

1 SB313  
2 136993-2  
3 By Senators Taylor, Whatley, Holtzclaw, Dial, Williams,  
4 Fielding, Brooks, Marsh, Allen and Holley  
5 RFD: Veterans and Military Affairs  
6 First Read: 14-FEB-12

1 SB313

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3  
4 ENROLLED, An Act,

5 To adopt a revised code of Military Justice  
6 substantially similar to the federal Uniform Code of Military  
7 Justice; and to repeal Sections 31-2-92 to 31-2-98, inclusive,  
8 31-2-101, 31-2-103, and 31-2-127, Code of Alabama 1975.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. PART I. GENERAL PROVISIONS.

11 Article 1. Definitions.

12 (a) For the purposes of this act, unless the context  
13 otherwise requires:

14 (1) ACCUSER. A person who signs and swears to  
15 charges, any person who directs that charges nominally be  
16 signed and sworn to by another, and any other person who has  
17 an interest other than an official interest in the prosecution  
18 of the accused.

19 (2) CADET, CANDIDATE, or MIDSHIPMAN. A person who is  
20 enrolled in or attending a state military academy, a regional  
21 training institute, or any other formal education program for  
22 the purpose of becoming a commissioned officer in the state  
23 military forces.

24 (3) CLASSIFIED INFORMATION. Information that meets  
25 all of the following requirements:

1           a. Any information or material that has been  
2 determined by an official of the United States or any state  
3 pursuant to law, an Executive order, or regulation to require  
4 protection against unauthorized disclosure for reasons of  
5 national or state security.

6           b. Any restricted data, as defined in Section 11(y)  
7 of the Atomic Energy Act of 1954 (42 U.S.C. §2014(y)).

8           (4) CODE. This act.

9           (5) COMMANDING OFFICER. Includes only commissioned  
10 officers of the state military forces and shall include  
11 officers in charge only when administering nonjudicial  
12 punishment under Article 15 of this code. The term "commander"  
13 has the same meaning as "commanding officer" unless the  
14 context otherwise requires. A commander is any general  
15 officer, the Adjutant General, or any other officer who, by  
16 virtue of position, is designated as a commanding officer.

17           (6) CONVENING AUTHORITY. Includes, in addition to  
18 the person who convened the court, a commissioned officer  
19 commanding for the time being or a successor in command to the  
20 convening authority.

21           (7) DAY. Unless otherwise specified with respect to  
22 forfeiture of pay, means calendar day and is not synonymous  
23 with the term "unit training assembly." Any punishment  
24 authorized by this article which is measured in terms of days,

1 shall when served in a status other than annual field  
2 training, be construed to mean succeeding duty days.

3 (8) DUTY STATUS OTHER THAN STATE ACTIVE DUTY. Any  
4 other type of duty not in federal service and not full-time  
5 duty in the active service of the state; under an order issued  
6 by authority of law and includes travel to and from such duty.

7 (9) ENLISTED MEMBER. A person in an enlisted grade.

8 (10) JUDGE ADVOCATE. A commissioned officer of the  
9 organized state military forces who is a member in good  
10 standing of the bar of the highest court of a state, and is  
11 either of the following:

12 a.1. Certified or designated as a judge advocate in  
13 the Judge Advocate General's Corps of the Army, Air Force,  
14 Navy, or the Marine Corps or designated as a law specialist as  
15 an officer of the Coast Guard, or a reserve component of one  
16 of these.

17 2. Certified as a non-federally recognized judge  
18 advocate, under regulations promulgated pursuant to this act,  
19 by the senior judge advocate of the commander of the force in  
20 the state military forces of which the accused is a member, as  
21 competent to perform such military justice duties required by  
22 this code. If there is no such judge advocate available, then  
23 such certification may be made by such senior judge advocate  
24 of the commander of another force in the state military  
25 forces, as the convening authority directs.

1           b. In the instance when a judge advocate is detailed  
2 under this code and is not a member of the bar of this state,  
3 the judge advocate shall be deemed admitted pro hac vice,  
4 subject to filing a certificate with the military judge  
5 setting forth his or her qualifications, and with notice and  
6 approval of the Alabama State Bar and Chief Justice of the  
7 Alabama Supreme Court, that counsel is all of the following:

8           1. A commissioned officer of the Armed Forces of the  
9 United States or a component thereof.

10           2. A member in good standing of the bar of the  
11 highest court of a state.

12           3. Meets the qualifications detailed in Article  
13 1(10)(A).

14           (11) MILITARY COURT. A court-martial or a court of  
15 inquiry.

16           (12) MILITARY JUDGE. An official of a general or  
17 special court-martial detailed in accordance with Article 26  
18 of this code.

19           (13) MILITARY OFFENSES. Those offenses prescribed  
20 under Part X which are not also covered by federal or state  
21 law.

22           (14) NATIONAL SECURITY. The national defense and  
23 foreign relations of the United States.

24           (15) OFFICER. A commissioned or warrant officer.

1           (16) OFFICER IN CHARGE. A member of the naval  
2 militia, the Navy, the Marine Corps, or the Coast Guard  
3 designated as such by appropriate authority.

4           (17) RECORD. When used in connection with the  
5 proceedings of a court-martial, means either of the following:

6           a. An official written transcript, written summary,  
7 or other writing relating to the proceedings.

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

11          (18) SENIOR FORCE COMMANDER. The commander of the  
12 same force of the state military forces as the accused

13          (19) SENIOR FORCE JUDGE ADVOCATE. The senior judge  
14 advocate of the commander of the same force of the state  
15 military forces as the accused and who is that commander's  
16 chief legal advisor.

17          (20) STATE. One of the several states, the District  
18 of Columbia, the Commonwealth of Puerto Rico, Guam, and the  
19 U.S. Virgin Islands.

20          (21) STATE ACTIVE DUTY. Full-time duty in the state  
21 military forces under an order of the Governor or otherwise  
22 issued by authority of law under Title 31, Chapter 2 of the  
23 Code of Alabama 1975, and paid in whole or in part by state  
24 funds, and includes travel to and from such duty.

1           (22) STATE MILITARY FORCES. The Alabama National  
2 Guard, as defined in Title 32, United States Code, Section 271  
3 of the Constitution of Alabama 1901, and Section 31-2-3, Code  
4 of Alabama 1975. The unorganized militia, state defense force,  
5 state national guard, home guard, or any other name of any  
6 state force that does not meet this definition shall not be  
7 part of the "state military forces" under this code.

8           (23) SUPERIOR COMMISSIONED OFFICER. A commissioned  
9 officer superior in rank or command.

10           Article 2. Persons subject to this code;  
11 jurisdiction.

12           (a) This act applies to all members of the state  
13 military forces at all times and in all places.

14           (b) Subject matter jurisdiction is established if a  
15 clear and convincing nexus exists between an offense, either  
16 military or non-military, and the state military force. When a  
17 member is in a duty status under either Title 32 U.S.C. or  
18 State Active Duty then a rebuttable presumption exists that  
19 the nexus is established. A proper civilian court has primary  
20 jurisdiction of an offense when an act or omission violates  
21 both this code and civilian criminal law, foreign or domestic.  
22 In such a case, a court-martial may be initiated only after  
23 the civilian authority has declined to prosecute or dismissed  
24 the charge, provided jeopardy has not attached. Courts-martial  
25 shall have primary jurisdiction over all other offenses

1 defined in this code. Jurisdiction over attempted crimes,  
2 conspiracy crimes, solicitation, and accessory crimes must be  
3 determined by the underlying offense.

4 Article 3. Jurisdiction to try certain personnel.

5 (a) Each person discharged from the state military  
6 forces who is later charged with having fraudulently obtained  
7 a discharge is, subject to Article 43 of this code, subject to  
8 trial by court-martial on that charge and is, after  
9 apprehension, subject to this code while in custody under the  
10 direction of the state military forces for that trial. Upon  
11 conviction of that charge, the person is subject to trial by  
12 court-martial for all offenses under this code committed  
13 before the fraudulent discharge.

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

18 Article 4. [Reserved].

19 Article 5. Territorial applicability of the code.

20 (a) This code has applicability at all times and in  
21 all places, provided that either the person subject to the  
22 code is in a duty status or, if not in a duty status, that  
23 there is a nexus between the act or omission constituting the  
24 offense and the efficient functioning of the state military  
25 forces; however, this grant of military jurisdiction shall



1       neither preclude nor limit civilian jurisdiction over an  
2       offense, which is limited only by the prohibition of double  
3       jeopardy.

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

11              Article 6. Judge Advocates.

12             (a) The senior force judge advocates in each of the  
13      state's military forces or that judge advocate's delegates  
14      shall make frequent inspections in the field in supervision of  
15      the administration of military justice in that force.

16             (b) Convening authorities shall at all times  
17      communicate directly with their judge advocates in matters  
18      relating to the administration of military justice. The judge  
19      advocate of any command is entitled to communicate directly  
20      with the judge advocate of a superior or subordinate command,  
21      or with the State Judge Advocate.

22             (c) No person who has acted as member, military  
23      judge, trial counsel, defense counsel, or investigating  
24      officer, or who has been a witness, in any case may later act

1 as a judge advocate to any reviewing authority upon the same  
2 case.

3 Article 6a. Military Judges.

4 Pursuant to Section 31-2-58, Code of Alabama 1975,  
5 procedures pertaining to the selection and regulation of  
6 military judges shall be promulgated by the Adjutant General  
7 and approved by the Governor.

8 PART II. APPREHENSION AND RESTRAINT.

9 Article 7. Apprehension.

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

12 (b) Any person authorized by this code or by Chapter  
13 47 of Title 10, U.S.C., or by regulations issued under either,  
14 to apprehend persons subject to this code, any marshal of a  
15 court-martial appointed pursuant to the provisions of this  
16 code, and any peace officer or civil officer having authority  
17 to apprehend offenders under the laws of the United States or  
18 of a state, may do so upon probable cause that an offense has  
19 been committed and that the person apprehended committed it.

20 (c) Commissioned officers, warrant officers, petty  
21 officers, and noncommissioned officers have authority to quell  
22 quarrels, frays, and disorders among persons subject to this  
23 code and to apprehend persons subject to this code who take  
24 part therein.

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

4           (e) No person authorized by this article to  
5 apprehend persons subject to this code or the place where such  
6 offender is confined, restrained, held, or otherwise housed  
7 may require payment of any fee or charge for so receiving,  
8 apprehending, confining, restraining, holding, or otherwise  
9 housing a person except as otherwise provided by Section  
10 31-2-106, Code of Alabama 1975.

11           Article 8. [Reserved].

12           Article 9. Imposition of restraint.

13           (a) Arrest is the restraint of a person by an order,  
14 not imposed as a punishment for an offense, directing him or  
15 her to remain within certain specified limits. Confinement is  
16 the physical restraint of a person.

17           (b) An enlisted member may be ordered into arrest or  
18 confinement by any commissioned officer by an order, oral or  
19 written, delivered in person or through other persons subject  
20 to this code. A commanding officer may authorize warrant  
21 officers, petty officers, or noncommissioned officers to order  
22 enlisted members of the commanding officer's command or  
23 subject to the commanding officer's authority into arrest or  
24 confinement.

1           (c) A commissioned officer, a warrant officer, or a  
2 civilian subject to this code or to trial thereunder may be  
3 ordered into arrest or confinement only by a commanding  
4 officer to whose authority the person is subject, by an order,  
5 oral or written, delivered in person or by another  
6 commissioned officer. The authority to order such persons into  
7 arrest or confinement may not be delegated.

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

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

14           Article 10. Restraint of persons charged with  
15 offenses.

16           Any person subject to this code charged with an  
17 offense under this code may be ordered into arrest or  
18 confinement, as circumstances may require. When any person  
19 subject to this code is placed in arrest or confinement prior  
20 to trial, immediate steps shall be taken to inform the person  
21 of the specific wrong of which the person is accused and  
22 diligent steps shall be taken to try the person or to dismiss  
23 the charges and release the person.

24           Article 11. Place of Confinement; Reports and  
25 receiving of prisoners.

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

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

11           (c) Every person authorized to receive prisoners  
12 pursuant to subsection (a) to whose charge a prisoner is  
13 committed, within 24 hours after that commitment or as soon as  
14 the person is relieved from guard, shall report to the  
15 commanding officer of the prisoner the name of the prisoner,  
16 the offense charged against the prisoner, and the name of the  
17 person who ordered or authorized the commitment.

