enforce an order  
20 described in paragraph (E) that has previously been issued by  
21 appropriate authority.

22 (2) An appeal of an order or ruling may not be taken  
23 unless the trial counsel provides the military judge with  
24 written notice of appeal from the order or ruling within  
25 seventy-two hours of the order or ruling. Such notice shall  
26 include a certification by the trial counsel that the appeal is  
27 not taken for the purpose of delay and, if the order or ruling  
28 appealed is one which excludes evidence, that the evidence  
29 excluded is substantial proof of a fact material in the  
30 proceeding.

31 (3) An appeal under this section shall be diligently  
32 prosecuted as provided by law.

33 (b) An appeal under this section shall be forwarded to the  
34 court prescribed in section sixty-seven-a of this article. In  
35 ruling on an appeal under this article, that court may act only  
36 with respect to matters of law.

37 (c) Any period of delay resulting from an appeal under  
38 this section shall be excluded in deciding any issue regarding  
39 denial of a speedy trial unless an appropriate authority  
40 determines that the appeal was filed solely for the purpose of  
41 delay with the knowledge that it was totally frivolous and  
42 without merit.

### **§15-1E-63. Rehearings.**

1 Each rehearing under this article shall take place before  
2 a court-martial composed of members not members of the  
3 court-martial which first heard the case. Upon a rehearing  
4 the accused may not be tried for any offense of which he or  
5 she was found not guilty by the first court-martial, and no  
6 sentence in excess of or more severe than the original  
7 sentence may be approved, unless the sentence is based upon  
8 a finding of guilty of an offense not considered upon the  
9 merits in the original proceedings, or unless the sentence  
10 prescribed for the offense is mandatory. If the sentence  
11 approved after the first court-martial was in accordance with  
12 a pretrial agreement and the accused at the rehearing changes  
13 a plea with respect to the charges or specifications upon  
14 which the pretrial agreement was based, or otherwise does  
15 not comply with the pretrial agreement, the approved  
16 sentence as to those charges or specifications may include  
17 any punishment not in excess of that lawfully adjudged at the  
18 first court-martial.

**§15-1E-64. Review by the senior force judge advocate.**

1 (a) Each general and special court-martial case in which  
2 there has been a finding of guilty shall be reviewed by the  
3 senior force judge advocate, or a designee. The senior force  
4 judge advocate, or designee, may not review a case under this  
5 subsection if that person has acted in the same case as an  
6 accuser, investigating officer, member of the court, military  
7 judge, or counsel or has otherwise acted on behalf of the  
8 prosecution or defense. The senior force judge advocate's  
9 review shall be in writing and shall contain the following:

10 (1) Conclusions as to whether:

11 (A) The court had jurisdiction over the accused and the  
12 offense;

13 (B) The charge and specification stated an offense; and

14 (C) The sentence was within the limits prescribed as a  
15 matter of law.

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

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

22 (b) The record of trial and related documents in each case  
23 reviewed under subsection (a) shall be sent for action to the  
24 Adjutant General, if:

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

27 (2) The sentence approved under subsection (c), section  
28 sixty of this article extends to dismissal, a bad-conduct or  
29 dishonorable discharge, or confinement for more than six  
30 months; or

31 (3) Such action is otherwise required by regulations of  
32 the Adjutant General.

33 (c)(1) The Adjutant General may:

34 (A) Disapprove or approve the findings or sentence, in  
35 whole or in part;

36 (B) Remit, commute, or suspend the sentence in whole or  
37 in part;

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

41 (D) Dismiss the charges.

42 (2) If a rehearing is ordered but the convening authority  
43 finds a rehearing impracticable, the convening authority shall  
44 dismiss the charges.

45 (3) If the opinion of the senior force judge advocate, or  
46 designee, in the senior force judge advocate's review under  
47 subsection (a) is that corrective action is required as a matter  
48 of law and if the Adjutant General does not take action that  
49 is at least as favorable to the accused as that recommended by  
50 the judge advocate, the record of trial and action thereon shall  
51 be sent to the Governor for review and action as deemed  
52 appropriate.

53 (d) The senior force judge advocate, or a designee, may  
54 review any case in which there has been a finding of not

55 guilty of all charges and specifications. The senior force  
56 judge advocate, or designee, may not review a case under this  
57 subsection if that person has acted in the same case as an  
58 accuser, investigating officer, member of the court, military  
59 judge, or counsel or has otherwise acted on behalf of the  
60 prosecution or defense. The senior force judge advocate's  
61 review shall be limited to questions of subject matter  
62 jurisdiction.

63 (e) The record of trial and related documents in each case  
64 reviewed under subsection (d) shall be sent for action to The  
65 Adjutant General. The Adjutant General may:

66 (1) When subject matter jurisdiction is found to be  
67 lacking, void the court-martial ab initio, with or without  
68 prejudice to the Government, as the Adjutant General deems  
69 appropriate; or

70 (2) Return the record of trial and related documents to the  
71 senior force judge advocate for appeal by the Government as  
72 provided by law.

