

1 SB313
2 136993-1
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

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8 SYNOPSIS: Under existing law, the Alabama National
9 Guard uses regulations to discipline guard members.
10 The options under the regulations are limited
11 compared to the federal Uniform Code of Military
12 Justice which applies when a member of the National
13 Guard is on federal duty.

14 This bill would revise the disciplinary
15 authority and procedures for the Alabama National
16 Guard in substantially similar form to the federal
17 Uniform Code of Military Justice.

18 This bill would provide that this new model
19 military code for the Alabama National Guard would
20 apply to all members of the Alabama National Guard
21 during periods when they are not mobilized and
22 would establish a system to provide for
23 courts-martial and non-judicial punishment for
24 forfeiture of pay and rank.

25 This bill would give Commanders added
26 disciplinary authority that can be applied to
27 offenses that are unique to the military, such as:

1 AWOL, insubordination, forgery of official military
2 records, assaults on superiors, and drug positives.

3 This military code would allow for Summary
4 and Special Courts-Martial which could result in
5 the issuance of a bad-conduct discharge and up to a
6 one-year incarceration in a county jail.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT
11

12 To adopt a revised code of Military Justice
13 substantially similar to the federal Uniform Code of Military
14 Justice; and to repeal Sections 31-2-92 to 31-2-98, inclusive,
15 31-2-101, 31-2-103, and 31-2-127, Code of Alabama 1975.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. PART I. GENERAL PROVISIONS.

18 Article 1. Definitions.

19 (a) For the purposes of this act, unless the context
20 otherwise requires:

21 (1) ACCUSER. A person who signs and swears to
22 charges, any person who directs that charges nominally be
23 signed and sworn to by another, and any other person who has
24 an interest other than an official interest in the prosecution
25 of the accused.

26 (2) CADET, CANDIDATE, or MIDSHIPMAN. A person who is
27 enrolled in or attending a state military academy, a regional

1 training institute, or any other formal education program for
2 the purpose of becoming a commissioned officer in the state
3 military forces.

4 (3) CLASSIFIED INFORMATION. Information that meets
5 all of the following requirements:

6 a. Any information or material that has been
7 determined by an official of the United States or any state
8 pursuant to law, an Executive order, or regulation to require
9 protection against unauthorized disclosure for reasons of
10 national or state security.

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

13 (4) CODE. This act.

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

22 (6) CONVENING AUTHORITY. Includes, in addition to
23 the person who convened the court, a commissioned officer
24 commanding for the time being or a successor in command to the
25 convening authority.

26 (7) DAY. Unless otherwise specified with respect to
27 forfeiture of pay, means calendar day and is not synonymous

1 with the term "unit training assembly." Any punishment
2 authorized by this article which is measured in terms of days,
3 shall when served in a status other than annual field
4 training, be construed to mean succeeding duty days.

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

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

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

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

19 2. Certified as a non-federally recognized judge
20 advocate, under regulations promulgated pursuant to this act,
21 by the senior judge advocate of the commander of the force in
22 the state military forces of which the accused is a member, as
23 competent to perform such military justice duties required by
24 this code. If there is no such judge advocate available, then
25 such certification may be made by such senior judge advocate
26 of the commander of another force in the state military
27 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.

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

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

3 a. An official written transcript, written summary,
4 or other writing relating to the proceedings.

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

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

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

14 (20) STATE. One of the several states, the District
15 of Columbia, the Commonwealth of Puerto Rico, Guam, and the
16 U.S. Virgin Islands.

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

22 (22) STATE MILITARY FORCES. The Alabama National
23 Guard, as defined in Title 32, United States Code, Section 271
24 of the Constitution of Alabama 1901, and Section 31-2-3, Code
25 of Alabama 1975. The unorganized militia, state defense force,
26 state national guard, home guard, or any other name of any

1 state force that does not meet this definition shall not be
2 part of the "state military forces" under this code.

3 (23) SUPERIOR COMMISSIONED OFFICER. A commissioned
4 officer superior in rank or command.

5 Article 2. Persons subject to this code;
6 jurisdiction.

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

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

24 Article 3. Jurisdiction to try certain personnel.

25 (a) Each person discharged from the state military
26 forces who is later charged with having fraudulently obtained
27 a discharge is, subject to Article 43 of this code, subject to

1 trial by court-martial on that charge and is, after
2 apprehension, subject to this code while in custody under the
3 direction of the state military forces for that trial. Upon
4 conviction of that charge, the person is subject to trial by
5 court-martial for all offenses under this code committed
6 before the fraudulent discharge.

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

11 Article 4. [Reserved].

12 Article 5. Territorial applicability of the code.

13 (a) This code has applicability at all times and in
14 all places, provided that either the person subject to the
15 code is in a duty status or, if not in a duty status, that
16 there is a nexus between the act or omission constituting the
17 offense and the efficient functioning of the state military
18 forces; however, this grant of military jurisdiction shall
19 neither preclude nor limit civilian jurisdiction over an
20 offense, which is limited only by the prohibition of double
21 jeopardy.

22 (b) Courts-martial and courts of inquiry may be
23 convened and held in units of the state military forces while
24 those units are serving outside the state with the same
25 jurisdiction and powers as to persons subject to this code as
26 if the proceedings were held inside the state, and offenses

1 committed outside the state may be tried and punished either
2 inside or outside the state.

3 Article 6. Judge Advocates.

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

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

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

19 Article 6a. Military Judges.

20 Pursuant to Section 31-2-58, Code of Alabama 1975,
21 procedures pertaining to the selection and regulation of
22 military judges shall be promulgated by the Adjutant General
23 and approved by the Governor.