18           Article 12. Confinement with enemy prisoners  
19 prohibited.

20           No member of the Alabama National Guard may be  
21 placed in confinement in immediate association with enemy  
22 prisoners or other foreign nationals not members of the Armed  
23 Forces.

24           Article 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 such  
5 person be any more rigorous than the circumstances required to  
6 insure the person's presence, but the person may be subjected  
7 to minor punishment during that period for infractions of  
8 discipline.

9           Article 14. Delivery of offenders to civil  
10 authorities.

11           A person subject to this code accused of an offense  
12 against civil authority is also subject to the Interstate  
13 Agreement on Detainers Act, 18 U.S.C. Appendix 2.

14           PART III. NON-JUDICIAL PUNISHMENT.

15           Article 15. Commanding officer's non-judicial  
16 punishment.

17           (a) Under such regulations as prescribed, any  
18 commanding officer may impose disciplinary punishments for  
19 minor offenses without the intervention of a court-martial  
20 pursuant to this article. The Governor, the Adjutant General,  
21 or an officer or a general or flag rank in command may  
22 delegate the powers under this article to a principal  
23 assistant who is a member of the Alabama National Guard.

24           (b) For the purposes of this article, the term "day"  
25 shall mean the following:

1           (1) For the purposes of pay, one day shall equal one  
2 active duty military pay day.

3           (2) For all other purposes, one day shall equal one  
4 calendar day.

5           (c) For the purposes of this part, all members must  
6 be in military status when punishment is imposed.

7           (d) Any commanding officer may impose upon enlisted  
8 members of the officer's command any of the following:

9                 (1) An admonition.

10                (2) A reprimand.

11               (3) The withholding of privileges for up to six  
12 consecutive months.

13               (4) The forfeiture of pay of up to eight days' pay.

14               (5) A reduction to the next inferior pay grade, if  
15 the grade from which demoted is within the promotion authority  
16 of the commander imposing the reduction.

17               (6) Extra duties, including fatigue or other duties,  
18 for up to eight days, which need not be consecutive.

19               (7) Restriction to certain specified limits, with or  
20 without suspension from duty, for not more than eight days,  
21 which need not be consecutive.

22           (e) Any commanding officer of the grade of major or  
23 lieutenant commander, or above may impose upon enlisted  
24 members of the officer's command any of the following:

1                   (1) Any punishment authorized in subdivisions  
2 (d) (1), (2), and (3).

3                   (2) The forfeiture of pay of up to 12 days' pay;

4                   (3) A reduction to the lowest or any intermediate  
5 pay grade, if the grade from which demoted is within the  
6 promotion authority of the commanding officer imposing the  
7 reduction, but an enlisted member in a pay grade above E-4 may  
8 not be reduced more than two pay grades.

9                   (4) Extra duties, including fatigue or other duties,  
10 for not more than 14 days which need not be consecutive.

11                   (5) Restriction to certain specified limits, with or  
12 without suspension from duty, for not more than 14 days which  
13 need not be consecutive.

14                   (f) The Governor, the Adjutant General, an officer  
15 exercising general court-martial convening authority, or an  
16 officer of a general or flag rank in command may impose both  
17 of the following:

18                   (1) Upon officers of the officer's command, any  
19 punishment authorized in subdivisions (e) (1), (2), (3), and  
20 (5).

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

23                   (g) Whenever any of those punishments are combined  
24 to run consecutively, the total length of the combined  
25 punishment cannot exceed the authorized duration of the



1 longest punishment in the combination, and there must be an  
2 apportionment of punishments so that no single punishment in  
3 the combination exceeds its authorized length under this  
4 article.

5 (h) Prior to the offer of non-judicial punishment,  
6 the commanding officer shall determine whether restriction  
7 shall be considered as a punishment. Should the commanding  
8 officer determine that the punishment option may include  
9 restriction, the accused shall be notified of the right to  
10 demand trial by court-martial. Should the commanding officer  
11 determine that the punishment option will not include  
12 restriction, the accused shall be notified that there is no  
13 right to trial by court-martial in lieu of non-judicial  
14 punishment.

15 (i) The officer who imposes the punishment, or the  
16 successor in command, at any time, may suspend, set aside,  
17 mitigate, or remit any part or amount of the punishment and  
18 restore all rights, privileges, and property affected. The  
19 officer also may do either of the following:

20 (1) Mitigate reduction in grade to forfeiture of  
21 pay.

22 (2) Mitigate extra duties to restriction.

23 The mitigated punishment shall not be for a greater  
24 period than the punishment mitigated. When mitigating  
25 reduction in grade to forfeiture of pay, the amount of the

1 forfeiture shall not be greater than the amount that could  
2 have been imposed initially under this article by the officer  
3 who imposed the punishment mitigated.

4 (j) A person punished under this article who  
5 considers the punishment unjust or disproportionate to the  
6 offense, through the proper channel, may appeal to the next  
7 superior authority within 45 days after the punishment is  
8 either announced or sent to the accused, as the commander may  
9 determine. The appeal shall be promptly forwarded and decided.  
10 During the pendency of the appeal, the punishment shall not be  
11 implemented. The superior authority may exercise the same  
12 powers with respect to the punishment imposed as may be  
13 exercised under subsection (i) by the officer who imposed the  
14 punishment. Before acting on an appeal from a punishment, the  
15 authority that is to act on the appeal may refer the case to a  
16 judge advocate for consideration and advice.

17 (k) The imposition and enforcement of disciplinary  
18 punishment under this article for any act or omission is not a  
19 bar to trial by court-martial or a civilian court of competent  
20 jurisdiction for a serious crime or offense growing out of the  
21 same act or omission and not properly punishable under this  
22 article; however, the fact that a disciplinary punishment has  
23 been enforced may be shown by the accused upon trial and, when  
24 so shown, it shall be considered in determining the measure of  
25 punishment to be adjudged in the event of a finding of guilty.

1           (1) Whenever a punishment of forfeiture of pay is  
2 imposed under this article, the forfeiture may apply to pay  
3 accruing before, on, or after the date that punishment is  
4 imposed.

5           (m) Regulations may prescribe the form of records to  
6 be kept of proceedings under this article and may require that  
7 certain categories of those proceedings be in writing.

8           (n) The accused shall be informed of the location of  
9 and right to consult counsel with regard to any non-judicial  
10 punishment. The Commander shall ensure the member is given  
11 appropriate means to contact counsel.

12           PART IV. COURT-MARTIAL JURISDICTION.

13           Article 16. Courts-martial classified.

14           The three kinds of courts-martial in the state  
15 military forces are:

16           (1) General courts-martial, consisting of either of  
17 the following:

18           a. A military judge and not less than five members.

19           b. Only a military judge, if before the court is  
20 assembled the accused, knowing the identity of the military  
21 judge and after consultation with defense counsel, requests  
22 orally on the record or in writing a court composed only of a  
23 military judge and the military judge approves.

24           (2) Special courts-martial, consisting of either of  
25 the following:

1 a. A military judge and not less than three members.

2 b. Only a military judge, if one has been detailed  
3 to the court, and the accused under the same conditions as  
4 those prescribed in paragraph b. of subdivision (1) so  
5 requests.

6 (3) Summary courts-martial, consisting of one  
7 commissioned officer.

8 Article 17. Jurisdiction of courts-martial in  
9 general.

10 Each component of the Alabama National Guard has  
11 court-martial jurisdiction over all members of the particular  
12 component who are subject to this code.

13 Article 18. Jurisdiction of general courts-martial.

14 Subject to Article 17, general courts-martial have  
15 jurisdiction to try persons subject to this code for any  
16 offense made punishable by this code, and, under such  
17 limitations as the Governor may prescribe, may adjudge any  
18 punishment not forbidden by this code.

19 Article 19. Jurisdiction of special courts-martial.

20 Subject to Article 17, special courts-martial have  
21 jurisdiction to try persons subject to this code for any  
22 offense made punishable by this code, and under such  
23 limitations as the Governor may prescribe, may adjudge any  
24 punishment not forbidden by this code except dishonorable  
25 discharge, dismissal, confinement for more than six months,

1 forfeiture of pay exceeding 24 days, which must be completed  
2 within one year.

3 Article 20. Jurisdiction of summary courts-martial.

4 (a) Subject to Article 17 of this code, summary  
5 courts-martial have jurisdiction to try persons subject to  
6 this code, except officers, cadets, candidates, and  
7 midshipmen, for any offense made punishable by this code under  
8 such limitations as the Governor may prescribe.

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

20 Article 21. [Reserved].

21 PART V. APPOINTMENT AND COMPOSITION OF  
22 COURTS-MARTIAL.

23 Article 22. Who may convene general courts-martial.

24 (a) General courts-martial may be convened by any  
25 one of the following:

1 (1) The Governor.

2 (2) The Adjutant General.

3 (3) A General Officer who is designated as a  
4 commander.

5 (b) If any such commanding officer is an accuser,  
6 the court shall be convened by superior competent authority  
7 and may in any case be convened by such superior authority if  
8 considered desirable by the authority.

9 Article 23. Who may convene special courts-martial.

10 (a) Special courts-martial may be convened by any  
11 one of the following:

12 (1) Any person who may convene a general  
13 court-martial.

14 (2) The commanding officer of a brigade, regiment, a  
15 group, or a corresponding unit of the Army.

16 (3) The commanding officer of a wing, group, or  
17 corresponding unit of the Air Force.

18 (4) The commanding officer or officer in charge of  
19 any other command when empowered by the Adjutant General.

20 (b) If any such officer is an accuser, the court  
21 shall be convened by superior competent authority and may in  
22 any case be convened by the superior authority if considered  
23 desirable by the authority.

24 Article 24. Who may convene summary court-martial

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

3           (1) Any person who may convene a general or special  
4 courts-martial.

5           (2) The commanding officer of a battalion, or  
6 corresponding unit of the Army.

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

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

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

18           Article 25. Who may serve on courts-martial.

19           (a) Any commissioned officer of the Alabama National  
20 Guard is eligible to serve on all courts-martial for the trial  
21 of any person subject to this code.

22           (b) Any warrant officer of the Alabama National  
23 Guard is eligible to serve on general and special  
24 courts-martial for the trial of any person subject to this  
25 code, other than a commissioned officer.

1           (c) Any enlisted member of the state military forces  
2 who is not a member of the same unit as the accused is  
3 eligible to serve on general and special courts-martial for  
4 the trial of any enlisted member subject to this code, but  
5 that member shall serve as a member of a court only if, before  
6 the conclusion of a session called by the military judge under  
7 Article 39(a) prior to trial or, in the absence of such a  
8 session, before the court is assembled for the trial of the  
9 accused, the accused personally has requested orally on the  
10 record or in writing that enlisted members serve on it. After  
11 such a request, the accused may not be tried by a general or  
12 special court-martial the membership of which does not include  
13 enlisted members in a number comprising at least one-third of  
14 the total membership of the court, unless eligible enlisted  
15 members cannot be obtained on account of physical conditions  
16 or military exigencies. If such members cannot be obtained,  
17 the court may be assembled and the trial held without them,  
18 but the convening authority shall make a detailed written  
19 statement, to be appended to the record, stating why they  
20 could not be obtained. For the purposes of this article, the  
21 term "unit" means any regularly organized body of the state  
22 military forces not larger than a company, a squadron, a  
23 division of the naval militia, or a body corresponding to one  
24 of them.



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

4           (e) When convening a court-martial, the convening  
5 authority shall detail as members of the court-martial the  
6 members of the Alabama National Guard as, in the convening  
7 authority's opinion, are best qualified for the duty by reason  
8 of age, education, training, experience, length of service,  
9 and judicial temperament. No member of the state military  
10 forces is eligible to serve as a member of a general or  
11 special court-martial when that member is the accuser, a  
12 witness, or has acted as investigating officer or as counsel  
13 in the same case.

14           (f) Before a court-martial is assembled for the  
15 trial of a case, the convening authority may excuse a member  
16 of the court from participating in the case. The convening  
17 authority may delegate the authority under this subsection to  
18 his or her staff judge advocate.