**§15-1E-65. Disposition of records after review by the convening authority.**

1 Except as otherwise required by this article, all records of  
2 trial and related documents shall be transmitted and disposed  
3 of as prescribed by regulation and provided by law.

**§15-1E-66. Reserved.**

**§15-1E-67. Reserved.**

**§15-1E-67a. Review by State Appellate Authority.**

1 Decisions of a court-martial are from a court with  
2 jurisdiction to issue felony convictions and appeals are to the

3 West Virginia Supreme Court of Appeals. The appellate  
4 procedures to be followed shall be those provided by law for  
5 the appeal of criminal cases thereto.

**§15-1E-68. Reserved.**

**§15-1E-69. Reserved.**

**§15-1E-70. Appellate counsel.**

1 (a) The senior force judge advocate shall detail a judge  
2 advocate as appellate government counsel to represent the  
3 state in the review or appeal of cases specified in section  
4 sixty-seven-a of this article and before any federal court  
5 when requested to do so by the state Attorney General.  
6 Appellate government counsel must be a member in good  
7 standing of the bar of the highest court of the state to which  
8 the appeal is taken.

9 (b) Upon an appeal by the state, an accused has the right  
10 to be represented by detailed military counsel before any  
11 reviewing authority and before any appellate court.

12 (c) Upon the appeal by an accused, the accused has the  
13 right to be represented by military counsel before any  
14 reviewing authority.

15 (d) Upon the request of an accused entitled to be so  
16 represented, the senior force judge advocate shall appoint a  
17 judge advocate to represent the accused in the review or  
18 appeal of cases specified in subsections (b) and (c) of this  
19 section.

20 (e) An accused may be represented by civilian appellate  
21 counsel at no expense to the state.

**§15-1E-71. Execution of sentence; suspension of sentence.**

1 (a) If the sentence of the court-martial extends to  
2 dismissal or a dishonorable or bad-conduct discharge and if  
3 the right of the accused to appellate review is not waived, and  
4 an appeal is not withdrawn under section sixty-one of this  
5 article, that part of the sentence extending to dismissal or a  
6 dishonorable or bad-conduct discharge may not be executed  
7 until there is a final judgment as to the legality of the  
8 proceedings. A judgment as to the legality of the  
9 proceedings is final in such cases when review is completed  
10 by an appellate court prescribed in section sixty-seven-a of  
11 this article, and is deemed final by the law of state where the  
12 judgment was had.

13 (b) If the sentence of the court-martial extends to  
14 dismissal or a dishonorable or bad conduct discharge and if  
15 the right of the accused to appellate review is waived, or an  
16 appeal is withdrawn under section sixty-one of this article,  
17 that part of the sentence extending to dismissal or a  
18 dishonorable or bad-conduct discharge may not be executed  
19 until review of the case by the senior force judge advocate  
20 and any action on that review under section sixty-four of this  
21 article is completed. Any other part of a court-martial  
22 sentence may be ordered executed by the convening authority  
23 or other person acting on the case under section sixty of this  
24 article when so approved under that section.

**§15-1E-72. Vacation of suspension.**

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

8 (b) The record of the hearing and the recommendation of  
9 the officer having special court-martial jurisdiction shall be  
10 sent for action to the officer exercising general court-martial  
11 jurisdiction over the probationer. If the officer vacates the  
12 suspension, any unexecuted part of the sentence, except a  
13 dismissal, shall be executed, subject to applicable restrictions  
14 in this article.

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

#### **§15-1E-73. Petition for a new trial.**

1 At any time within two years after approval by the  
2 convening authority of a court-martial sentence the accused  
3 may petition the Adjutant General for a new trial on the  
4 grounds of newly discovered evidence or fraud on the court-  
5 martial.

#### **§15-1E-74. Remission and suspension.**

1 (a) Any authority competent to convene, for the  
2 command in which the accused is serving or assigned, a court  
3 of the kind that imposed the sentence may remit or suspend  
4 any part or amount of the unexecuted part of any sentence,  
5 including all uncollected forfeitures other than a sentence  
6 approved by the Governor.

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

#### **§15-1E-75. Restoration.**

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

8 (b) If a previously executed sentence of dishonorable or  
9 bad-conduct discharge is not imposed on a new trial, the  
10 Governor may substitute therefore a form of discharge  
11 authorized for administrative issuance unless the accused is  
12 to serve out the remainder of the accused's enlistment.

13 (c) If a previously executed sentence of dismissal is not  
14 imposed on a new trial, the Governor may substitute  
15 therefore a form of discharge authorized for administrative  
16 issue, and the commissioned officer dismissed by that  
17 sentence may be reappointed by the Governor alone to such  
18 commissioned grade and with such rank as in the opinion of  
19 the Governor that former officer would have attained had he  
20 not been dismissed. The reappointment of such a former  
21 officer shall be without regard to the existence of a vacancy  
22 and shall affect the promotion status of other officers only  
23 insofar as the Governor may direct. All time between the  
24 dismissal and the reappointment shall be considered as actual  
25 service for all purposes, including the right to pay and  
26 allowances.