24 PART II. APPREHENSION AND RESTRAINT.

25 Article 7. Apprehension.

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

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

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

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

17 (e) No person authorized by this article to
18 apprehend persons subject to this code or the place where such
19 offender is confined, restrained, held, or otherwise housed
20 may require payment of any fee or charge for so receiving,
21 apprehending, confining, restraining, holding, or otherwise
22 housing a person except as otherwise provided by Section
23 31-2-106, Code of Alabama 1975.

24 Article 8. [Reserved].

25 Article 9. Imposition of restraint.

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

1 her to remain within certain specified limits. Confinement is
2 the physical restraint of a person.

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

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

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

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

24 Article 10. Restraint of persons charged with
25 offenses.

26 Any person subject to this code charged with an
27 offense under this code may be ordered into arrest or

1 confinement, as circumstances may require. When any person
2 subject to this code is placed in arrest or confinement prior
3 to trial, immediate steps shall be taken to inform the person
4 of the specific wrong of which the person is accused and
5 diligent steps shall be taken to try the person or to dismiss
6 the charges and release the person.

7 Article 11. Place of Confinement; Reports and
8 receiving of prisoners.

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

12 (b) No person authorized to receive prisoners
13 pursuant to subsection (a) may refuse to receive or keep any
14 prisoner committed to the person's charge by a commissioned
15 officer of the state military forces, when the committing
16 officer furnishes a statement, signed by such officer, of the
17 offense charged against the prisoner, unless otherwise
18 authorized by law.

19 (c) Every person authorized to receive prisoners
20 pursuant to subsection (a) to whose charge a prisoner is
21 committed, within 24 hours after that commitment or as soon as
22 the person is relieved from guard, shall report to the
23 commanding officer of the prisoner the name of the prisoner,
24 the offense charged against the prisoner, and the name of the
25 person who ordered or authorized the commitment.

26 Article 12. Confinement with enemy prisoners
27 prohibited.

1 No member of the Alabama National Guard may be
2 placed in confinement in immediate association with enemy
3 prisoners or other foreign nationals not members of the Armed
4 Forces.

5 Article 13. Punishment prohibited before trial.

6 No person, while being held for trial or awaiting a
7 verdict, may be subjected to punishment or penalty other than
8 arrest or confinement upon the charges pending against the
9 person, nor shall the arrest or confinement imposed upon such
10 person be any more rigorous than the circumstances required to
11 insure the person's presence, but the person may be subjected
12 to minor punishment during that period for infractions of
13 discipline.

14 Article 14. Delivery of offenders to civil
15 authorities.

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

19 PART III. NON-JUDICIAL PUNISHMENT.

20 Article 15. Commanding officer's non-judicial
21 punishment.

22 (a) Under such regulations as prescribed, any
23 commanding officer may impose disciplinary punishments for
24 minor offenses without the intervention of a court-martial
25 pursuant to this article. The Governor, the Adjutant General,
26 or an officer or a general or flag rank in command may

1 delegate the powers under this article to a principal
2 assistant who is a member of the Alabama National Guard.

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

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

7 (2) For all other purposes, one day shall equal one
8 calendar day.

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

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

13 (1) An admonition.

14 (2) A reprimand.

15 (3) The withholding of privileges for up to six
16 consecutive months.

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

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

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

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

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

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

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

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

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

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

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

21 (1) Upon officers of the officer's command, any
22 punishment authorized in subdivisions (e) (1), (2), (3), and
23 (5).

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

26 (g) Whenever any of those punishments are combined
27 to run consecutively, the total length of the combined

1 punishment cannot exceed the authorized duration of the
2 longest punishment in the combination, and there must be an
3 apportionment of punishments so that no single punishment in
4 the combination exceeds its authorized length under this
5 article.

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

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

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

23 (2) Mitigate extra duties to restriction.

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

1 have been imposed initially under this article by the officer
2 who imposed the punishment mitigated.

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

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

25 (l) Whenever a punishment of forfeiture of pay is
26 imposed under this article, the forfeiture may apply to pay

1 accruing before, on, or after the date that punishment is
2 imposed.

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

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

10 PART IV. COURT-MARTIAL JURISDICTION.

11 Article 16. Courts-martial classified.

12 The three kinds of courts-martial in the state
13 military forces are:

14 (1) General courts-martial, consisting of either of
15 the following:

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

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

22 (2) Special courts-martial, consisting of either of
23 the following:

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

25 b. Only a military judge, if one has been detailed
26 to the court, and the accused under the same conditions as

1 those prescribed in paragraph b. of subdivision (1) so
2 requests.

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

5 Article 17. Jurisdiction of courts-martial in
6 general.

7 Each component of the Alabama National Guard has
8 court-martial jurisdiction over all members of the particular
9 component who are subject to this code.

10 Article 18. Jurisdiction of general courts-martial.

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

16 Article 19. Jurisdiction of special courts-martial.

17 Subject to Article 17, special courts-martial have
18 jurisdiction to try persons subject to this code for any
19 offense made punishable by this code, and under such
20 limitations as the Governor may prescribe, may adjudge any
21 punishment not forbidden by this code except dishonorable
22 discharge, dismissal, confinement for more than six months,
23 forfeiture of pay exceeding 24 days, which must be completed
24 within one year.

25 Article 20. Jurisdiction of summary courts-martial.

26 (a) Subject to Article 17 of this code, summary
27 courts-martial have jurisdiction to try persons subject to

1 this code, except officers, cadets, candidates, and
2 midshipmen, for any offense made punishable by this code under
3 such limitations as the Governor may prescribe.