19           Article 26. Military judge of a general or special  
20 court-martial.

21           (a) A military judge shall be detailed to each  
22 general and special court-martial. The military judge shall  
23 preside over each open session of the court-martial to which  
24 the military judge has been detailed.

25           (b) A military judge shall be all of the following:

1           (1) An active or retired commissioned officer.

2           (2) A member in good standing of the bar of the  
3 highest court of a state or a member of the bar of a federal  
4 court for at least five years.

5           (3) Either a certified military judge or a certified  
6 military judge or a judge of a court of competent jurisdiction  
7 who is approved by the Adjutant General.

8           (c) In the instance when a military judge is not a  
9 member of the bar of the highest court of the state, the  
10 military judge shall be deemed admitted pro hac vice, subject  
11 to filing a certificate with the senior judge advocate which  
12 is the same force as the accused setting forth such  
13 qualifications provided in subsection (b) and with notice and  
14 approval of the State Bar and Chief Justice of the Alabama  
15 Supreme Court.

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

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

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

8           Article 27. Detail of trial counsel and defense  
9 counsel.

10           (a) (1) Trial counsel and defense counsel shall be  
11 detailed for each general and special court-martial. The  
12 Alabama National Guard shall prescribe regulations providing  
13 the manner in which counsel are detailed for such  
14 court-martial and for persons who are authorized to detail  
15 counsel for such court-martial.

16           (2) No person who has acted as investigating  
17 officer, military judge, witness, or court member in any case  
18 may act later as trial counsel, assistant trial counsel, or,  
19 unless expressly requested by the accused, as defense counsel  
20 or assistant or associate defense counsel in the same case. No  
21 person who has acted for the prosecution may act later in the  
22 same case for the defense nor may any person who has acted for  
23 the defense act later in the same case for the prosecution.

24           (3) Except as provided in subsection (b), trial  
25 counsel or defense counsel detailed for a general or special

1 court-martial must be a judge advocate as defined in  
2 subsection (10) of Article 1.

3 (b) In the instance when an accused elects to retain  
4 civilian counsel at his or her own expense and not at the  
5 expense of the government, the counsel shall be a member of  
6 the State Bar of Alabama or a member of good standing of a bar  
7 of a state and admitted pro hac vice in accordance with the  
8 State of Alabama, with notice and approval of the Alabama  
9 State Bar and Chief Justice of the Alabama Supreme Court.

10 Article 28. Detail or employment of reporters and  
11 interpreters.

12 Under such regulations as may be prescribed, the  
13 convening authority of a general or special court-martial or  
14 court of inquiry shall detail or employ qualified court  
15 reporters, who shall record the proceedings of and testimony  
16 taken before that court and may detail or employ interpreters  
17 who shall interpret for the court.

18 Article 29. Absent and additional members.

19 (a) No member of a general or special court-martial  
20 may be absent or excused after the court has been assembled  
21 for the trial of the accused unless excused as a result of a  
22 challenge, excused by the military judge for physical  
23 disability or other good cause, or excused by order of the  
24 convening authority for good cause.

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

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

22           (d) If the military judge of a court-martial  
23 composed of a military judge only is unable to proceed with  
24 the trial because of physical disability, as a result of a  
25 challenge, or for other good cause, the trial shall proceed,

1 subject to any applicable conditions of Article 16(1)b. or  
2 (2)b., after the detail of a new military judge as if no  
3 evidence had previously been introduced, unless a verbatim  
4 record of the evidence previously introduced or a stipulation  
5 thereof is read in court in the presence of the new military  
6 judge, the accused, and counsel for both sides.

7 PART VI. PRE-TRIAL PROCEDURE.

8 Article 30. Charges and specifications.

9 (a) Charges and specifications shall be signed by a  
10 person subject to this code under oath before a commissioned  
11 officer authorized by Article 136(a) of this code to  
12 administer oaths and shall state both of the following:

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

15 (2) That the charges and specifications are true in  
16 fact to the best of the signer's knowledge and belief.

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

22 Article 31. Compulsory self-incrimination  
23 prohibited.

24 (a) No person subject to this code may compel any  
25 person to incriminate himself or herself or to answer any

1 question the answer to which may tend to incriminate him or  
2 her.

3 (b) No person subject to this code may interrogate  
4 or request any statement from an accused or a person suspected  
5 of an offense without first informing that person of the  
6 nature of the accusation and advising that person that he or  
7 she does not have to make any statement regarding the offense  
8 of which the person is accused or suspected and that any  
9 statement made by the person may be used as evidence against  
10 the person in a trial by court-martial.

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

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

19 Article 32. Investigation.

20 (a) No charge or specification may be referred to a  
21 general court-martial for trial until a thorough and impartial  
22 investigation of all the matters set forth therein has been  
23 made. This investigation shall include inquiry as to the truth  
24 of the matter set forth in the charges, consideration of the  
25 form of charges, and a recommendation as to the disposition

1 which should be made of the case in the interest of justice  
2 and discipline.

3 (b) The accused shall be advised of the charges  
4 against the accused and of the right to be represented at that  
5 investigation by counsel. The accused has the right to be  
6 represented at that investigation as provided in Article 38  
7 and in regulations prescribed under that article. At that  
8 investigation, full opportunity shall be given to the accused  
9 to cross-examine witnesses, if they are available, and to  
10 present anything the accused may desire in the accused's own  
11 behalf, either in defense or mitigation. The investigating  
12 officer shall examine available witnesses requested by the  
13 accused. If the charges are forwarded after the investigation,  
14 they shall be accompanied by a statement of the substance of  
15 the testimony taken on both sides and a copy of the statement  
16 shall be given to the accused.

17 (c) If an investigation of the subject matter of an  
18 offense has been conducted before the accused is charged with  
19 the offense, and if the accused was present at the  
20 investigation and afforded the opportunities for  
21 representation, cross-examination, and presentation prescribed  
22 in subsection (b), no further investigation of that charge is  
23 necessary under this article unless it is demanded by the  
24 accused after the accused is informed of the charge. A demand  
25 for further investigation entitles the accused to recall



1 witnesses for further cross-examination and to offer any new  
2 evidence in the accused's own behalf.

3 (d) If evidence adduced in an investigation under  
4 this article indicates that the accused committed an uncharged  
5 offense, the investigating officer may investigate the subject  
6 matter of that offense without the accused having first been  
7 charged with the offense if the accused:

8 (1) Is present at the investigation.

9 (2) Is informed of the nature of each uncharged  
10 offense investigated.

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

14 (e) The requirements of this article are binding on  
15 all persons administering this code but failure to follow them  
16 does not constitute jurisdictional error.

17 Article 33. [Reserved].

18 Article 34. Advice of judge advocate and reference  
19 for trial.

20 (a) Before directing the trial of any charge by  
21 general or special court-martial, the convening authority  
22 shall refer it to a judge advocate for consideration and  
23 advice. The convening authority may not refer a specification  
24 under a charge to a general or special court-martial for trial

1 unless the convening authority has been advised in writing by  
2 a judge advocate of all of the following:

3 (1) The specification alleges an offense under this  
4 code.

5 (2) The specification is warranted by the evidence  
6 indicated in the report of investigation under Article 32 of  
7 this code, if there is such a report.

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

10 (b) The advice of the judge advocate under  
11 subsection (a) with respect to a specification under a charge  
12 shall include a written and signed statement by the judge  
13 advocate containing both of the following:

14 (1) Conclusions with respect to each matter set  
15 forth in subsection (a).

16 (2) Recommended action that the convening authority  
17 should take regarding the specification. If the specification  
18 is referred for trial, the recommendation of the judge  
19 advocate shall accompany the specification.

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

1 Article 35. Service of charges.

2 The trial counsel shall serve or caused to be served  
 3 upon the accused a copy of the charges. No person, against the  
 4 person's objection, may be brought to trial before a general  
 5 court-martial case within a period of 45 days after the  
 6 service of charges upon the accused, or in a special  
 7 court-martial, within a period of 45 days after the service of  
 8 charges upon the accused.

9 PART VII. TRIAL PROCEDURE.

10 Article 36. Governor or the Adjutant General may  
 11 prescribe rules.

12 Pretrial, trial, and post-trial procedures,  
 13 including modes of proof, for court-martial cases arising  
 14 under this code, and for courts of inquiry, may be prescribed  
 15 by the Governor or the Adjutant General by regulations, or as  
 16 otherwise provided by law, which shall apply the principles of  
 17 law and the rules of evidence generally recognized in military  
 18 criminal cases in the courts of the Armed Forces but which may  
 19 not be contrary to or inconsistent with this code.

20 Article 37. Unlawfully influencing action of court.

21 (a) No authority convening a general, special, or  
 22 summary court-martial, nor any other commanding officer, or  
 23 officer serving on the staff thereof, may censure, reprimand,  
 24 or admonish the court or any member, the military judge, or  
 25 counsel thereof, with respect to the findings or sentence

1 adjudged by the court or with respect to any other exercise of  
2 its or their functions in the conduct of the proceedings. No  
3 person subject to this code may attempt to coerce or, by any  
4 unauthorized means, influence the action of a court-martial or  
5 court of inquiry or any member thereof, in reaching the  
6 findings or sentence in any case, or the action of any  
7 convening, approving, or reviewing authority with respect to  
8 its judicial acts. This subsection shall not apply to either  
9 of the following:

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

14 (2) Statements and instructions given in open court  
15 by the military judge, summary court-martial officer, or  
16 counsel.

17 (b) In the preparation of an effectiveness, fitness,  
18 or efficiency report, or any other report or document used in  
19 whole or in part for the purpose of determining whether a  
20 member of the state military forces is qualified to be  
21 advanced in grade, or in determining the assignment or  
22 transfer of a member of the state military forces, or in  
23 determining whether a member of the state military forces  
24 should be retained on active status, no person subject to this

1 code may, in preparing any report shall do either of the  
2 following:

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

6 (2) Give a less favorable rating or evaluation of  
7 any counsel of the accused because of zealous representation  
8 before a court-martial.

9 Article 38. Duties of trial counsel and defense  
10 counsel.

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

15 (b) (1) The accused has the right to be represented  
16 in defense before a general or special court-martial or at an  
17 investigation under Article 32 as provided in this subsection.

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

20 (3) The accused may be represented by either of the  
21 following:

22 a. By military counsel detailed under Article 27.

23 b. By military counsel of the accused's own  
24 selection if that counsel is reasonably available as  
25 determined under subdivision (7).

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

5           (5) Except as provided under subdivision (6), if the  
6 accused is represented by military counsel of his or her own  
7 selection under paragraph (3)b., any military counsel detailed  
8 under paragraph (3)a. shall be excused.

9           (6) The accused is not entitled to be represented by  
10 more than one military counsel. However, the person authorized  
11 under regulations prescribed under Article 27 to detail  
12 counsel, in that person's sole discretion:

13           a. May detail additional military counsel as  
14 assistant defense counsel.

15           b. If the accused is represented by military counsel  
16 of the accused's own selection under paragraph (3)b., may  
17 approve a request from the accused that military counsel  
18 detailed under paragraph (3)a. act as associate defense  
19 counsel.

20           (7) The senior force judge advocate of the same  
21 force of which the accused is a member, shall determine  
22 whether the military counsel selected by an accused is  
23 reasonably available.

24           (c) In any court-martial proceeding resulting in a  
25 conviction, the defense counsel may do any of the following:

1           (1) Forward for attachment to the record of  
2 proceedings a brief of such matters as counsel determines  
3 should be considered in behalf of the accused on review,  
4 including any objection to the contents of the record which  
5 counsel considers appropriate.

6           (2) Assist the accused in the submission of any  
7 matter under Article 60.

8           (3) Take other action authorized by this code.

9           Article 39. Sessions.

10          (a) At any time after the service of charges which  
11 have been referred for trial to a court-martial composed of a  
12 military judge and members, the military judge, subject to  
13 Article 35, may call the court into session without the  
14 presence of the members for the purpose of:

15           (1) Hearing and determining motions raising defenses  
16 or objections which are capable of determination without trial  
17 of the issues raised by a plea of not guilty.