**§15-1E-76. Finality of proceedings, findings, and sentences.**

1 The appellate review of records of trial provided by this  
2 article, the proceedings, findings, and sentences of courts-  
3 martial as approved, reviewed, or affirmed as required by this  
4 article, and all dismissals and discharges carried into  
5 execution under sentences by courts-martial following

6 approval, review, or affirmation as required by this article,  
7 are final and conclusive. Orders publishing the proceedings  
8 of courts-martial and all action taken pursuant to those  
9 proceedings are binding upon all departments, courts,  
10 agencies, and officers of the United States and the several  
11 states, subject only to action upon a petition for a new trial as  
12 provided in section seventy-three of this article and to action  
13 under section seventy-four of this article.

**§15-1E-76a. Leave required to be taken pending review of  
certain court-martial convictions.**

1 Under regulations prescribed, an accused who has been  
2 sentenced by a court-martial may be required to take leave  
3 pending completion of action under this section if the  
4 sentence, as approved under section sixty of this article,  
5 includes an unsuspended dismissal or an unsuspended  
6 dishonorable or bad-conduct discharge. The accused may be  
7 required to begin such leave on the date on which the  
8 sentence is approved under section sixty of this article or at  
9 any time after such date, and such leave may be continued  
10 until the date on which action under this section is completed  
11 or may be terminated at any earlier time.

**§15-1E-76b. Lack of mental capacity or mental responsibility:  
commitment of accused for examination and  
treatment.**

1 (a) Persons incompetent to stand trial.

2 (1) In the case of a person determined under this article  
3 to be presently suffering from a mental disease or defect  
4 rendering the person mentally incompetent to the extent that  
5 the person is unable to understand the nature of the  
6 proceedings against that person or to conduct or cooperate  
7 intelligently in the defense of the case, the general court-  
8 martial convening authority for that person shall commit the

9 person to the custody of the Department of Health and  
10 Human Resources.

11 (2) The Department of Health and Human Resources  
12 shall take action in accordance with the state statute  
13 applicable to persons incompetent to stand trial. If at the end  
14 of the period for hospitalization provided in the state statute  
15 applicable to persons incompetent to stand trial, it is  
16 determined that the committed person's mental condition has  
17 not so improved as to permit the trial to proceed, action shall  
18 be taken in accordance with the state statute applicable to  
19 persons incompetent to stand trial.

20 (3)(A) When the director of a facility in which a person  
21 is hospitalized pursuant to subdivision (2) determines that the  
22 person has recovered to such an extent that the person is able  
23 to understand the nature of the proceedings against the person  
24 and to conduct or cooperate intelligently in the defense of the  
25 case, the director shall promptly transmit a notification of that  
26 determination to the Department of Health and Human  
27 Resources and to the general court-martial convening  
28 authority for the person. The director shall send a copy of the  
29 notification to the person's counsel.

30 (B) Upon receipt of a notification, the general court-  
31 martial convening authority shall promptly take custody of  
32 the person unless the person covered by the notification is no  
33 longer subject to this article. If the person is no longer  
34 subject to this article, the Department of Health and Human  
35 Resources shall take any action within its authority it  
36 considers appropriate regarding the person.

37 (C) The director of the facility may retain custody of the  
38 person for not more than thirty days after transmitting the  
39 notifications required by subdivision (3), subsection (a).

40 (4) In the application of the state statute applicable to  
41 persons incompetent to stand trial to a case under this  
42 subsection, references to the court that ordered the  
43 commitment of a person, and to the clerk of such court, shall  
44 be deemed to refer to the general court-martial convening  
45 authority for that person. However, if the person is no longer  
46 subject to this article at a time relevant to the application of  
47 such section to the person, the state trial court with felony  
48 jurisdiction in the county where the person is hospitalized or  
49 otherwise may be found shall be considered as the court that  
50 ordered the commitment of the person.

51 (b) Persons found not guilty by reason of lack of mental  
52 responsibility.

53 (1) If a person is found by a court-martial not guilty only  
54 by reason of lack of mental responsibility, the person shall be  
55 committed to a suitable facility until the person is eligible for  
56 release in accordance with this article.

57 (2) The court-martial shall conduct a hearing on the  
58 mental condition in accordance with the state statute  
59 applicable to persons incompetent to stand trial.

60 (3) A report of the results of the hearing shall be made to  
61 the general court-martial convening authority for the person.

62 (4) If the court-martial fails to find, by the standard  
63 specified in the state statute applicable to persons  
64 incompetent to stand trial, that the person's release would not  
65 create a substantial risk of bodily injury to another person or  
66 serious damage of property of another due to a present mental  
67 disease or defect:

68 (A) The general court-martial convening authority may  
69 commit the person to the custody of the Department of  
70 Health and Human Resources; and

71 (B) The Department of Health and Human Resources  
72 shall take action in accordance with the state statute  
73 applicable to persons incompetent to stand trial.