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

15 Article 21. [Reserved].

16 PART V. APPOINTMENT AND COMPOSITION OF
17 COURTS-MARTIAL.

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

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

21 (1) The Governor.

22 (2) The Adjutant General.

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

25 (b) If any such commanding officer is an accuser,
26 the court shall be convened by superior competent authority

1 and may in any case be convened by such superior authority if
2 considered desirable by the authority.

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

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

6 (1) Any person who may convene a general
7 court-martial.

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

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

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

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

18 Article 24. Who may convene summary court-martial

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

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

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

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

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

3 (b) When only one commissioned officer is present
4 with a command or detachment that officer shall be the summary
5 court-martial of that command or detachment and shall hear and
6 determine all summary courts-martial cases. Summary
7 court-martial, however, may be convened in any case by
8 superior competent authority if considered desirable by the
9 authority.

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

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

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

18 (c) Any enlisted member of the state military forces
19 who is not a member of the same unit as the accused is
20 eligible to serve on general and special courts-martial for
21 the trial of any enlisted member subject to this code, but
22 that member shall serve as a member of a court only if, before
23 the conclusion of a session called by the military judge under
24 Article 39(a) prior to trial or, in the absence of such a
25 session, before the court is assembled for the trial of the
26 accused, the accused personally has requested orally on the
27 record or in writing that enlisted members serve on it. After

1 such a request, the accused may not be tried by a general or
2 special court-martial the membership of which does not include
3 enlisted members in a number comprising at least one-third of
4 the total membership of the court, unless eligible enlisted
5 members cannot be obtained on account of physical conditions
6 or military exigencies. If such members cannot be obtained,
7 the court may be assembled and the trial held without them,
8 but the convening authority shall make a detailed written
9 statement, to be appended to the record, stating why they
10 could not be obtained. For the purposes of this article, the
11 term "unit" means any regularly organized body of the state
12 military forces not larger than a company, a squadron, a
13 division of the naval militia, or a body corresponding to one
14 of them.

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

18 (e) When convening a court-martial, the convening
19 authority shall detail as members of the court-martial the
20 members of the Alabama National Guard as, in the convening
21 authority's opinion, are best qualified for the duty by reason
22 of age, education, training, experience, length of service,
23 and judicial temperament. No member of the state military
24 forces is eligible to serve as a member of a general or
25 special court-martial when that member is the accuser, a
26 witness, or has acted as investigating officer or as counsel
27 in the same case.

1 (f) Before a court-martial is assembled for the
2 trial of a case, the convening authority may excuse a member
3 of the court from participating in the case. The convening
4 authority may delegate the authority under this subsection to
5 his or her staff judge advocate.

6 Article 26. Military judge of a general or special
7 court-martial.

8 (a) A military judge shall be detailed to each
9 general and special court-martial. The military judge shall
10 preside over each open session of the court-martial to which
11 the military judge has been detailed.

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

13 (1) An active or retired commissioned officer.

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

17 (3) Either a certified military judge or a certified
18 military judge or a judge of a court of competent jurisdiction
19 who is approved by the Adjutant General.

20 (c) In the instance when a military judge is not a
21 member of the bar of the highest court of the state, the
22 military judge shall be deemed admitted pro hac vice, subject
23 to filing a certificate with the senior judge advocate which
24 is the same force as the accused setting forth such
25 qualifications provided in subsection (b) and with notice and
26 approval of the State Bar and Chief Justice of the Alabama
27 Supreme Court.

1 (d) The military judge of a general or special
2 court-martial shall be designated by the senior force judge
3 advocate which is the same force as the accused, or a
4 designee, for detail by the convening authority. Neither the
5 convening authority nor any staff member of the convening
6 authority shall prepare or review any report concerning the
7 effectiveness, fitness, or efficiency of the military judge so
8 detailed, which relates to performance of duty as a military
9 judge.

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

13 (f) The military judge of a court-martial may not
14 consult with the members of the court except in the presence
15 of the accused, trial counsel, and defense counsel nor vote
16 with the members of the court.

17 Article 27. Detail of trial counsel and defense
18 counsel.

19 (a) (1) Trial counsel and defense counsel shall be
20 detailed for each general and special court-martial. The
21 Alabama National Guard shall prescribe regulations providing
22 the manner in which counsel are detailed for such
23 court-martial and for persons who are authorized to detail
24 counsel for such court-martial.

25 (2) No person who has acted as investigating
26 officer, military judge, witness, or court member in any case
27 may act later as trial counsel, assistant trial counsel, or,

1 unless expressly requested by the accused, as defense counsel
2 or assistant or associate defense counsel in the same case. No
3 person who has acted for the prosecution may act later in the
4 same case for the defense nor may any person who has acted for
5 the defense act later in the same case for the prosecution.

6 (3) Except as provided in subsection (b), trial
7 counsel or defense counsel detailed for a general or special
8 court-martial must be a judge advocate as defined in
9 subsection (10) of Article 1.

10 (b) In the instance when an accused elects to retain
11 civilian counsel at his or her own expense and not at the
12 expense of the government, the counsel shall be a member of
13 the State Bar of Alabama or a member of good standing of a bar
14 of a state and admitted pro hac vice in accordance with the
15 State of Alabama, with notice and approval of the Alabama
16 State Bar and Chief Justice of the Alabama Supreme Court.