18           (2) Hearing and ruling upon any matter which may be  
19 ruled upon by the military judge under this code, whether or  
20 not the matter is appropriate for later consideration or  
21 decision by the members of the court.

22           (3) Holding the arraignment and receiving the pleas  
23 of the accused.

1           (4) Performing any other procedural function which  
2 does not require the presence of the members of the court  
3 under this code.

4           These proceedings shall be conducted in the presence  
5 of the accused, the defense counsel, and the trial counsel and  
6 shall be made a part of the record. These proceedings may be  
7 conducted notwithstanding the number of court members and  
8 without regard to Article 29.

9           (b) When the members of a court-martial deliberate  
10 or vote, only the members may be present. All other  
11 proceedings, including any other consultation of the members  
12 of the court with counsel or the military judge, shall be made  
13 a part of the record and shall be in the presence of the  
14 accused, the defense counsel, the trial counsel, and the  
15 military judge.

16           Article 40. Continuances.

17           The military judge of a court-martial or the summary  
18 court-martial officer, for reasonable cause, may grant a  
19 continuance to any party for such time, and as often, as may  
20 appear to be just.

21           Article 41. Challenges.

22           (a) Challenges For Cause.

23           (1) The military judge and members of a general or  
24 special court-martial may be challenged by the accused or the  
25 trial counsel for cause stated to the court. The military



1 judge or the court shall determine the relevancy and validity  
2 of challenges for cause and may not receive a challenge to  
3 more than one person at a time. Challenges by the trial  
4 counsel shall ordinarily be presented and decided before those  
5 by the accused are offered.

6 (2) If exercise of a challenge for cause reduces the  
7 court below the minimum number of members required by Article  
8 16, all parties, notwithstanding Article 29, shall either  
9 exercise or waive any challenge for cause then apparent  
10 against the remaining members of the court before additional  
11 members are detailed to the court. However, peremptory  
12 challenges shall not be exercised at that time.

13 (b) Peremptory Challenges.

14 (1) Each accused and the trial counsel are entitled  
15 initially to one peremptory challenge of members of the court.  
16 The military judge may not be challenged except for cause.

17 (2) If exercise of a peremptory challenge reduces  
18 the court below the minimum number of members required by  
19 Article 16, the parties, notwithstanding Article 29, shall  
20 either exercise or waive any remaining peremptory challenge,  
21 not previously waived, against the remaining members of the  
22 court before additional members are detailed to the court.

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

1 the trial counsel are entitled to one peremptory challenge  
2 against members not previously subject to peremptory  
3 challenge.

4 Article 42. Oaths or Affirmations.

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

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

24 Article 43. Statute of limitations.

1           (a) Except as otherwise provided in this article, a  
2 person charged with any offense is not liable to be tried by  
3 courts-martial or punished under Article 15 if the offense was  
4 committed more than 12 months before the receipt of sworn  
5 charges and specifications by an officer exercising  
6 court-martial jurisdiction over the command or before the  
7 imposition of punishment under Article 15.

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

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

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

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

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

1           (3) Committed in connection with the negotiation,  
2 procurement, award, performance, payment, interim financing,  
3 cancellation, or other termination or settlement, of any  
4 contract, subcontract, or purchase order which is connected  
5 with or related to the prosecution of the war, or with any  
6 disposition of termination inventory by any war contractor or  
7 government agency, is suspended until two years after the  
8 termination of hostilities as proclaimed by the President or  
9 by a joint resolution of Congress.

10           (e) (1) If charges or specifications are dismissed as  
11 defective or insufficient for any cause and the period  
12 prescribed by the applicable statute of limitations has  
13 expired or will expire within 180 days after the date of  
14 dismissal of the charges and specifications, trial and  
15 punishment under new charges and specifications are not barred  
16 by the statute of limitations if the conditions specified in  
17 subdivision (2) are met.

18           (2) The conditions referred to in subdivision (1)  
19 are that the new charges and specifications shall:

20           a. Be received by an officer exercising summary  
21 court-martial jurisdiction over the command within 180 days  
22 after the dismissal of the charges or specifications.

23           b. Allege the same acts or omissions that were  
24 alleged in the dismissed charges or specifications, or allege

1 acts or omissions that were included in the dismissed charges  
2 or specifications.

3 Article 44. Former jeopardy.

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

6 (b) No proceeding in which an accused has been found  
7 guilty by a court-martial upon any charge or specification is  
8 a trial pursuant to this article until the finding of guilty  
9 has become final after review of the case has been fully  
10 completed.

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

16 (d) Any offense adjudicated under Chapter 47 of  
17 Title 10, U.S.C., shall be barred from prosecution under this  
18 code.

19 Article 45. Pleas of the accused.

20 (a) If an accused after arraignment makes an  
21 irregular pleading, or after a plea of guilty sets up matter  
22 inconsistent with the plea, or if it appears that the accused  
23 has entered the plea of guilty improvidently or through lack  
24 of understanding of its meaning and effect, or if the accused  
25 fails or refuses to plead, a plea of not guilty shall be

1 entered in the record, and the court shall proceed as though  
2 the accused had pleaded not guilty.

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

12 Article 46. Opportunity to obtain witnesses and  
13 other evidence.

14 The trial counsel, the defense counsel, and the  
15 court-martial shall have equal opportunity to obtain witnesses  
16 and other evidence as prescribed by regulations and provided  
17 by law. Process issued in court-martial cases to compel  
18 witnesses to appear and testify and to compel the production  
19 of other evidence shall apply the principles of law and the  
20 rules of courts-martial generally recognized in military  
21 criminal cases in the courts of the Armed Forces of the United  
22 States, but which may not be contrary to or inconsistent with  
23 this code. Process shall run to any part of the United States,  
24 or the territories, commonwealths, and possessions, and may be  
25 executed by civil officers as prescribed by the laws of the

1 place where the witness or evidence is located or outside of  
2 the United States.

3 Article 47. Refusal to appear or testify.

4 (a) Any person not subject to this code who does all  
5 of the following may be punished by the military court in the  
6 same manner as a criminal court of the state:

7 (1) Has been duly subpoenaed to appear as a witness  
8 or to produce books and records before a court-martial or  
9 court of inquiry, or before any military or civil officer  
10 designated to take a deposition to be read in evidence before  
11 such a court.

12 (2) Has been duly paid or tendered the fees and  
13 mileage of a witness at the rates allowed to witnesses  
14 attending a criminal court of the state.

15 (3) Willfully neglects or refuses to appear, or  
16 refuses to qualify as a witness or to testify or to produce  
17 any evidence which that person may have been legally  
18 subpoenaed to produce.

19 (b) The fees and mileage of witnesses shall be  
20 advanced or paid out of the appropriations for the  
21 compensation of witnesses.

22 Article 48. Contempt.

23 A military judge or summary court-martial officer  
24 may punish for contempt any person who uses any menacing word,  
25 sign, or gesture in its presence, or who disturbs its

1 proceedings by any riot or disorder. A person subject to this  
2 code may be punished for contempt by confinement not to exceed  
3 five days or a fine of one hundred dollars (\$100), or both. A  
4 person not subject to this code may be punished for contempt  
5 by a military court in the same manner as a criminal court of  
6 the state.

7 Article 49. Depositions.

8 (a) At any time after charges have been signed as  
9 provided in Article 30, any party may take oral or written  
10 depositions unless the military judge or summary court-martial  
11 officer hearing the case or, if the case is not being heard,  
12 an authority competent to convene a court-martial for the  
13 trial of those charges forbids it for good cause.

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

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

21 (d) A duly authenticated deposition taken upon  
22 reasonable notice to the other parties, so far as otherwise  
23 admissible under the rules of evidence, may be read in  
24 evidence or, in the case of audiotape, videotape, digital



1 image or file, or similar material, may be played in evidence  
2 before any military court, if any one of the following occurs:

3 (1) The witness resides or is beyond the state in  
4 which the court is ordered to sit, or beyond 100 miles from  
5 the place of trial or hearing.

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

11 (3) The present location of the witness is unknown.

12 Article 50. Admissibility of records of courts of  
13 inquiry.

14 (a) In any case not extending to the dismissal of a  
15 commissioned officer, the sworn testimony, contained in the  
16 duly authenticated record of proceedings of a court of  
17 inquiry, of a person whose oral testimony cannot be obtained,  
18 if otherwise admissible under the rules of evidence, may be  
19 read in evidence by any party before a court-martial if the  
20 accused was a party before the court of inquiry and if the  
21 same issue was involved or if the accused consents to the  
22 introduction of such evidence.

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

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

3           Article 50a. Defense of lack of mental  
4 responsibility.

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

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

14           (c) Whenever lack of mental responsibility of the  
15 accused with respect to an offense is properly at issue, the  
16 military judge shall instruct the members of the court as to  
17 the defense of lack of mental responsibility under this  
18 article and charge jurors to find the accused any one of the  
19 following:

20                 (1) Guilty.

21                 (2) Not guilty.

22                 (3) Not guilty only by reason of lack of mental  
23 responsibility.

24           (d) Subsection (c) does not apply to a court-martial  
25 composed of a military judge only. In the case of a

1 court-martial composed of a military judge only or a summary  
2 court-martial officer, whenever lack of mental responsibility  
3 of the accused with respect to an offense is properly at  
4 issue, the military judge or summary court-martial officer  
5 shall find the accused any one of the following:

6 (1) Guilty.

7 (2) Not guilty.

8 (3) Not guilty only by reason of lack of mental  
9 responsibility.

10 (e) Notwithstanding the provisions of Article 52,  
11 the accused shall be found not guilty only by reason of lack  
12 of mental responsibility if either of the following occurs:

13 (1) A majority of the members of the court-martial  
14 present at the time the vote is taken determines that the  
15 defense of lack of mental responsibility has been established.

16 (2) In the case of a court-martial composed of a  
17 military judge only or a summary court-martial officer, the  
18 military judge or summary court-martial officer determines  
19 that the defense of lack of mental responsibility has been  
20 established.

21 Article 51. Voting and rulings.

22 (a) Voting by members of a general or special  
23 court-martial on the findings and on the sentence shall be by  
24 secret written ballot. The junior member of the court shall  
25 count the votes. The count shall be checked by the president,

1 who shall forthwith announce the result of the ballot to the  
2 members of the court.

3 (b) The military judge shall rule upon all questions  
4 of law and all interlocutory questions arising during the  
5 proceedings. Any such ruling made by the military judge upon  
6 any question of law or any interlocutory question other than  
7 the factual issue of mental responsibility of the accused is  
8 final and constitutes the ruling of the court. However, the  
9 military judge may change the ruling at any time during the  
10 trial. Unless the ruling is final, if any member objects  
11 thereto, the court shall be cleared and closed and the  
12 question decided by a voice vote as provided in Article 52,  
13 beginning with the junior in rank.

14 (c) Before a vote is taken on the findings, the  
15 military judge, in the presence of the accused and counsel,  
16 shall instruct the members of the court as to the elements of  
17 the offense and charge them with all of the following:

18 (1) The accused must be presumed to be innocent  
19 until his or her guilt is established by legal and competent  
20 evidence beyond reasonable doubt.

21 (2) In the case being considered, if there is a  
22 reasonable doubt as to the guilt of the accused, the doubt  
23 must be resolved in favor of the accused and the accused must  
24 be acquitted.

1           (3) If there is a reasonable doubt as to the degree  
2 of guilt, the finding must be in a lower degree as to which  
3 there is no reasonable doubt.

4           (4) The burden of proof to establish the guilt of  
5 the accused beyond reasonable doubt is upon the state.

6           (d) Subsections (a), (b), and (c) do not apply to a  
7 court-martial composed of a military judge only. The military  
8 judge of such a court-martial shall determine all questions of  
9 law and fact arising during the proceedings and, if the  
10 accused is convicted, adjudge an appropriate sentence. The  
11 military judge of such a court-martial shall make a general  
12 finding, and in addition, on request, shall find the facts  
13 specially. If an opinion or memorandum of decision is filed,  
14 it will be sufficient if the findings of fact appear therein.

15           Article 52. Number of votes required

16           (a) No person may be convicted of an offense except  
17 as provided in Article 45(b) or by the concurrence of  
18 two-thirds of the members present at the time the vote is  
19 taken.