74 (5) The state statute applicable to persons incompetent to  
75 stand trial, shall apply in the case of a person hospitalized  
76 pursuant to paragraph (B), subdivision (4), except that the  
77 state trial court with felony jurisdiction in the county where  
78 the person is hospitalized shall be considered as the court that  
79 ordered the person's commitment.

80 (c) General provisions.

81 (1) Except as otherwise provided in this subsection and  
82 subdivision (1), subsection (d), the state statute most closely  
83 comparable to 18 U.S.C. 4247(d), apply in the administration  
84 of this section.

85 (2) In the application of the state statute most closely  
86 comparable to 18 U.S.C. 4247(d), to hearings conducted by  
87 a court-martial under this section or by order of a general  
88 court-martial convening authority under this article, the  
89 reference in that section to article 3006A of such title does  
90 not apply.

91 (d) Applicability.

92 (1) The state statute most closely comparable to chapter  
93 313 of title 18, United States Code, [10 U.S.C. § 4241 et seq.]  
94 referred to in this section apply according to the provisions of  
95 this section notwithstanding article 4247(j) of title 18.

96 (2) If the status of a person as described in section two of  
97 this article, terminates while the person is, pursuant to this  
98 section, in the custody of the Department of Health and  
99 Human Resources, hospitalized, or on conditional release

100 under a prescribed regimen of medical, psychiatric, or  
101 psychological care or treatment, the provisions of this section  
102 establishing requirements and procedures regarding a person  
103 no longer subject to this article shall continue to apply to that  
104 person notwithstanding the change of status.

## PART X. PUNITIVE ARTICLES.

### **§15-1E-77. Principals.**

- 1 Any person subject to this article is a principal 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 or her would be punishable by this article.

### **§15-1E-78. 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  
4 or prevent his or her apprehension, trial, or punishment shall  
5 be punished as a court-martial may direct.

### **§15-1E-79. 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-80. 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  
4 an 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-81. 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  
4 object of the conspiracy, be punished as a court-martial may  
5 direct.

**§15-1E-82. 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-five of this article or mutiny in violation of section  
4 ninety-four 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, the person shall be punished as a court-martial  
9 may direct.

10 (b) Any person subject to this article who solicits or  
11 advises another or others to commit an act of misbehavior  
12 before the enemy in violation of section ninety-nine of this  
13 article or sedition in violation of section ninety-four of this

14 article shall, if the offense solicited or advised is committed,  
15 be punished with the punishment provided for the  
16 commission of the offense, but, if the offense solicited or  
17 advised is not committed, the person shall be punished as a  
18 court-martial may direct.

**§15-1E-83. Fraudulent enlistment, appointment, or separation.**

1 Any person, shall be punished as a court-martial may  
2 direct, who:

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

8 (2) Procures his or her own separation from the state  
9 military forces by knowingly false representation or  
10 deliberate concealment as to his or her eligibility for that  
11 separation.

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

1 Any person subject to this article who effects an  
2 enlistment or appointment in or a separation from the state  
3 military forces of any person who is known to him or her to  
4 be ineligible for that enlistment, appointment, or separation  
5 because it is prohibited by law, regulation, or order shall be  
6 punished as a court-martial may direct.

**§15-1E-85. Desertion.**

1 (a) Any member of the state military forces who:

2 (1) Without authority goes or remains absent from his or  
3 her unit, organization, or place of duty with intent to remain  
4 away there from permanently;

5 (2) Quits his unit, organization, or place of duty with  
6 intent to avoid hazardous duty or to shirk important service;  
7 or

8 (3) Without being regularly separated from one of the  
9 state military forces enlists or accepts an appointment in the  
10 same or another one of the state military forces, or in one of  
11 the Armed Forces of the United States, without fully  
12 disclosing the fact that he has not been regularly separated, or  
13 enters any foreign armed service except when authorized by  
14 the United States; is guilty of desertion.

15 (b) Any commissioned officer of the state military forces  
16 who, after tender of his or her resignation and before notice  
17 of its acceptance, quits his or her post or proper duties  
18 without leave and with intent to remain away there from  
19 permanently is guilty of desertion.

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

**§15-1E-86. Absence without leave.**

1 Any person subject to this article who, without authority:

2 (1) Fails to go to his or her appointed place of duty at the  
3 time prescribed;

4 (2) Goes from that place; or

5 (3) Absents himself or herself or remains absent from his  
6 or her unit, organization, or place of duty at which he or she

7 is required to be at the time prescribed; shall be punished as  
8 a court-martial may direct.

**§15-1E-87. Missing movement.**

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

**§15-1E-88. Contempt toward officials.**

1 Any commissioned officer who uses contemptuous words  
2 against the President, the Vice President, Congress, the  
3 Secretary of Defense, the Secretary of a military department,  
4 the Secretary of Homeland Security, or the Governor or  
5 Legislature of the state shall be punished as a court-martial  
6 may direct.