17 Article 28. Detail or employment of reporters and
18 interpreters.

19 Under such regulations as may be prescribed, the
20 convening authority of a general or special court-martial or
21 court of inquiry shall detail or employ qualified court
22 reporters, who shall record the proceedings of and testimony
23 taken before that court and may detail or employ interpreters
24 who shall interpret for the court.

25 Article 29. Absent and additional members.

26 (a) No member of a general or special court-martial
27 may be absent or excused after the court has been assembled

1 for the trial of the accused unless excused as a result of a
2 challenge, excused by the military judge for physical
3 disability or other good cause, or excused by order of the
4 convening authority for good cause.

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

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

26 (d) If the military judge of a court-martial
27 composed of a military judge only is unable to proceed with

1 the trial because of physical disability, as a result of a
2 challenge, or for other good cause, the trial shall proceed,
3 subject to any applicable conditions of Article 16(1)b. or
4 (2)b., after the detail of a new military judge as if no
5 evidence had previously been introduced, unless a verbatim
6 record of the evidence previously introduced or a stipulation
7 thereof is read in court in the presence of the new military
8 judge, the accused, and counsel for both sides.

9 PART VI. PRE-TRIAL PROCEDURE.

10 Article 30. Charges and specifications.

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

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

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

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

24 Article 31. Compulsory self-incrimination
25 prohibited.

26 (a) No person subject to this code may compel any
27 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
26 which should be made of the case in the interest of justice
27 and discipline.

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

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

26 (d) If evidence adduced in an investigation under
27 this article indicates that the accused committed an uncharged

1 offense, the investigating officer may investigate the subject
2 matter of that offense without the accused having first been
3 charged with the offense if the accused:

4 (1) Is present at the investigation.

5 (2) Is informed of the nature of each uncharged
6 offense investigated.

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

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

13 Article 33. [Reserved].

14 Article 34. Advice of judge advocate and reference
15 for trial.

16 (a) Before directing the trial of any charge by
17 general or special court-martial, the convening authority
18 shall refer it to a judge advocate for consideration and
19 advice. The convening authority may not refer a specification
20 under a charge to a general or special court-martial for trial
21 unless the convening authority has been advised in writing by
22 a judge advocate of all of the following:

23 (1) The specification alleges an offense under this
24 code.

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

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

3 (b) The advice of the judge advocate under
4 subsection (a) with respect to a specification under a charge
5 shall include a written and signed statement by the judge
6 advocate containing both of the following:

7 (1) Conclusions with respect to each matter set
8 forth in subsection (a).

9 (2) Recommended action that the convening authority
10 should take regarding the specification. If the specification
11 is referred for trial, the recommendation of the judge
12 advocate shall accompany the specification.

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

19 Article 35. Service of charges.

20 The trial counsel shall serve or caused to be served
21 upon the accused a copy of the charges. No person, against the
22 person's objection, may be brought to trial before a general
23 court-martial case within a period of 45 days after the
24 service of charges upon the accused, or in a special
25 court-martial, within a period of 45 days after the service of
26 charges upon the accused.

27 PART VII. TRIAL PROCEDURE.

1 Article 36. Governor or the Adjutant General may
2 prescribe rules.

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

11 Article 37. Unlawfully influencing action of court.

12 (a) No authority convening a general, special, or
13 summary court-martial, nor any other commanding officer, or
14 officer serving on the staff thereof, may censure, reprimand,
15 or admonish the court or any member, the military judge, or
16 counsel thereof, with respect to the findings or sentence
17 adjudged by the court or with respect to any other exercise of
18 its or their functions in the conduct of the proceedings. No
19 person subject to this code may attempt to coerce or, by any
20 unauthorized means, influence the action of a court-martial or
21 court of inquiry or any member thereof, in reaching the
22 findings or sentence in any case, or the action of any
23 convening, approving, or reviewing authority with respect to
24 its judicial acts. This subsection shall not apply to either
25 of the following:

26 (1) General instructional or informational courses
27 in military justice if such courses are designed solely for

1 the purpose of instructing members of a command in the
2 substantive and procedural aspects of courts-martial.

3 (2) Statements and instructions given in open court
4 by the military judge, summary court-martial officer, or
5 counsel.

6 (b) In the preparation of an effectiveness, fitness,
7 or efficiency report, or any other report or document used in
8 whole or in part for the purpose of determining whether a
9 member of the state military forces is qualified to be
10 advanced in grade, or in determining the assignment or
11 transfer of a member of the state military forces, or in
12 determining whether a member of the state military forces
13 should be retained on active status, no person subject to this
14 code may, in preparing any report shall do either of the
15 following:

16 (1) Consider or evaluate the performance of duty of
17 any such member as a member of a court-martial or witness
18 therein.

19 (2) Give a less favorable rating or evaluation of
20 any counsel of the accused because of zealous representation
21 before a court-martial.

22 Article 38. Duties of trial counsel and defense
23 counsel.

24 (a) The trial counsel of a general or special
25 court-martial shall prosecute in the name of the state, and,
26 under the direction of the court, shall prepare the record of
27 the proceedings.

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

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

6 (3) The accused may be represented by either of the
7 following:

8 a. By military counsel detailed under Article 27.

9 b, By military counsel of the accused's own
10 selection if that counsel is reasonably available as
11 determined under subdivision (7).

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

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

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

24 a. May detail additional military counsel as
25 assistant defense counsel.

26 b. If the accused is represented by military counsel
27 of the accused's own selection under paragraph (3)b., may

1 approve a request from the accused that military counsel
2 detailed under paragraph (3)a. act as associate defense
3 counsel.