20           (b) All other questions to be decided by the members  
21 of a general or special court-martial shall be determined by a  
22 majority vote, but a determination to reconsider a finding of  
23 guilty or to reconsider a sentence, with a view toward  
24 decreasing it, may be made by any lesser vote which indicates  
25 that the reconsideration is not opposed by the number of votes

1 required for that finding or sentence. A tie vote on a  
2 challenge disqualifies the member challenged. A tie vote on a  
3 motion relating to the question of the accused's sanity is a  
4 determination against the accused. A tie vote on any other  
5 question is a determination in favor of the accused.

6 Article 53. Court to announce action.

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

9 Article 54. Record of trial

10 (a) Each general and special court-martial shall  
11 keep a separate record of the proceedings in each case brought  
12 before it, and the record shall be authenticated by the  
13 signature of the military judge. If the record cannot be  
14 authenticated by the military judge by reason of his or her  
15 death, disability, or absence, it shall be authenticated by  
16 the signature of the trial counsel or by that of a member, if  
17 the trial counsel is unable to authenticate it by reason of  
18 his or her death, disability, or absence. In a court-martial  
19 consisting of only a military judge, the record shall be  
20 authenticated by the court reporter under the same conditions  
21 which would impose such a duty on a member under this  
22 subsection.

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

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

4           (c) Each summary court-martial shall keep a separate  
5 record of the proceedings in each case, and the record shall  
6 be authenticated in the manner as may be prescribed by  
7 regulations.

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

11           PART VIII. SENTENCES.

12           Article 55. Cruel and unusual punishments  
13 prohibited.

14           Punishment by flogging, or by branding, marking, or  
15 tattooing on the body, or any other cruel or unusual  
16 punishment may not be adjudged by a court-martial or inflicted  
17 upon any person subject to this code. The use of irons, single  
18 or double, except for the purpose of safe custody, is  
19 prohibited.

20           Article 56. Maximum limits.

21           (a) The punishment which a court-martial may direct  
22 for an offense may not exceed such limits as prescribed by  
23 this code, but in no instance may a sentence exceed more than  
24 one year for a military offense, nor shall a sentence of death  
25 be adjudged. A conviction by a court-martial of any military

1 offense is a misdemeanor as defined under the Code of Alabama  
2 1975.

3 (b) The limits of punishment for violations of the  
4 punitive articles prescribed herein shall be lesser of the  
5 sentences prescribed by the state manual for courts-martial,  
6 but in no instance shall any punishment exceed that authorized  
7 by this code.

8 Article 57. Effective date of sentences.

9 (a) Whenever a sentence of a court-martial as  
10 lawfully adjudged and approved includes a forfeiture of pay or  
11 allowances in addition to confinement not suspended, the  
12 forfeiture may apply to pay or allowances becoming due on or  
13 after the date the sentence is approved by the convening  
14 authority. No forfeiture may extend to any pay or allowances  
15 accrued before that date.

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

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

23 Article 57a. Deferment of sentences.

24 (a) On application by an accused who is under  
25 sentence to confinement that has not been ordered executed,



1 the convening authority or, if the accused is no longer under  
2 that person's jurisdiction, the person exercising general  
3 court-martial jurisdiction over the command to which the  
4 accused is currently assigned, may in that person's sole  
5 discretion defer service of the sentence to confinement. The  
6 deferment shall terminate when the sentence is ordered  
7 executed. The deferment may be rescinded at any time by the  
8 person who granted it or, if the accused is no longer under  
9 that person's jurisdiction, by the person exercising general  
10 court-martial jurisdiction over the command to which the  
11 accused is currently assigned.

12 (b) (1) In any case in which a court-martial  
13 sentences an accused referred to in subdivision (2) to  
14 confinement, the convening authority may defer the service of  
15 the sentence to confinement, without the consent of the  
16 accused, until after the accused has been permanently released  
17 to the state military forces by a state, the United States, or  
18 a foreign country referred to in that paragraph.

19 (2) Subdivision (1) applies to a person subject to  
20 this code who meets both of the following:

21 a. While in the custody of a state, the United  
22 States, or a foreign country is temporarily returned by that  
23 state, the United States, or a foreign country to the state  
24 military forces for trial by court-martial.

1           b. After the court-martial, is returned to that  
2 state, the United States, or a foreign country under the  
3 authority of a mutual agreement or treaty, as the case may be.

4           (3) In this subsection, the term "state" includes  
5 the District of Columbia and any commonwealth, territory, or  
6 possession of the United States.

7           (c) In any case in which a court-martial sentences  
8 an accused to confinement and the sentence to confinement has  
9 been ordered executed, but in which review of the case under  
10 Article 67(a) is pending, the Adjutant General may defer  
11 further service of the sentence to confinement while that  
12 review is pending.

13           Article 58. Execution of confinement.

14           (a) A sentence of confinement adjudged by a  
15 court-martial, whether or not the sentence includes discharge  
16 or dismissal, and whether or not the discharge or dismissal  
17 has been executed, may be carried into execution by  
18 confinement in any place authorized by this code. Persons so  
19 confined are subject to the same discipline and treatment as  
20 persons regularly confined or committed to that place of  
21 confinement.

22           (b) The omission of "hard labor" as a sentence  
23 authorized under this code does not deprive the state  
24 confinement facility from employing it, if it otherwise is  
25 within the authority of that facility to do so.

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

4 Article 58a. Sentences: Reduction in enlisted grade  
5 upon approval.

6 (a) A court-martial sentence of an enlisted member  
7 in a pay grade above E-1, as approved by the convening  
8 authority, that includes either a bad-conduct discharge or  
9 confinement reduces that member to pay grade E-1, effective on  
10 the date of that approval.

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

17 Article 58b. Sentences: Forfeiture of pay and  
18 allowances during confinement.

19 (a) (1) A court-martial sentence described in  
20 subdivision (2) shall result in the forfeiture of pay, or of  
21 pay and allowances, due that member during any period of  
22 confinement or parole. The forfeiture pursuant to this article  
23 shall take effect on the date determined under Article 57(a)  
24 and may be deferred as provided by that article. The pay and  
25 allowances forfeited, in the case of a general court-martial,

1 shall be all pay and allowances due that member during such  
2 period and, in the case of a special court-martial, shall be  
3 two-thirds of all pay due that member during such period.

4 (2) A sentence covered by this article is any  
5 sentence that includes either of the following:

6 a. Confinement for more than six months.

7 b. Confinement for six months or less and a  
8 bad-conduct discharge or dismissal.

9 (b) In a case involving an accused who has  
10 dependents, the convening authority or other person acting  
11 under Article 60 of this code may waive any or all of the  
12 forfeitures of pay and allowances required by subsection (a)  
13 for a period not to exceed six months. Any amount of pay or  
14 allowances that, except for a waiver under this subsection,  
15 would be forfeited shall be paid, as the convening authority  
16 or other person taking action directs, to the dependents of  
17 the accused.

18 (c) If the sentence of a member who forfeits pay and  
19 allowances under subsection (a) is set aside or disapproved  
20 or, as finally approved, does not provide for a punishment  
21 referred to in subdivision (a)(2), the member shall be paid  
22 the pay and allowances which the member would have been paid,  
23 except for the forfeiture, for the period during which the  
24 forfeiture was in effect.

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

3                   Article 59. Error of law; lesser included offense.

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

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

12                   Article 60. Action by the convening authority.

13                   (a) The findings and sentence of a court-martial  
14 shall be reported promptly to the convening authority after  
15 the announcement of the sentence.

16                   (b) (1) The accused may submit to the convening  
17 authority matters for consideration by the convening authority  
18 with respect to the findings and the sentence. Any submission  
19 shall be in writing. Except in a summary court-martial case, a  
20 submission shall be made within 10 days after the accused has  
21 been given an authenticated record of trial and, if  
22 applicable, the recommendation of a judge advocate under  
23 subsection (d). In a summary court-martial case, such a  
24 submission shall be made within seven days after the sentence  
25 is announced.

1           (2) If the accused shows that additional time is  
2 required for the accused to submit such matters, the convening  
3 authority or other person taking action under this article,  
4 for good cause, may extend the applicable period under  
5 subdivision (1) for up to an additional 60 days as determined  
6 by the convening authority or person taking action under this  
7 article.

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

11           (4) The accused may waive the right to make a  
12 submission to the convening authority under subdivision (1). A  
13 waiver must be made in writing and may not be revoked. For the  
14 purposes of subdivision (c)(2), the time within which the  
15 accused may make a submission under this subsection shall be  
16 deemed to have expired upon the submission of such a waiver to  
17 the convening authority.

18           (c)(1) The authority under this article to modify  
19 the findings and sentence of a court-martial is a matter of  
20 command prerogative involving the sole discretion of the  
21 convening authority. If it is impractical for the convening  
22 authority to act, the convening authority shall forward the  
23 case to a person exercising general courts-martial  
24 jurisdiction who may take action under this article.

1           (2) Action on the sentence of a court-martial shall  
2 be taken by the convening authority or by another person  
3 authorized to act under this article. Such action may be taken  
4 only after consideration of any matters submitted by the  
5 accused under subsection (b) or after the time for submitting  
6 such matters expires, whichever is earlier. The convening  
7 authority or other person taking such action, in that person's  
8 sole discretion may approve, disapprove, commute, or suspend  
9 the sentence in whole or in part.

10           (3) Action on the findings of a court-martial by the  
11 convening authority or other person acting on the sentence is  
12 not required. However, such person, in the person's sole  
13 discretion may do any of the following:

14           a. Dismiss any charge or specification by setting  
15 aside a finding of guilty thereto.

16           b. Change a finding of guilty to a charge or  
17 specification to a finding of guilty to an offense that is a  
18 lesser included offense of the offense stated in the charge or  
19 specification.

20           c. Set aside a reduction in rank and pay grade, even  
21 if the convening authority does not aside, remit, or reduce  
22 the confinement adjudged by the court-martial.

23           (d) Before acting under this article on any general  
24 or special court-martial case in which there is a finding of  
25 guilt, the convening authority or other person taking action

1 under this article shall obtain and consider the written  
2 recommendation of a judge advocate. The convening authority or  
3 other person taking action under this article shall refer the  
4 record of trial to the judge advocate, and the judge advocate  
5 shall use such record in the preparation of the  
6 recommendation. The recommendation of the judge advocate shall  
7 include such matters as may be prescribed by regulation and  
8 shall be served on the accused, who may submit any matter in  
9 response under subsection (b). Failure to object in the  
10 response to the recommendation or to any matter attached to  
11 the recommendation waives the right to object thereto.

12 (e) (1) The convening authority or other person  
13 taking action under this article, in the person's sole  
14 discretion, may order a proceeding in revision or a rehearing.

15 (2) A proceeding in revision may be ordered if there  
16 is an apparent error or omission in the record or if the  
17 record shows improper or inconsistent action by a  
18 court-martial with respect to the findings or sentence that  
19 can be rectified without material prejudice to the substantial  
20 rights of the accused. In no case, however, may a proceeding  
21 in revision do any of the following:

22 a. Reconsider a finding of not guilty of any  
23 specification or a ruling which amounts to a finding of not  
24 guilty.



1           b. Reconsider a finding of not guilty of any charge,  
2 unless there has been a finding of guilty under a  
3 specification laid under that charge, which sufficiently  
4 alleges a violation of some article of this code.

5           c. Increase the severity of the sentence unless the  
6 sentence prescribed for the offense is mandatory.

7           (3) A rehearing may be ordered by the convening  
8 authority or other person taking action under this article if  
9 that person disapproves the findings and sentence and states  
10 the reasons for disapproval of the findings. If such person  
11 disapproves the findings and sentence and does not order a  
12 rehearing, that person shall dismiss the charges. A rehearing  
13 as to the findings may not be ordered where there is a lack of  
14 sufficient evidence in the record to support the findings. A  
15 rehearing as to the sentence may be ordered if the convening  
16 authority or other person taking action under this subsection  
17 disapproves the sentence.

18           Article 61. Withdrawal of appeal.

19           (a) In each case subject to appellate review under  
20 this code, the accused may file with the convening authority a  
21 statement expressly withdrawing the right of the accused to  
22 such appeal. Such a withdrawal shall be signed by both the  
23 accused and his or her defense counsel and must be filed in  
24 accordance with appellate procedures as provided by law.