**§15-1E-89. Disrespect toward superior commissioned officer.**

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

**§15-1E-90. Assaulting or willfully disobeying superior  
commissioned officer.**

1 Any person subject to this article who:

2 (1) Strikes his or her superior commissioned officer or  
3 draws or lifts up any weapon or offers any violence against  
4 him or her while he or she is in the execution of his or her  
5 office; or

6 (2) Willfully disobeys a lawful command of his or her  
7 superior commissioned officer;

8 (3) Shall be punished, if the offense is committed in time  
9 of war, by confinement of not more than ten years or such  
10 other punishment as a court-martial may direct, and if the  
11 offense is committed at any other time, by such punishment  
12 as a court-martial may direct.

**§15-1E-91. Insubordinate conduct toward warrant officer,  
noncommissioned officer, or petty officer.**

1 Any warrant officer or enlisted member who:

2 (1) Strikes or assaults a warrant officer, noncommissioned  
3 officer, or petty officer, while that officer is in the execution  
4 of his or her office;

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

7 (3) Treats with contempt or is disrespectful in language  
8 or deportment toward a warrant officer, noncommissioned  
9 officer, or petty officer, while that officer is in the execution  
10 of his or her office; shall be punished as a court-martial may  
11 direct.

**§15-1E-92. 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;

4 (2) Having knowledge of any other lawful order issued  
5 by a member of the state military forces, which it is his or her  
6 duty to obey, fails to obey the order; or

7 (3) Is derelict in the performance of his or her duties;  
8 shall be punished as a court-martial may direct.

**§15-1E-93. 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-94. Mutiny or sedition.**

1 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 do his or her duty or creates any violence  
5 or 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;

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

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

**§15-1E-95. Resistance, flight, breach of arrest, and escape.**

1 Any person subject to this article who:

2 (1) Resists apprehension;

3 (2) Flees from apprehension;

4 (3) Breaks arrest; or

5 (4) Escapes from custody or confinement; shall be  
6 punished as a court-martial may direct.

**§15-1E-96. Releasing prisoner without proper authority.**

1 Any person subject to this article who, without proper  
2 authority, releases any prisoner committed to his or her  
3 charge, or who through neglect or design suffers any such  
4 prisoner to escape, shall be punished as a court-martial may  
5 direct, whether or not the prisoner was committed in strict  
6 compliance with law.

**§15-1E-97. Unlawful detention.**

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

**§15-1E-98. 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  
6 comply with any provision of this article regulating the  
7 proceedings before, during, or after trial of an accused; shall  
8 be punished as a court-martial may direct.

**§15-1E-99. 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, surrenders, or delivers up any  
5 command, unit, place, or military property which it is his or  
6 her duty to defend;

7 (3) Through disobedience, neglect, or intentional  
8 misconduct endangers the safety of any such command, unit,  
9 place, or military property;

10 (4) Casts away his or her arms or ammunition;

11 (5) Is guilty of cowardly conduct;

12 (6) Quits his or her place of duty to plunder or pillage;

13 (7) Causes false alarms in any command, unit, or place  
14 under control of the Armed Forces of the United States or the  
15 state military forces;

16 (8) Willfully fails to do his or her utmost to encounter,  
17 engage, capture, or destroy any enemy troops, combatants,  
18 vessels, aircraft, or any other thing, which it is his or her duty  
19 so to encounter, engage, capture, or destroy; or

20 (9) Does not afford all practicable relief and assistance to  
21 any troops, combatants, vessels, or aircraft of the Armed  
22 Forces belonging to the United States or their allies, to the  
23 state, or to any other state, when engaged in battle; shall be  
24 punished as a court-martial may direct.

**§15-1E-100. Subordinate compelling surrender.**

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

**§15-1E-101. Improper use of countersign.**

1 Any person subject to this article who in time of war  
2 discloses the parole or countersign to any person not entitled  
3 to receive it or who gives to another, who is entitled to  
4 receive and use the parole or countersign, a different parole  
5 or countersign from that which, to his knowledge, he was  
6 authorized and required to give, shall be punished as a court  
7 martial may direct.

**§15-1E-102. 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-103. Captured or abandoned property.**

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

6 (b) Any person subject to this article who:

7 (1) Fails to carry out the duties prescribed in subsection  
8 (a);

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

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

**§15-1E-104. 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 court-  
8 martial may direct.

**§15-1E-105. Misconduct as prisoner.**

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

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

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

**§15-1E-106. Reserved.**

**§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 made in the line of duty, knowing it  
4 to be false, or makes any other false official statement made  
5 in the line of duty, knowing it to be false, shall be punished  
6 as a court-martial may direct.

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

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

**§15-1E-109. Property other than military property - Waste, spoilage, or destruction.**

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

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

1 (a) Any person subject to this article who willfully and  
2 wrongfully hazards or suffers to be hazarded any vessel of  
3 the Armed Forces of the United States or any state military  
4 forces shall suffer such punishment as a court-martial may  
5 direct.

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

**§15-1E-111. Reserved.**

**§15-1E-112. Drunk on duty.**

1 Any person subject to this article other than a sentinel or  
2 lookout, who is found drunk on duty, shall be punished as a  
3 court-martial may direct.