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

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

10 (1) Forward for attachment to the record of
11 proceedings a brief of such matters as counsel determines
12 should be considered in behalf of the accused on review,
13 including any objection to the contents of the record which
14 counsel considers appropriate.

15 (2) Assist the accused in the submission of any
16 matter under Article 60.

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

18 Article 39. Sessions.

19 (a) At any time after the service of charges which
20 have been referred for trial to a court-martial composed of a
21 military judge and members, the military judge, subject to
22 Article 35, may call the court into session without the
23 presence of the members for the purpose of:

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

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

5 (3) Holding the arraignment and receiving the pleas
6 of the accused.

7 (4) Performing any other procedural function which
8 does not require the presence of the members of the court
9 under this code.

10 These proceedings shall be conducted in the presence
11 of the accused, the defense counsel, and the trial counsel and
12 shall be made a part of the record. These proceedings may be
13 conducted notwithstanding the number of court members and
14 without regard to Article 29.

15 (b) When the members of a court-martial deliberate
16 or vote, only the members may be present. All other
17 proceedings, including any other consultation of the members
18 of the court with counsel or the military judge, shall be made
19 a part of the record and shall be in the presence of the
20 accused, the defense counsel, the trial counsel, and the
21 military judge.

22 Article 40. Continuances.

23 The military judge of a court-martial or the summary
24 court-martial officer, for reasonable cause, may grant a
25 continuance to any party for such time, and as often, as may
26 appear to be just.

27 Article 41. Challenges.

1 (a) Challenges For Cause.

2 (1) The military judge and members of a general or
3 special court-martial may be challenged by the accused or the
4 trial counsel for cause stated to the court. The military
5 judge or the court shall determine the relevancy and validity
6 of challenges for cause and may not receive a challenge to
7 more than one person at a time. Challenges by the trial
8 counsel shall ordinarily be presented and decided before those
9 by the accused are offered.

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

17 (b) Peremptory Challenges.

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

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

1 (3) Whenever additional members are detailed to the
2 court, and after any challenges for cause against such
3 additional members are presented and decided, each accused and
4 the trial counsel are entitled to one peremptory challenge
5 against members not previously subject to peremptory
6 challenge.

7 Article 42. Oaths or Affirmations.

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

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

27 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.

25 (3) Committed in connection with the negotiation,
26 procurement, award, performance, payment, interim financing,
27 cancellation, or other termination or settlement, of any

1 contract, subcontract, or purchase order which is connected
2 with or related to the prosecution of the war, or with any
3 disposition of termination inventory by any war contractor or
4 government agency, is suspended until two years after the
5 termination of hostilities as proclaimed by the President or
6 by a joint resolution of Congress.

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

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

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

20 b. Allege the same acts or omissions that were
21 alleged in the dismissed charges or specifications, or allege
22 acts or omissions that were included in the dismissed charges
23 or specifications.

24 Article 44. Former jeopardy.

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

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

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

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

14 Article 45. Pleas of the accused.

15 (a) If an accused after arraignment makes an
16 irregular pleading, or after a plea of guilty sets up matter
17 inconsistent with the plea, or if it appears that the accused
18 has entered the plea of guilty improvidently or through lack
19 of understanding of its meaning and effect, or if the accused
20 fails or refuses to plead, a plea of not guilty shall be
21 entered in the record, and the court shall proceed as though
22 the accused had pleaded not guilty.

23 (b) With respect to any charge or specification to
24 which a plea of guilty has been made by the accused and
25 accepted by the military judge or by a court-martial without a
26 military judge, a finding of guilty of the charge or
27 specification may be entered immediately without vote. This

1 finding shall constitute the finding of the court unless the
2 plea of guilty is withdrawn prior to announcement of the
3 sentence, in which event, the proceedings shall continue as
4 though the accused had pleaded not guilty.

5 Article 46. Opportunity to obtain witnesses and
6 other evidence.

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

21 Article 47. Refusal to appear or testify.

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

25 (1) Has been duly subpoenaed to appear as a witness
26 or to produce books and records before a court-martial or
27 court of inquiry, or before any military or civil officer

1 designated to take a deposition to be read in evidence before
2 such a court.

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

6 (3) Willfully neglects or refuses to appear, or
7 refuses to qualify as a witness or to testify or to produce
8 any evidence which that person may have been legally
9 subpoenaed to produce.

10 (b) The fees and mileage of witnesses shall be
11 advanced or paid out of the appropriations for the
12 compensation of witnesses.

13 Article 48. Contempt.

14 A military judge or summary court-martial officer
15 may punish for contempt any person who uses any menacing word,
16 sign, or gesture in its presence, or who disturbs its
17 proceedings by any riot or disorder. A person subject to this
18 code may be punished for contempt by confinement not to exceed
19 five days or a fine of one hundred dollars (\$100), or both. A
20 person not subject to this code may be punished for contempt
21 by a military court in the same manner as a criminal court of
22 the state.

23 Article 49. Depositions.

24 (a) At any time after charges have been signed as
25 provided in Article 30, any party may take oral or written
26 depositions unless the military judge or summary court-martial
27 officer hearing the case or, if the case is not being heard,

1 an authority competent to convene a court-martial for the
2 trial of those charges forbids it for good cause.

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

6 (c) Depositions may be taken before and
7 authenticated by any military or civil officer authorized by
8 the laws of the state or by the laws of the place where the
9 deposition is taken to administer oaths.