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

3 Article 62. Appeal by the state.

4 (a) (1) In a trial by court-martial in which a  
5 punitive discharge may be adjudged, the state may appeal the  
6 following, other than a finding of not guilty with respect to  
7 the charge or specification by the members of the  
8 court-martial or an order or ruling that is, or that amounts  
9 to, a finding of not guilty with respect to the charge or  
10 specification:

11 a. An order or ruling of the military judge which  
12 terminates the proceedings with respect to a charge or  
13 specification.

14 b. An order or ruling which excludes evidence that  
15 is substantial proof of a fact material in the proceeding.

16 c. An order or ruling which directs the disclosure  
17 of classified information.

18 d. An order or ruling which imposes sanctions for  
19 nondisclosure of classified information.

20 e. A refusal of the military judge to issue a  
21 protective order sought by the state to prevent the disclosure  
22 of classified information.

23 f. A refusal by the military judge to enforce an  
24 order described in paragraph e. that has previously been  
25 issued by appropriate authority.

1           (2) An appeal of an order or ruling may not be taken  
2 unless the trial counsel provides the military judge with  
3 written notice of appeal from the order or ruling within 72  
4 hours of the order or ruling. Such notice shall include a  
5 certification by the trial counsel that the appeal is not  
6 taken for the purpose of delay and, if the order or ruling  
7 appealed is one which excludes evidence, that the evidence  
8 excluded is substantial proof of a fact material in the  
9 proceeding.

10           (3) An appeal under this article shall be diligently  
11 prosecuted as provided by law.

12           (b) An appeal under this article shall be forwarded  
13 to the court prescribed in Article 67a. In ruling on an appeal  
14 under this article, that court may act only with respect to  
15 matters of law.

16           (c) Any period of delay resulting from an appeal  
17 under this article shall be excluded in deciding any issue  
18 regarding denial of a speedy trial unless an appropriate  
19 authority determines that the appeal was filed solely for the  
20 purpose of delay with the knowledge that it was totally  
21 frivolous and without merit.

22           Article 63. Rehearings.

23           Each rehearing under this code shall take place  
24 before a court-martial composed of members not members of the  
25 court-martial which first heard the case. Upon a rehearing the

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

15 Article 64. Review by the Senior Judge Advocate.

16 (a) Each general and special court-martial case in  
17 which there has been a finding of guilty shall be reviewed by  
18 the senior judge advocate, or a designee for the convening  
19 authority. The senior judge advocate, or designee, may not  
20 review a case under this subsection if that person has acted  
21 in the same case as an accuser, investigating officer, member  
22 of the court, military judge, or counsel or has otherwise  
23 acted on behalf of the prosecution or defense. The senior  
24 judge advocate's review shall be in writing and shall contain  
25 all of the following:

1 (1) Conclusions as to whether:

2 a. The court had jurisdiction over the accused and  
3 the offense.

4 b. The charge and specification stated an offense.

5 c. The sentence was within the limits prescribed as  
6 a matter of law.

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

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

13 (b) The record of trial and related documents in  
14 each case reviewed under subsection (a) shall be sent for  
15 action to the general court-martial convening authority if any  
16 of the following occur:

17 (1) The judge advocate who reviewed the case  
18 recommends corrective action.

19 (2) The sentence approved under Article 60(c) of  
20 this code extends to dismissal, a bad-conduct or dishonorable  
21 discharge, or confinement for more than six months.

22 (3) Such action is otherwise required by regulations  
23 of the Adjutant General.

24 (c) (1) The convening authority may do any of the  
25 following:

1           a. Disapprove or approve the findings or sentence,  
2 in whole or in part.

3           b. Remit, commute, or suspend the sentence in whole  
4 or in part.

5           c. Except where the evidence was insufficient at the  
6 trial to support the findings, order a rehearing on the  
7 findings, on the sentence, or on both.

8           d. Dismiss the charges.

9           (2) If a rehearing is ordered but the convening  
10 authority finds a rehearing impracticable, the convening  
11 authority shall dismiss the charges.

12           (3) If the opinion of the senior judge advocate, or  
13 designee, in the senior judge advocate's review under  
14 subsection (a) is that corrective action is required as a  
15 matter of law and if the convening authority does not take  
16 action that is at least as favorable to the accused as that  
17 recommended by the judge advocate, the record of trial and  
18 action thereon shall be sent to the Adjutant General for  
19 review and action as deemed appropriate. In cases where the  
20 Adjutant General is the convening authority, the record of  
21 trial and action thereon shall be sent to the Governor for  
22 review and action as deemed appropriate. The Adjutant General  
23 or Governor shall act on this decision within 30 days of  
24 receiving the opinion and record of trial.

1           Article 65. Disposition of records after review by  
2 the convening authority.

3           Except as otherwise required by this code, all  
4 records of trial and related documents shall be transmitted  
5 and disposed of as prescribed by regulation and provided by  
6 law.

7           Article 66. Military Court-Martial Review Panel.

8           The Governor shall establish a Military  
9 Court-Martial Review Panel which shall be composed of one or  
10 more panels, and each such panel shall be composed of not less  
11 than three appellate military judges. The military judges  
12 selected for the Military Court-Martial Review Panel shall be  
13 active or retired judge advocates of the Department of Defense  
14 of the United States. Further composition and selection of  
15 judges for the panel shall be established by regulation  
16 pursuant to Sections 131 and 271 of the Official Recompilation  
17 of the Constitution of Alabama of 1901, as amended. For the  
18 purpose of reviewing courts-martial cases, the body may sit in  
19 panels or as a whole in accordance with the rules prescribed  
20 by the Governor. All appeals of decisions of courts-martial  
21 shall proceed directly to the Military Court-Martial Review  
22 Panel.

23           Article 67. Review by State Appellate Authority

24           Decisions of the Military Court-Martial Review Panel  
25 are subject to review by the Alabama Supreme Court by writ of

1 certiorari pursuant to Section 140 of Official ReCompilation  
2 of the Constitution of Alabama of 1901, as amended. The  
3 appellate procedures to be followed shall be those provided by  
4 law for the appeal of criminal cases thereto.

5 Article 68. [Reserved].

6 Article 69. [Reserved].

7 Article 70. Appellate counsel.

8 (a) The senior judge advocate shall detail a judge  
9 advocate as appellate government counsel to represent the  
10 state in the review or appeal of cases specified in Article 67  
11 and before any federal court when requested to do so by the  
12 state Attorney General.

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

16 (c) Upon the appeal by an accused, the accused has  
17 the right to be represented by military counsel before any  
18 reviewing authority.

19 (d) Upon the request of an accused entitled to be so  
20 represented, the regional defense counsel shall appoint a  
21 judge advocate to represent the accused in the review or  
22 appeal of cases specified in subsections (b) and (c).

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



1           Article 71. Execution of sentence; suspension of  
2 sentence

3           (a) If the sentence of the court-martial extends to  
4 dismissal or bad-conduct discharge and if the right of the  
5 accused to appellate review is not waived, and an appeal is  
6 not withdrawn under Article 61, that part of the sentence  
7 extending to dismissal or bad-conduct discharge may not be  
8 executed until there is a final judgment as to the legality of  
9 the proceedings. A judgment as to the legality of the  
10 proceedings is final in such cases when review is completed by  
11 an appellate court prescribed in Article 67, and is deemed  
12 final by the law of the State of Alabama.

13           (b) If the sentence of the court-martial extends to  
14 dismissal or bad conduct discharge and if the right of the  
15 accused to appellate review is waived, or an appeal is  
16 withdrawn under Article 61, that part of the sentence  
17 extending to dismissal or a bad-conduct discharge may not be  
18 executed until review of the case by the senior judge advocate  
19 and any action on that review under Article 64 is completed.  
20 Any other part of a court-martial sentence may be ordered  
21 executed by the convening authority or other person acting on  
22 the case under Article 60 when so approved under that article.

23           (c) The convening authority may suspend the  
24 execution of any sentence or part thereof.

25           Article 72. Vacation of suspension.

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

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

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

20           Article 73. Petition for a new trial.

21           At any time within two years after approval by the  
22 convening authority of a court-martial sentence, the accused  
23 may petition the Adjutant General for a new trial on the  
24 grounds of newly discovered evidence or fraud on the  
25 court-martial.

1           At any time within 45 days of discovery of fraud on  
2 the court-martial or newly discovered evidence, the accused  
3 may petition for new trial with the Military Court-Martial  
4 Review Panel. In the event the accused's case is pending  
5 before the Alabama Supreme Court, the appeal shall be stayed  
6 until the Military Court Martial Review Panel rules on the  
7 petition.

8           Article 74. Remission and suspension.

9           (a) The Governor may remit or suspend any part or  
10 amount of the unexecuted part of any sentence, including all  
11 uncollected forfeitures.

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

15           Article 75. Restoration.

16           (a) Under such regulations as may be prescribed, all  
17 rights, privileges, and property affected by an executed part  
18 of a court-martial sentence which has been set aside or  
19 disapproved, except an executed dismissal or discharge, shall  
20 be restored unless a new trial or rehearing is ordered and  
21 such executed part is included in a sentence imposed upon the  
22 new trial or rehearing.

23           (b) If a previously executed sentence of or  
24 bad-conduct discharge is not imposed on a new trial, the  
25 Governor shall substitute therefor a form of discharge

1 authorized for administrative issuance unless the accused is  
2 to serve out the remainder of the accused's enlistment.

3 Article 76. Finality of proceedings, findings, and  
4 sentences.

5 The appellate review of records of trial provided by  
6 this code, the proceedings, findings, and sentences of  
7 courts-martial as approved, reviewed, or affirmed as required  
8 by this code, and all dismissals and discharges carried into  
9 execution under sentences by courts-martial following  
10 approval, review, or affirmation as required by this code, are  
11 final and conclusive. Orders publishing the proceedings of  
12 courts-martial and all action taken pursuant to those  
13 proceedings are binding upon all departments, courts,  
14 agencies, and officers of the United States and the several  
15 states, subject only to action upon a petition for a new trial  
16 as provided in Article 73 and to action under Article 74.

17 Article 76a. Leave required to be taken pending  
18 review of certain court-martial convictions.

19 Under regulations prescribed, an accused who has  
20 been sentenced by a court-martial may be required to take  
21 leave pending completion of action under this article if the  
22 sentence, as approved under Article 60 of this code, includes  
23 an unsuspended dismissal or an unsuspended dishonorable or  
24 bad-conduct discharge. The accused may be required to begin  
25 such leave on the date on which the sentence is approved under

1 Article 60 or at any time after such date, and such leave may  
2 be continued until the date on which action under this article  
3 is completed or may be terminated at any earlier time.

4 Article 76b. Lack of mental capacity or mental  
5 responsibility.

6 The determination of lack of mental capacity or  
7 mental responsibility shall be determined pursuant to Alabama  
8 state law as well as regulations of the Department of Defense  
9 of the United States and the laws of the United States  
10 governing the Armed Forces of the United States as required  
11 under Section 272 of the Official Recompilation of the  
12 Constitution of Alabama of 1901, as amended.

13 PART X. PUNITIVE ARTICLES.

14 Article 77. Principals.

15 Any person subject to this code who does either of  
16 the following is a principal:

17 (1) Commits an offense punishable by this code, or  
18 aids, abets, counsels, commands, or procures its commission.

19 (2) Causes an act to be done which if directly  
20 performed by him or her would be punishable by this code.

21 Article 78. Accessory after the fact.

22 Any person subject to this code who, knowing that an  
23 offense punishable by this code has been committed, receives,  
24 comforts, or assists the offender in order to hinder or

1 prevent his or her apprehension, trial, or punishment shall be  
2 punished as a court-martial may direct.

3 Article 79. Conviction of lesser included offense.

4 An accused may be found guilty of an offense  
5 necessarily included in the offense charged or of an attempt  
6 to commit either the offense charged or an offense necessarily  
7 included therein.

8 Article 80. Attempts.

9 (a) An act, done with specific intent to commit an  
10 offense under this code, amounting to more than mere  
11 preparation and tending, even though failing, to effect its  
12 commission, is an attempt to commit that offense.