**§15-1E-112a. Wrongful use, possession, etc, of controlled substances.**

1 (a) Any person subject to this article who wrongfully  
2 uses, possesses, manufactures, distributes, imports into the  
3 customs territory of the United States, exports from the  
4 United States, or introduces into an installation, vessel,  
5 vehicle, or aircraft used by or under the control of the Armed  
6 Forces of the United States or of any state military forces a  
7 substance described in subsection (b) shall be punished as a  
8 court-martial may direct.

9 (b) The substances referred to in subsection (a) are the  
10 following:

11 (1) Opium, heroin, cocaine, amphetamine, lysergic acid  
12 diethylamide, methamphetamine, phencyclidine, barbituric  
13 acid and marijuana and any compound or derivative of any  
14 such substance.

15 (2) Any substance not specified in subdivision (1) that is  
16 listed on a schedule of controlled substances prescribed by  
17 the President for the purposes of the Uniform Code of  
18 Military Justice of the Armed Forces of the United States.

19 (3) Any other substance not specified in subdivision (1)  
20 or contained on a list prescribed by the President under  
21 subdivision (2) that is listed in schedules I through V of  
22 article 202 of the Controlled Substances Act 21 U.S.C. § 812.

**§15-1E-113. Misbehavior of sentinel.**

1 Any sentinel or look-out who is found drunk or sleeping  
2 upon his post or leaves it before being regularly relieved,  
3 shall be punished, if the offense is committed in time of war,  
4 by confinement of not more than ten years or other  
5 punishment as a court-martial may direct, but if the offense  
6 is committed at any other time, by such punishment as a  
7 court-martial may direct.

**§15-1E-114. Dueling.**

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

**§15-1E-115. Malingering.**

1 Any person subject to this article who for the purpose of  
2 avoiding work, duty, or service:

3 (1) Feigns illness, physical disablement, mental lapse, or  
4 derangement; or

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

**§15-1E-116. Riot or breach of peace.**

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

**§15-1E-117. Provoking speeches or gestures.**

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

**§15-1E-118. Reserved.**

**§15-1E-119. Reserved.**

**§15-1E-120. Reserved.**

**§15-1E-121. Reserved.**

**§15-1E-122. Reserved.**

**§15-1E-123. Reserved.**

**§15-1E-124. Reserved.**

**§15-1E-125. Reserved.**

**§15-1E-126. Reserved.**

**§15-1E-127. Reserved.**

**§15-1E-128. Reserved.**

**§15-1E-129. Reserved.**

**§15-1E-130. Reserved.**

**§15-1E-131. Reserved.**

**§15-1E-132. Frauds against the government.**

1 Any person subject to this article:

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

3 (A) Makes any claim against the United States, the state,  
4 or any officer thereof; or

5 (B) 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;

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

13 (B) Makes any oath, affirmation or certification to any  
14 fact or to any writing or other paper knowing the oath,  
15 affirmation or certification to be false; or

16 (C) Forges or counterfeits any signature upon any writing  
17 or other paper, or uses any such signature knowing it to be  
18 forged or counterfeited;

19 (3) Who, having charge, possession, custody, or control  
 20 of any money, or other property of the United States or the  
 21 state, furnished or intended for the Armed Forces of the  
 22 United States or the state military forces, knowingly delivers  
 23 to any person having authority to receive it, any amount  
 24 thereof less than that for which he or she receives a certificate  
 25 or receipt; or

26 (4) Who, being authorized to make or deliver any paper  
 27 certifying the receipt of any property of the United States or  
 28 the state, furnished or intended for the Armed Forces of the  
 29 United States or the state military forces, makes or delivers  
 30 to any person such writing without having full knowledge of  
 31 the truth of the statements therein contained and with intent  
 32 to defraud the United States or the state; shall, upon  
 33 conviction, be punished as a court-martial may direct.

**§15-1E-133. Conduct unbecoming an officer and a gentleman.**

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

**§15-1E-134. 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 shall  
 5 be taken cognizance of by a court-martial and punished at the  
 6 discretion of a military court. However, where a crime  
 7 constitutes an offense that violates both this article and the  
 8 criminal laws of the state where the offense occurs or  
 9 criminal laws of the United States, jurisdiction of the military  
 10 court must be determined in accordance with subsection (b),  
 11 section two of this article.

PART XI. MISCELLANEOUS PROVISIONS

**§15-1E-135. Courts of inquiry.**

1 (a) Courts of inquiry to investigate any matter of concern  
2 to the state military forces may be convened by any person  
3 authorized to convene a general court-martial, whether or not  
4 the persons involved have requested such an inquiry.

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

8 (c) Any person subject to this article whose conduct is  
9 subject to inquiry shall be designated as a party. Any person  
10 subject to this article who has a direct interest in the subject  
11 of inquiry has the right to be designated as a party upon  
12 request to the court. Any person designated as a party shall  
13 be given due notice and has the right to be present, to be  
14 represented by counsel, to cross-examine witnesses, and to  
15 introduce evidence.

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

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

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

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

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

**§15-1E-136. Authority to administer oaths and to act as notary.**

1 (a) The following persons may administer oaths for the  
2 purposes of military administration, including military  
3 justice:

4 (1) All judge advocates.