10 (d) A duly authenticated deposition taken upon
11 reasonable notice to the other parties, so far as otherwise
12 admissible under the rules of evidence, may be read in
13 evidence or, in the case of audiotape, videotape, digital
14 image or file, or similar material, may be played in evidence
15 before any military court, if any one of the following occurs:

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

19 (2) The witness by reason of death, age, sickness,
20 bodily infirmity, imprisonment, military necessity,
21 nonamenability to process, or other reasonable cause, is
22 unable or refuses to appear and testify in person at the place
23 of trial or hearing.

24 (3) The present location of the witness is unknown.
25 Article 50. Admissibility of records of courts of
26 inquiry.

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

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

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

15 Article 50a. Defense of lack of mental
16 responsibility.

17 (a) It is an affirmative defense in a trial by
18 court-martial that, at the time of the commission of the acts
19 constituting the offense, the accused, as a result of a severe
20 mental disease or defect, was unable to appreciate the nature
21 and quality or the wrongfulness of the acts. Mental disease or
22 defect does not otherwise constitute a defense.

23 (b) The accused has the burden of proving the
24 defense of lack of mental responsibility by clear and
25 convincing evidence.

26 (c) Whenever lack of mental responsibility of the
27 accused with respect to an offense is properly at issue, the

1 military judge shall instruct the members of the court as to
2 the defense of lack of mental responsibility under this
3 article and charge jurors to find the accused any one of the
4 following:

5 (1) Guilty.

6 (2) Not guilty.

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

9 (d) Subsection (c) does not apply to a court-martial
10 composed of a military judge only. In the case of a
11 court-martial composed of a military judge only or a summary
12 court-martial officer, whenever lack of mental responsibility
13 of the accused with respect to an offense is properly at
14 issue, the military judge or summary court-martial officer
15 shall find the accused any one of the following:

16 (1) Guilty.

17 (2) Not guilty.

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

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

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

26 (2) In the case of a court-martial composed of a
27 military judge only or a summary court-martial officer, the

1 military judge or summary court-martial officer determines
2 that the defense of lack of mental responsibility has been
3 established.

4 Article 51. Voting and rulings.

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

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

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

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

4 (2) In the case being considered, if there is a
5 reasonable doubt as to the guilt of the accused, the doubt
6 must be resolved in favor of the accused and the accused must
7 be acquitted.

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

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

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

22 Article 52. Number of votes required

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

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

12 Article 53. Court to announce action.

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

15 Article 54. Record of trial

16 (a) Each general and special court-martial shall
17 keep a separate record of the proceedings in each case brought
18 before it, and the record shall be authenticated by the
19 signature of the military judge. If the record cannot be
20 authenticated by the military judge by reason of his or her
21 death, disability, or absence, it shall be authenticated by
22 the signature of the trial counsel or by that of a member, if
23 the trial counsel is unable to authenticate it by reason of
24 his or her death, disability, or absence. In a court-martial
25 consisting of only a military judge, the record shall be
26 authenticated by the court reporter under the same conditions

1 which would impose such a duty on a member under this
2 subsection.

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

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

9 (c) Each summary court-martial shall keep a separate
10 record of the proceedings in each case, and the record shall
11 be authenticated in the manner as may be prescribed by
12 regulations.

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

16 PART VIII. SENTENCES.

17 Article 55. Cruel and unusual punishments
18 prohibited.

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

25 Article 56. Maximum limits.

26 (a) The punishment which a court-martial may direct
27 for an offense may not exceed such limits as prescribed by

1 this code, but in no instance may a sentence exceed more than
2 one year for a military offense, nor shall a sentence of death
3 be adjudged. A conviction by a court-martial of any military
4 offense is a misdemeanor as defined under the Code of Alabama
5 1975.

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

11 Article 57. Effective date of sentences.

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

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

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

26 Article 57a. Deferment of sentences.

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

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

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

23 a. While in the custody of a state, the United
24 States, or a foreign country is temporarily returned by that
25 state, the United States, or a foreign country to the state
26 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,
26 shall be all pay and allowances due that member during such

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

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

5 a. Confinement for more than six months.

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

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

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

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

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

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

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

9 Article 60. Action by the convening authority.

10 (a) The findings and sentence of a court-martial
11 shall be reported promptly to the convening authority after
12 the announcement of the sentence.

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

23 (2) If the accused shows that additional time is
24 required for the accused to submit such matters, the convening
25 authority or other person taking action under this article,
26 for good cause, may extend the applicable period under
27 subdivision (1) for up to an additional 60 days as determined

1 by the convening authority or person taking action under this
2 article.

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

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

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

20 (2) Action on the sentence of a court-martial shall
21 be taken by the convening authority or by another person
22 authorized to act under this article. Such action may be taken
23 only after consideration of any matters submitted by the
24 accused under subsection (b) or after the time for submitting
25 such matters expires, whichever is earlier. The convening
26 authority or other person taking such action, in that person's

1 sole discretion may approve, disapprove, commute, or suspend
2 the sentence in whole or in part.

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

7 a. Dismiss any charge or specification by setting
8 aside a finding of guilty thereto.

9 b. Change a finding of guilty to a charge or
10 specification to a finding of guilty to an offense that is a
11 lesser included offense of the offense stated in the charge or
12 specification.

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

16 (d) Before acting under this article on any general
17 or special court-martial case in which there is a finding of
18 guilt, the convening authority or other person taking action
19 under this article shall obtain and consider the written
20 recommendation of a judge advocate. The convening authority or
21 other person taking action under this article shall refer the
22 record of trial to the judge advocate, and the judge advocate
23 shall use such record in the preparation of the
24 recommendation. The recommendation of the judge advocate shall
25 include such matters as may be prescribed by regulation and
26 shall be served on the accused, who may submit any matter in
27 response under subsection (b). Failure to object in the

1 response to the recommendation or to any matter attached to
2 the recommendation waives the right to object thereto.