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

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

20 Article 81. Conspiracy.

21 Any person subject to this code who conspires with  
22 any other person to commit an offense under this code, if one  
23 or more of the conspirators does an act to effect the object  
24 of the conspiracy, shall be punished as a court-martial may  
25 direct.

1 Article 82. Solicitation.

2 Any person subject to this code who solicits or  
3 advises another to commit a violation of this code, if the  
4 offense solicited or advised is attempted or committed, be  
5 punished with the punishment provided for the commission of  
6 the offense, but, if the offense solicited or advised is not  
7 committed or attempted, the person shall be punished as a  
8 court-martial may direct.

9 Article 83. Fraudulent enlistment, appointment, or  
10 separation.

11 Any person who does either of the following shall be  
12 punished as a court-martial may direct:

13 (1) Procures his or her own enlistment or  
14 appointment in the state military forces by knowingly false  
15 representation or deliberate concealment as to his or her  
16 qualifications for that enlistment or appointment and receives  
17 pay or allowances thereunder.

18 (2) Procures his or her own separation from the  
19 Alabama National Guard by knowingly false representation or  
20 deliberate concealment as to his or her eligibility for that  
21 separation.

22 Article 84. Unlawful enlistment, appointment, or  
23 separation.

24 Any person subject to this code who effects an  
25 enlistment or appointment in or a separation from the Alabama

1 National Guard of any person who is known to him or her to be  
2 ineligible for that enlistment, appointment, or separation  
3 because it is prohibited by law, regulation, or order shall be  
4 punished as a court-martial may direct.

5 Article 85. Desertion

6 (a) Any member of the Alabama National Guard who  
7 does any of the following is guilty of desertion:

8 (1) Without authority goes or remains absent from  
9 his or her unit, organization, or place of duty with intent to  
10 remain away permanently.

11 (2) Quits his or her unit, organization, or place of  
12 duty with intent to avoid hazardous duty or to shirk important  
13 service.

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

21 (b) Any commissioned officer of the Alabama National  
22 Guard who, after tender of his or her resignation and before  
23 notice of its acceptance, quits his or her post or proper  
24 duties without leave and with intent to remain away  
25 permanently is guilty of desertion.



1 (c) Any person found guilty of desertion or attempt  
2 to desert shall be punished as a court-martial may direct.

3 Article 86. Absence without leave.

4 Any person subject to this code who, without  
5 authority, does any of the following shall be punished as a  
6 court-martial may direct:

7 (1) Fails to go to his or her appointed place of  
8 duty at the time prescribed.

9 (2) Goes from the appointed place of duty.

10 (3) Absents himself or herself or remains absent  
11 from his or her unit, organization, or place of duty at which  
12 he or she is required to be at the time prescribed.

13 Article 87. Missing movement.

14 Any person subject to this code who through neglect  
15 or design misses the movement of a ship, aircraft, or unit  
16 with which he or she is required in the course of duty to move  
17 shall be punished as a court-martial may direct.

18 Article 88. [Reserve].

19 Article 89. Disrespect toward superior commissioned  
20 officer.

21 Any person subject to this code who behaves with  
22 disrespect toward his or her superior commissioned officer  
23 shall be punished as a court-martial may direct.

24 Article 90. Assaulting or willfully disobeying  
25 superior commissioned officer.

1           Any person subject to this code who does either of  
2 the following shall be punished as a court-martial may direct.

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

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

9           Article 91. Insubordinate conduct toward warrant  
10 officer, noncommissioned officer, or petty officer.

11           Any warrant officer or enlisted member who does any  
12 of the following shall be punished as a court-martial may  
13 direct:

14           (1) Strikes or assaults a warrant officer,  
15 noncommissioned officer, or petty officer, while that officer  
16 is in the execution of his or her office.

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

19           (3) Treats with contempt or is disrespectful in  
20 language or deportment toward a warrant officer,  
21 noncommissioned officer, or petty officer, while that officer  
22 is in the execution of his or her office.

23           Article 92. Failure to obey order or regulation.

24           Any person subject to this code who does any of the  
25 following shall be punished as a court-martial may direct:

1           (1) Violates or fails to obey any lawful general  
2 order or regulation.

3           (2) Having knowledge of any other lawful order  
4 issued by a member of the Alabama National Guard, which it is  
5 his or her duty to obey, fails to obey the order.

6           (3) Is derelict in the performance of his or her  
7 duties.

8           Article 93. Cruelty and maltreatment.

9           Any person subject to this code who is guilty of  
10 cruelty toward, or oppression or maltreatment of, any person  
11 subject to his or her orders shall be punished as a  
12 court-martial may direct.

13           Article 94. Mutiny or sedition.

14           (a) Any person subject to this code who:

15           (1) With intent to usurp or override lawful military  
16 authority, refuses, in concert with any other person, to obey  
17 orders or otherwise do his or her duty or creates any violence  
18 or disturbance is guilty of mutiny.

19           (2) With intent to cause the overthrow or  
20 destruction of lawful civil authority, creates, in concert  
21 with any other person, revolt, violence, or other disturbance  
22 against that authority is guilty of sedition.

23           (3) Fails to do his or her utmost to prevent and  
24 suppress a mutiny or sedition being committed in his or her  
25 presence, or fails to take all reasonable means to inform his

1 or her superior commissioned officer or commanding officer of  
2 a mutiny or sedition which he or she knows or has reason to  
3 believe is taking place is guilty of a failure to suppress or  
4 report a mutiny or sedition.

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

9 Article 95. Resistance, flight, breach of arrest,  
10 and escape.

11 Any person subject to this code who does any of the  
12 following shall be punished as a court-martial may direct:

13 (1) Resists apprehension.

14 (2) Flees from apprehension.

15 (3) Breaks arrest.

16 (4) Escapes from custody or confinement.

17 Article 96. Releasing prisoner without proper  
18 authority.

19 Any person subject to this code who, without proper  
20 authority, releases any prisoner committed to his or her  
21 charge, or who through neglect or design suffers any such  
22 prisoner to escape, shall be punished as a court-martial may  
23 direct, whether or not the prisoner was committed in strict  
24 compliance with law.

25 Article 97. Unlawful detention.

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

5           Article 98. Noncompliance with procedural rules

6           Any person subject to this code who does either of  
7 the following shall be punished as a court-martial may direct:

8           (1) Is responsible for unnecessary delay in the  
9 disposition of any case of a person accused of an offense  
10 under this code.

11           (2) Knowingly and intentionally fails to enforce or  
12 comply with any provision of this code regulating the  
13 proceedings before, during, or after trial of an accused.

14           Article 99. Misbehavior before the enemy.

15           Any person subject to this code who before or in the  
16 presence of the enemy does any of the following shall be  
17 punishable as a court-martial may direct:

18           (1) Runs away.

19           (2) Shamefully abandons, surrenders, or delivers up  
20 any command, unit, place, or military property which it is his  
21 or her duty to defend.

22           (3) Through disobedience, neglect, or intentional  
23 misconduct endangers the safety of any such command, unit,  
24 place, or military property.

25           (4) Casts away his or her arms or ammunition.

1           (5) Is guilty of cowardly conduct.

2           (6) Quits his or her place of duty to plunder or  
3 pillage.

4           (7) Causes false alarms in any command, unit, or  
5 place under control of the Armed Forces of the United States  
6 or the state military forces.

7           (8) Willfully fails to do his or her utmost to  
8 encounter, engage, capture, or destroy any enemy troops,  
9 combatants, vessels, aircraft, or any other thing, which it is  
10 his or her duty so to encounter, engage, capture, or destroy.

11           (9) Does not afford all practicable relief and  
12 assistance to any troops, combatants, vessels, or aircraft of  
13 the Armed Forces belonging to the United States or its allies,  
14 to the state, or to any other state, when engaged in battle.

15           Article 100. Subordinate compelling surrender.

16           Any person subject to this code who compels or  
17 attempts to compel the Commander of the Alabama National  
18 Guard, or of any other state, place, vessel, aircraft, or  
19 other military property, or of any body of members of the  
20 Armed Forces, to give it up to an enemy or to abandon it, or  
21 who strikes the colors or flag to an enemy without proper  
22 authority, shall be punished as a court-martial may direct.

23           Article 101. Improper use of countersign.

24           Any person subject to this code who in time of war  
25 discloses the parole or countersign to any person not entitled

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

6 Article 102. Forcing a safeguard.

7 Any person subject to this code who forces a  
8 safeguard shall be punished as a court-martial may direct.

9 Article 103. Captured or abandoned property.

10 (a) All persons subject to this code shall secure  
11 all public property taken for the service of the United States  
12 or the state, and shall give notice and turn over to the  
13 proper authority without delay all captured or abandoned  
14 property in their possession, custody, or control.

15 (b) Any person subject to this code who does any of  
16 the following shall be punished as a court-martial may direct:

17 (1) Fails to carry out the duties prescribed in  
18 subsection (a).

19 (2) Buys, sells, trades, or in any way deals in or  
20 disposes of taken, captured, or abandoned property, whereby he  
21 or she receives or expects any profit, benefit, or advantage  
22 to himself or herself another directly or indirectly connected  
23 with himself or herself.

24 (3) Engages in looting or pillaging.

25 Article 104. Aiding the enemy.

1           Any person subject to this code who does either of  
2 the following shall be punished as a court-martial may direct:

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

5           (2) Without proper authority, knowingly harbors or  
6 protects or gives intelligence to, or communicates or  
7 corresponds with or holds any intercourse with the enemy,  
8 either directly or indirectly.

9           Article 105. Misconduct as prisoner.

10          Any person subject to this code who, while in the  
11 hands of the enemy in time of war, does either of the  
12 following shall be punished as a court-martial may direct:

13          (1) For the purpose of securing favorable treatment  
14 by his or her captors acts without proper authority in a  
15 manner contrary to law, custom, or regulation, to the  
16 detriment of others of whatever nationality held by the enemy  
17 as civilian or military prisoners.

18          (2) While in a position of authority over such  
19 persons maltreats them without justifiable cause.

20          Article 106. [Reserved].

21          Article 106a. [Reserved].

22          Article 107. False official statements.

23          Any person subject to this code who, with intent to  
24 deceive, signs any false record, return, regulation, order, or  
25 other official document made in the line of duty, knowing it



1 to be false, or makes any other false official statement made  
2 in the line of duty, knowing it to be false, shall be punished  
3 as a court-martial may direct.

4 Article 108. Military property – Loss, damage,  
5 destruction, or wrongful disposition.

6 Any person subject to this code who, without proper  
7 authority does any of the following regarding any military  
8 property of the United States or of any state, shall be  
9 punished as a court-martial may direct:

10 (1) Sells or otherwise disposes of.

11 (2) Willfully or through neglect damages, destroys,  
12 or loses.

13 (3) Willfully or through neglect suffers to be lost,  
14 damaged, destroyed, sold, or wrongfully disposed of.

15 Article 109. Property other than military property –  
16 Waste, spoilage, or destruction.

17 Any person subject to this code who willfully or  
18 recklessly wastes, spoils, or otherwise willfully and  
19 wrongfully destroys or damages any property other than  
20 military property of the United States or of any state shall  
21 be punished as a court-martial may direct.

22 Article 110. Improper hazarding of vessel.

23 (a) Any person subject to this code who willfully  
24 and wrongfully hazards or suffers to be hazarded any vessel of  
25 the Armed Forces of the United States or any state military

1 forces shall suffer such punishment as a court-martial may  
2 direct.

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

7 Article 111. [Reserved].

8 Article 112. Drunk on duty.

9 Any person subject to this code, other than a  
10 sentinel or lookout, who is found drunk on duty, shall be  
11 punished as a court-martial may direct.

12 Article 112a. Wrongful use, possession, etc., of  
13 controlled substances.

14 (a) Any person subject to this code who wrongfully  
15 uses, possesses, manufactures, distributes, imports into the  
16 customs territory of the United States, exports from the  
17 United States, or introduces into an installation, vessel,  
18 vehicle, or aircraft used by or under the control of the Armed  
19 Forces of the United States or of any state military forces a  
20 substance described in subsection (b) shall be punished as a  
21 court-martial may direct.