5 (2) All summary courts-martial.

6 (3) All adjutants, assistant adjutants, acting adjutants, and  
7 personnel adjutants.

8 (4) All commanding officers of the naval militia.

9 (5) All other persons designated by regulations of the  
10 Armed Forces of the United States or by statute.

11 (b) The following persons may administer oaths  
12 necessary in the performance of their duties:

13 (1) The president, military judge, and trial counsel for all  
14 general and special courts-martial.

15 (2) The president and the counsel for the court of any  
16 court of inquiry.

17 (3) All officers designated to take a deposition.

18 (4) All persons detailed to conduct an investigation.

19 (5) All recruiting officers.

20 (6) All other persons designated by regulations of the  
21 Armed Forces of the United States or by statute.

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

**§15-1E-137. Articles to be explained.**

1 (a) (1) The sections of this article specified in subdivision  
2 (3) shall be carefully explained to each enlisted member at  
3 the time of, or within thirty days after, the member's initial  
4 entrance into a duty status with the state military forces.

5 (2) Such section shall be explained again:

6 (A) After the member has completed basic or recruit  
7 training; and

8 (B) At the time when the member reenlists.

9 (3) This subsection applies with respect to sections two,  
10 three, seven through fifteen, twenty-five, twenty-seven,  
11 thirty-one, thirty-seven, thirty-eight, fifty-five, seventy-seven  
12 through one hundred thirty-four, and one hundred thirty-  
13 seven through one hundred thirty-nine of this article.

14 (b) The text of the article and of the regulations  
15 prescribed under this article shall be made available to a  
16 member of the state military forces, upon request by the  
17 member, for the member's personal examination.

**§15-1E-138. Complaints of wrongs.**

1 Any member of the state military forces who believes  
2 himself or herself wronged by a commanding officer, and  
3 who, upon due application to that commanding officer, is  
4 refused redress, may complain to any superior commissioned  
5 officer, who shall forward the complaint to the officer  
6 exercising general court-martial jurisdiction over the officer  
7 against whom it is made. The officer exercising general  
8 court-martial jurisdiction shall examine into the complaint  
9 and take proper measures for redressing the wrong  
10 complained of; and shall, as soon as possible, send to the  
11 Adjutant General a true statement of that complaint, with the  
12 proceedings had thereon.

**§15-1E-139. 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 the person's property has been wrongfully  
4 taken by members of the state military forces, that person  
5 may, under such regulations prescribed, convene a board to  
6 investigate the complaint. The board shall consist of from  
7 one to three commissioned officers and, for the purpose of  
8 that investigation, it has power to summon witnesses and  
9 examine them upon oath, to receive depositions or other  
10 documentary evidence, and to assess the damages sustained  
11 against the responsible parties. The assessment of damages  
12 made by the board is subject to the approval of the  
13 commanding officer, and in the amount approved by that  
14 officer shall be charged against the pay of the offenders. The  
15 order of the commanding officer directing charges herein  
16 authorized is conclusive on any disbursing officer for  
17 payment to the injured parties of the damages so assessed and  
18 approved.

19 (b) If the offenders cannot be ascertained, but the  
20 organization or detachment to which they belong is known,  
21 charges totaling the amount of damages assessed and  
22 approved may be made in such proportion as may be  
23 considered just upon the individual members thereof who are  
24 shown to have been present at the scene at the time the  
25 damages complained of were inflicted, as determined by the  
26 approved findings of the board.

**§15-1E-140. Delegation by the Governor.**

1 The Governor may delegate any authority vested in the  
2 Governor under this article, and provide for the sub  
3 delegation of any such authority, except the power given the  
4 Governor by section twenty-two of this article.

**§15-1E-141. Payment of fees, costs and expenses.**

1 (a) The fees and authorized travel expenses of all  
2 witnesses, experts, victims, court reporters and interpreters,  
3 fees for the service of process, the costs of collection,  
4 apprehension, detention and confinement, and all other  
5 necessary expenses of prosecution and the administration of  
6 military justice, not otherwise payable by any other source,  
7 shall be paid out of the military justice fund.

8 (b) For the foregoing purposes, there is created in the  
9 State Treasury a special revenue account, designated the  
10 Military Justice Fund that shall be administered by the  
11 Adjutant General, from which expenses of military justice  
12 shall be paid in the amounts and manner as prescribed by  
13 law. The Legislature may appropriate and have deposited in  
14 the Military Justice Fund such funds as it deems necessary to  
15 carry out the purposes of this article.

**§15-1E-142. Payment of fines and disposition thereof.**

1 (a) Fines imposed by a military court or through  
2 imposition of nonjudicial punishment may be paid to the state  
3 and delivered to the court or imposing officer, or to a person  
4 executing their process. Fines may be collected in the  
5 following manner:

6 (1) By cash or money order;

7 (2) By credit or debit cards in accordance with rules  
8 promulgated by the Adjutant General. Any charges made by  
9 the credit company shall be paid by the person responsible  
10 for paying the fine or costs;

11 (3) By retention of any pay or allowances due or to  
12 become due the person fined from any state or the United  
13 States;

14 (4) By garnishment or levy, together with costs, on the  
15 wages, goods, and chattels of a person delinquent in paying  
16 a fine, as provided by law.