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

6 (2) A proceeding in revision may be ordered if there
7 is an apparent error or omission in the record or if the
8 record shows improper or inconsistent action by a
9 court-martial with respect to the findings or sentence that
10 can be rectified without material prejudice to the substantial
11 rights of the accused. In no case, however, may a proceeding
12 in revision do any of the following:

13 a. Reconsider a finding of not guilty of any
14 specification or a ruling which amounts to a finding of not
15 guilty.

16 b. Reconsider a finding of not guilty of any charge,
17 unless there has been a finding of guilty under a
18 specification laid under that charge, which sufficiently
19 alleges a violation of some article of this code.

20 c. Increase the severity of the sentence unless the
21 sentence prescribed for the offense is mandatory.

22 (3) A rehearing may be ordered by the convening
23 authority or other person taking action under this article if
24 that person disapproves the findings and sentence and states
25 the reasons for disapproval of the findings. If such person
26 disapproves the findings and sentence and does not order a
27 rehearing, that person shall dismiss the charges. A rehearing

1 as to the findings may not be ordered where there is a lack of
2 sufficient evidence in the record to support the findings. A
3 rehearing as to the sentence may be ordered if the convening
4 authority or other person taking action under this subsection
5 disapproves the sentence.

6 Article 61. Withdrawal of appeal.

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

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

15 Article 62. Appeal by the state.

16 (a) (1) In a trial by court-martial in which a
17 punitive discharge may be adjudged, the state may appeal the
18 following, other than a finding of not guilty with respect to
19 the charge or specification by the members of the
20 court-martial or an order or ruling that is, or that amounts
21 to, a finding of not guilty with respect to the charge or
22 specification:

23 a. An order or ruling of the military judge which
24 terminates the proceedings with respect to a charge or
25 specification.

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

1 c. An order or ruling which directs the disclosure
2 of classified information.

3 d. An order or ruling which imposes sanctions for
4 nondisclosure of classified information.

5 e. A refusal of the military judge to issue a
6 protective order sought by the state to prevent the disclosure
7 of classified information.

8 f. A refusal by the military judge to enforce an
9 order described in paragraph e. that has previously been
10 issued by appropriate authority.

11 (2) An appeal of an order or ruling may not be taken
12 unless the trial counsel provides the military judge with
13 written notice of appeal from the order or ruling within 72
14 hours of the order or ruling. Such notice shall include a
15 certification by the trial counsel that the appeal is not
16 taken for the purpose of delay and, if the order or ruling
17 appealed is one which excludes evidence, that the evidence
18 excluded is substantial proof of a fact material in the
19 proceeding.

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

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

26 (c) Any period of delay resulting from an appeal
27 under this article shall be excluded in deciding any issue

1 regarding denial of a speedy trial unless an appropriate
2 authority determines that the appeal was filed solely for the
3 purpose of delay with the knowledge that it was totally
4 frivolous and without merit.

5 Article 63. Rehearings.

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

23 Article 64. Review by the Senior Judge Advocate.

24 (a) Each general and special court-martial case in
25 which there has been a finding of guilty shall be reviewed by
26 the senior judge advocate, or a designee for the convening
27 authority. The senior judge advocate, or designee, may not

1 review a case under this subsection if that person has acted
2 in the same case as an accuser, investigating officer, member
3 of the court, military judge, or counsel or has otherwise
4 acted on behalf of the prosecution or defense. The senior
5 judge advocate's review shall be in writing and shall contain
6 all of the following:

7 (1) Conclusions as to whether:

8 a. The court had jurisdiction over the accused and
9 the offense.

10 b. The charge and specification stated an offense.

11 c. The sentence was within the limits prescribed as
12 a matter of law.

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

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

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

23 (1) The judge advocate who reviewed the case
24 recommends corrective action.

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

1 (3) Such action is otherwise required by regulations
2 of the Adjutant General.

3 (c) (1) The convening authority may do any of the
4 following:

5 a. Disapprove or approve the findings or sentence,
6 in whole or in part.

7 b. Remit, commute, or suspend the sentence in whole
8 or in part.

9 c. Except where the evidence was insufficient at the
10 trial to support the findings, order a rehearing on the
11 findings, on the sentence, or on both.

12 d. Dismiss the charges.

13 (2) If a rehearing is ordered but the convening
14 authority finds a rehearing impracticable, the convening
15 authority shall dismiss the charges.

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

1 or Governor shall act on this decision within 30 days of
2 receiving the opinion and record of trial.

3 Article 65. Disposition of records after review by
4 the convening authority.

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

9 Article 66. Military Court-Martial Review Panel.

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

25 Article 67. Review by State Appellate Authority

26 Decisions of the Military Court-Martial Review Panel
27 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.

25 Article 71. Execution of sentence; suspension of
26 sentence

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

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

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

23 Article 72. Vacation of suspension.

24 (a) Before the vacation of the suspension of a
25 special court-martial sentence, which as approved includes a
26 bad-conduct discharge, or of any general court-martial
27 sentence, the officer having special court-martial

1 jurisdiction over the probationer shall hold a hearing on an
2 alleged violation of probation. The probationer shall be
3 represented at the hearing by military counsel if the
4 probationer so desires.