22 (b) The substances referred to in subsection (a) are  
23 the following:

24 (1) Opium, heroin, cocaine, amphetamine, lysergic  
25 acid diethylamide, methamphetamine, phencyclidine, barbituric

1 acid, and marijuana and any compound or derivative of any such  
2 substance.

3 (2) Any substance not specified in subdivision (1)  
4 that is listed on a schedule of controlled substances  
5 prescribed by the President for the purposes of the Uniform  
6 Code of Military Justice of the Armed Forces of the United  
7 States, 10 U.S.C. § 801 et seq.

8 (3) Any other substance not specified in subdivision  
9 (1) or contained on a list prescribed by the President under  
10 subdivision (2) that is listed in Schedules I through V of  
11 Article 202 of the Controlled Substances Act, 21 U.S.C. § 812  
12 or that is listed under Title 20 of the Code of Alabama 1975.

13 Article 112b. Wrongful possession, etc., of drug  
14 paraphernalia.

15 Any person subject to this code who wrongfully  
16 possesses, manufactures, distributes, imports into the customs  
17 territory of the United States, exports from the United  
18 States, or introduces into an installation, vessel, vehicle,  
19 or aircraft used by or under the control of the Armed Forces  
20 of the United States or of any state military forces drug  
21 paraphernalia as defined in Section 13A-12-260, Code of  
22 Alabama 1975, shall be punished as a court-martial may direct.

23 Article 113. Misbehavior of sentinel.

24 Any sentinel or lookout who is found drunk or  
25 sleeping upon his or her post, or leaves it before being

1 regularly relieved, shall be punished as a court-martial may  
2 direct.

3 Article 114. Dueling.

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

9 Article 115. Malingering.

10 Any person subject to this code who for the purpose  
11 of avoiding work, duty, or service does either of the  
12 following shall be punished as a court-martial may direct:

13 (1) Feigns illness, physical disablement, mental  
14 lapse, or derangement.

15 (2) Intentionally inflicts self-injury.

16 Article 116. Riot or breach of peace.

17 Any person subject to this code who causes or  
18 participates in any riot or breach of the peace shall be  
19 punished as a court-martial may direct.

20 Article 117. Provoking speeches or gestures.

21 Any person subject to this code who uses provoking  
22 or reproachful words or gestures towards any other person  
23 subject to this code shall be punished as a court-martial may  
24 direct.

25 Article 118. [Reserved].

1 Article 119. [Reserved].

2 Article 120. [Reserved].

3 Article 121. Larceny and wrongful appropriation.

4 (a) Any person subject to this code who wrongfully  
5 takes, obtains, or withholds, by any means, from the  
6 possession of the owner or of any other person any money,  
7 personal property, or article of value of any kind:

8 (1) With intent permanently to deprive or defraud  
9 another person of the use and benefit of property or to  
10 appropriate it to his or her own use or the use of any person  
11 other than the owner, steals that property and is guilty of  
12 larceny.

13 (2) With intent temporarily to deprive or defraud  
14 another person of the use and benefit of property or to  
15 appropriate it to his or her own use or the use of any person  
16 other than the owner, is guilty of wrongful appropriation.

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

19 Article 122. [Reserved].

20 Article 123. Forgery.

21 Any person subject to this code who, with intent to  
22 defraud does either of the following is guilty of forgery and  
23 shall be punished as a court-martial may direct:

24 (1) Falsely makes or alters any signature, to, or  
25 any part of, any writing which would, if genuine, apparently

1 impose a legal liability on another or change his or her legal  
2 right or liability to his or her prejudice.

3 (2) Utters, offers, issues, or transfers such a  
4 writing, known by him or her to be so made or altered; is  
5 guilty of forgery and shall be punished as a court-martial may  
6 direct.

7 Article 123a. Making, drawing, or uttering check,  
8 draft, or order without sufficient funds.

9 (a) Any person subject to this code who, for the  
10 procurement of any article or thing of value, with intent to  
11 defraud, or For the payment of any past due obligation, or for  
12 any other purpose, with intent to deceive; makes, draws,  
13 utters, or delivers any check, draft, or order for the payment  
14 of money upon any bank or other depository, knowing at the  
15 time that the maker or drawer has not or will not have  
16 sufficient funds in, or credit with, the bank or other  
17 depository for the payment of that check, draft, or order in  
18 full upon its presentment, shall be punished as a  
19 court-martial may direct.

20 (b) The making, drawing, uttering, or delivering by  
21 a maker or drawer of a check, draft, or order, payment of  
22 which is refused by the drawee because of insufficient funds  
23 of the maker or drawer in the drawee's possession or control,  
24 is prima facie evidence of his or her intent to defraud or  
25 deceive and of his or her knowledge of insufficient funds in,

1 or credit with, that bank or other depository, unless the  
2 maker or drawer pays the holder the amount due within five  
3 days after receiving notice, orally or in writing, that the  
4 check, draft, or order was not paid on presentment. In this  
5 article , the word "credit" means an arrangement or  
6 understanding, express or implied, with the bank or other  
7 depository for the payment of that check, draft, or order.

8 Article 124. [Reserved].

9 Article 125. [Reserved].

10 Article 126. [Reserved].

11 Article 127. Extortion.

12 Any person subject to this code who communicates  
13 threats to another person with the intention thereby to obtain  
14 anything of value or any acquittance, advantage, or immunity  
15 is guilty of extortion and shall be punished as a  
16 court-martial may direct.

17 Article 128. Assault.

18 (a) Any person subject to this code who attempts or  
19 offers with unlawful force or violence to do bodily harm to  
20 another person, whether or not the attempt or offer is  
21 consummated, is guilty of assault and shall be punished as a  
22 court-martial may direct.

23 (b) Any person subject to this chapter who does  
24 either of the following is guilty of aggravated assault and  
25 shall be punished as a court-martial may direct:

1           (1) Commits an assault with a dangerous weapon or  
2 other means or force likely to produce death or grievous  
3 bodily harm.

4           (2) Commits an assault and intentionally inflicts  
5 grievous bodily harm with or without a weapon.

6           Article 129. [Reserved].

7           Article 130. Housebreaking.

8           Any person subject to this code who unlawfully  
9 enters the building or structure of another with intent to  
10 commit a criminal offense therein is guilty of housebreaking  
11 and shall be punished as a court-martial may direct.

12          Article 131. Perjury.

13          Any person subject to this code who in a judicial  
14 proceeding or in a course of justice willfully and corruptly  
15 does either of the following is guilty of perjury and shall be  
16 punished as a court-martial may direct:

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

20           (2) In any declaration, certificate, verification,  
21 or statement under penalty of perjury as permitted under 28  
22 U.S.C. § 1746, or Section 13A-10-100, et seq., Code of Alabama  
23 1975, subscribes any false statement material to the issue or  
24 matter of inquiry.

25          Article 132. Frauds against the government.



1           Any person subject to this code who does any of the  
2 following shall, upon conviction, be punished as a  
3 court-martial may direct:

4           (1) Knowing it to be false or fraudulent, makes any  
5 claim against the United States, the state, or any officer  
6 thereof or who, for the purpose of obtaining the approval,  
7 allowance, or payment of any claim against the United States,  
8 the state, or any officer thereof.

9           (2) For the purpose of obtaining the approval,  
10 allowance, or payment of any claim against the United States,  
11 the state, or any officer thereof makes or uses any writing or  
12 other paper knowing it to contain any false or fraudulent  
13 statements, makes any oath, affirmation, or certification to  
14 any fact or to any writing or other paper knowing the oath,  
15 affirmation or certification to be false, or forges or  
16 counterfeits any signature upon any writing or other paper, or  
17 uses any such signature knowing it to be forged or  
18 counterfeited.

19           (3) 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  
25 certificate or receipt.

1           (4) Being authorized to make or deliver any paper  
2 certifying the receipt of any property of the United States or  
3 the state, furnished or intended for the Armed Forces of the  
4 United States or the state military forces, makes or delivers  
5 to any person such writing without having full knowledge of  
6 the truth of the statements therein contained and with intent  
7 to defraud the United States or the state.

8           Article 133. Conduct unbecoming an officer and a  
9 gentleman.

10           Any commissioned officer, cadet, candidate, or  
11 midshipman who is convicted of conduct unbecoming an officer  
12 and a gentleman shall be punished as a court-martial may  
13 direct.

14           Article 134. General article.

15           Though not specifically mentioned in this code, all  
16 disorders and neglects to the prejudice of good order and  
17 discipline in the state military forces and all conduct of a  
18 nature to bring discredit upon the state military forces shall  
19 be taken cognizance of by a court-martial and punished at the  
20 discretion of a military court. However, where a crime  
21 constitutes an offense that violates both this code and the  
22 criminal laws of the state where the offense occurs or  
23 criminal laws of the United States, jurisdiction of the  
24 military court must be determined in accordance with Article  
25 2 (b) .

1           PART XI. MISCELLANEOUS PROVISIONS.

2           Article 135. Courts of inquiry.

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

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

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

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

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

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

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

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

12 Article 136. Authority to administer oaths and to  
13 act as notary.

14 (a) The following persons may administer oaths for  
15 the purposes of military administration, including military  
16 justice:

17 (1) All judge advocates.

18 (2) All summary courts-martial.

19 (3) All adjutants, assistant adjutants, acting  
20 adjutants, and personnel adjutants.

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

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

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

3           (2) The president and the counsel for the court of  
4 any court of inquiry.

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

6           (4) All persons detailed to conduct an  
7 investigation.

8           (5) All recruiting officers.

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

11           (c) The signature without seal of any such person,  
12 together with the title of his or her office, is prima facie  
13 evidence of the person's authority.

14           Article 137. Articles to be explained.

15           (a) (1) The articles of this code shall be carefully  
16 explained to each enlisted member at the time, or within one  
17 year after, the member joins the Alabama National Guard.

18           (2) Such articles shall be explained again:

19           a. After the member has completed basic or recruit  
20 training.

21           b. At the time when the member reenlists.

22           (b) The text of the code and of the regulations  
23 prescribed under such code shall be made available to a member  
24 of the state military forces, upon request by the member, for  
25 the member's personal examination.

1 Article 138. Complaints of wrongs.

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

14 Article 139. [Reserved].

15 Article 140. Delegation by the Governor.

16 The Governor may delegate any authority vested in  
17 the Governor under this code, and provide for the  
18 subdelegation of any such authority, except the power given  
19 the Governor by Article 22.

20 Article 141. [Reserved].

21 Article 142. [Reserved].

22 Article 143. Uniformity of interpretation.

23 This code shall be so construed as to effectuate its  
24 general purpose to make it uniform, so far as practical, with  
25 the Uniform Code of Military Justice, Chapter 47 of Title 10,

1 U.S.C. in conformance with Section 272 of the Official  
2 Recompilation of the Constitution of Alabama of 1901, as  
3 amended. .

4 Article 144. Immunity for action of military courts.

5 All persons acting within their official capacity  
6 under the provisions of this code shall be immune from any  
7 civil liability to the same extent as judicial officers within  
8 the State of Alabama Unified Judicial System.

9 Article 145. Severability.

10 The provisions of this code are hereby declared to  
11 be severable and if any provision of this code or the  
12 application of such provision to any person or circumstance is  
13 declared invalid for any reason, such declaration shall not  
14 affect the validity of the remaining portions of this code.

15 Article 146. Short Title.

16 This act may be cited as the Alabama Code of  
17 Military Justice (ACMJ).

18 Article 147.

19 The act repeals Sections 31-2-92 to 31-2-98,  
20 inclusive, and Sections 31-2-101, 31-2-103, and 31-2-127, Code  
21 of Alabama 1975.

22 Article 148.

23 To the extent not inconsistent with existing law,  
24 nothing in this code affects the remainder of Title 31,  
25 Chapter 2 or the Constitution of Alabama of 1901.

1 Article 149.

2 This act shall become effective upon passage and  
3 approval by the Governor, and upon the adoption of  
4 implementing guidelines signed by the Governor and promulgated  
5 by the Adjutant General in accordance with Section 31-2-58,  
6 Code of Alabama 1975.



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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB313  
Senate 23-FEB-12  
I hereby certify that the within Act originated in and passed  
the Senate.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 03-MAY-12

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By: Senator Taylor