17 (b) Unless otherwise required by law, a military court  
18 may collect a portion of any costs or fines at the time the  
19 amount is imposed by the court so long as the court requires  
20 the balance to be paid in accordance with a payment plan  
21 which specifies:

22 (1) The number of payments to be made;

23 (2) the dates on which the payments are due; and

24 (3) the amounts due for each payment. The written  
25 agreement represents the minimum payments and the last  
26 date those payments may be made. The obligor or the  
27 obligor's agent may accelerate the payment schedule at any  
28 time by paying any additional portion of any costs or fines.

29 (c) If any costs or fines imposed by a military court or  
30 through nonjudicial punishment in a case are not paid within  
31 one hundred eighty days from the date of judgment and the  
32 expiration of any stay of execution, the Adjutant General may  
33 notify the Commissioner of the Division of Motor Vehicles  
34 of the failure to pay: *Provided*, That in a case in which a  
35 person is a nonresident of this state and is assessed a fine or  
36 costs by a military court or through nonjudicial punishment,  
37 the Adjutant General may notify the Division of Motor  
38 Vehicles of the failure to pay within eighty days from the  
39 date of judgment and expiration of any stay of execution.  
40 Upon notice, the Division of Motor Vehicles shall suspend  
41 any privilege the person defaulting on payment may have to  
42 operate a motor vehicle in this state, including any driver's  
43 license issued to the person by the Division of Motor  
44 Vehicles, until all costs or fines are paid in full. *Provided*,  
45 That any person who has had his or her license to operate a  
46 motor vehicle in this state suspended pursuant to this  
47 subsection and his or her failure to pay is based upon  
48 inability to pay, may, if he or she is employed on a full or  
49 part-time basis, petition to the Adjutant General for an order  
50 authorizing him or her to operate a motor vehicle solely for  
51 employment purposes. Upon a showing satisfactory to the  
52 Adjutant General of inability to pay, employment and  
53 compliance with other applicable motor vehicle laws, the  
54 Adjutant General shall issue an order granting relief.

55 (d) Any sum so received or retained shall be deposited in  
56 the Military Justice Fund or to whomever the court so directs.

**§15-1E-143. Uniformity of interpretation.**

1 This article shall be so construed as to effectuate its  
2 general purpose to make it uniform, so far as practical, with  
3 the Uniform Code of Military Justice, chapter 47 of title 10,  
4 United States Code.

**§15-1E-144. Immunity for action of military courts.**

1 All persons acting under the provisions of this article,  
2 whether as a member of the military or as a civilian, shall be  
3 immune from any personal liability for any of the acts or  
4 omissions which they did or failed to do as part of their duties  
5 under this article.

**§15-1E-145. Reserved.**

**§15-1E-146. Short Title.**

1 This article may be cited as the Uniform State Code of  
2 Military Justice (USCMJ).”

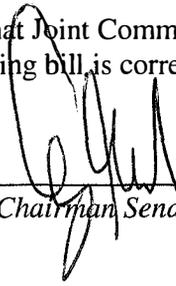
**§15-1E-147. Time of taking effect.**

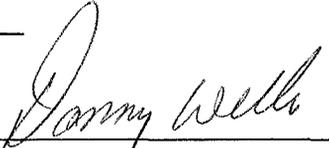
1 This act takes effect July 1, 2010.

**§15-1E-148. Supersedes existing state military justice codes.**

1 Upon enactment and the effective date, this law  
2 supersedes all existing statutes, ordinances, directives, rules,  
3 regulations, orders and other laws in the state covered by the  
4 subject matter of this law, and all such statutes, ordinances,  
5 directives, rules, regulations, orders and other laws are  
6 hereby repealed.

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

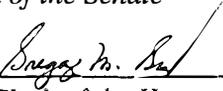
  
\_\_\_\_\_  
Chairman Senate Committee

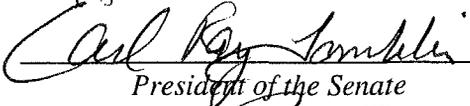
  
\_\_\_\_\_  
Chairman House Committee

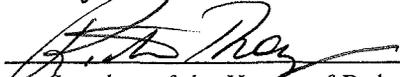
Originating in the House.

In effect ninety days from passage.

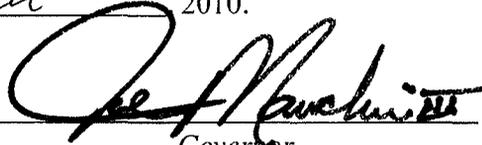
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 18<sup>th</sup>  
day of April 2010.

  
\_\_\_\_\_  
Governor

SECRETARY OF STATE

PRESENTED TO THE  
GOVERNOR

MAR 22 2010

Time 3:40 pm