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

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

16 Article 73. Petition for a new trial.

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

22 At any time within 45 days of discovery of fraud on
23 the court-martial or newly discovered evidence, the accused
24 may petition for new trial with the Military Court-Martial
25 Review Panel. In the event the accused's case is pending
26 before the Alabama Supreme Court, the appeal shall be stayed

1 until the Military Court Martial Review Panel rules on the
2 petition.

3 Article 74. Remission and suspension.

4 (a) The Governor may remit or suspend any part or
5 amount of the unexecuted part of any sentence, including all
6 uncollected forfeitures.

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

10 Article 75. Restoration.

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

18 (b) If a previously executed sentence of or
19 bad-conduct discharge is not imposed on a new trial, the
20 Governor shall substitute therefor a form of discharge
21 authorized for administrative issuance unless the accused is
22 to serve out the remainder of the accused's enlistment.

23 Article 76. Finality of proceedings, findings, and
24 sentences.

25 The appellate review of records of trial provided by
26 this code, the proceedings, findings, and sentences of
27 courts-martial as approved, reviewed, or affirmed as required

1 by this code, and all dismissals and discharges carried into
2 execution under sentences by courts-martial following
3 approval, review, or affirmation as required by this code, are
4 final and conclusive. Orders publishing the proceedings of
5 courts-martial and all action taken pursuant to those
6 proceedings are binding upon all departments, courts,
7 agencies, and officers of the United States and the several
8 states, subject only to action upon a petition for a new trial
9 as provided in Article 73 and to action under Article 74.

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

12 Under regulations prescribed, an accused who has
13 been sentenced by a court-martial may be required to take
14 leave pending completion of action under this article if the
15 sentence, as approved under Article 60 of this code, includes
16 an unsuspended dismissal or an unsuspended dishonorable or
17 bad-conduct discharge. The accused may be required to begin
18 such leave on the date on which the sentence is approved under
19 Article 60 or at any time after such date, and such leave may
20 be continued until the date on which action under this article
21 is completed or may be terminated at any earlier time.

22 Article 76b. Lack of mental capacity or mental
23 responsibility.

24 The determination of lack of mental capacity or
25 mental responsibility shall be determined pursuant to Alabama
26 state law as well as regulations of the Department of Defense
27 of the United States and the laws of the United States

1 governing the Armed Forces of the United States as required
2 under Section 272 of the Official ReCompilation of the
3 Constitution of Alabama of 1901, as amended.

4 PART X. PUNITIVE ARTICLES.

5 Article 77. Principals.

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

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

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

12 Article 78. Accessory after the fact.

13 Any person subject to this code who, knowing that an
14 offense punishable by this code has been committed, receives,
15 comforts, or assists the offender in order to hinder or
16 prevent his or her apprehension, trial, or punishment shall be
17 punished as a court-martial may direct.

18 Article 79. Conviction of lesser included offense.

19 An accused may be found guilty of an offense
20 necessarily included in the offense charged or of an attempt
21 to commit either the offense charged or an offense necessarily
22 included therein.

23 Article 80. Attempts.

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

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

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

8 Article 81. Conspiracy.

9 Any person subject to this code who conspires with
10 any other person to commit an offense under this code, if one
11 or more of the conspirators does an act to effect the object
12 of the conspiracy, shall be punished as a court-martial may
13 direct.

14 Article 82. Solicitation.

15 Any person subject to this code who solicits or
16 advises another to commit a violation of this code, if the
17 offense solicited or advised is attempted or committed, be
18 punished with the punishment provided for the commission of
19 the offense, but, if the offense solicited or advised is not
20 committed or attempted, the person shall be punished as a
21 court-martial may direct.

22 Article 83. Fraudulent enlistment, appointment, or
23 separation.

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

26 (1) Procures his or her own enlistment or
27 appointment in the state military forces by knowingly false

1 representation or deliberate concealment as to his or her
2 qualifications for that enlistment or appointment and receives
3 pay or allowances thereunder.

4 (2) Procures his or her own separation from the
5 Alabama National Guard by knowingly false representation or
6 deliberate concealment as to his or her eligibility for that
7 separation.

8 Article 84. Unlawful enlistment, appointment, or
9 separation.

10 Any person subject to this code who effects an
11 enlistment or appointment in or a separation from the Alabama
12 National Guard of any person who is known to him or her to be
13 ineligible for that enlistment, appointment, or separation
14 because it is prohibited by law, regulation, or order shall be
15 punished as a court-martial may direct.

16 Article 85. Desertion

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

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

22 (2) Quits his or her unit, organization, or place of
23 duty with intent to avoid hazardous duty or to shirk important
24 service.

25 (3) Without being regularly separated from the
26 Alabama National Guard, enlists or accepts an appointment in
27 the same or another one of the state military forces, or in

1 one of the Armed Forces of the United States, without fully
2 disclosing the fact that he or she has not been regularly
3 separated, or enters any foreign armed service except when
4 authorized by the United States.

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

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

12 Article 86. Absence without leave.

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

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

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

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

22 Article 87. Missing movement.

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

27 Article 88. [Reserve].

1 Article 89. Disrespect toward superior commissioned
2 officer.

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

6 Article 90. Assaulting or willfully disobeying
7 superior commissioned officer.

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

10 (1) Strikes his or her superior commissioned officer
11 or draws or lifts up any weapon or offers any violence against
12 him or her while he or she is in the execution of his or her
13 office.

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

16 Article 91. Insubordinate conduct toward warrant
17 officer, noncommissioned officer, or petty officer.

18 Any warrant officer or enlisted member who does any
19 of the following shall be punished as a court-martial may
20 direct:

21 (1) Strikes or assaults a warrant officer,
22 noncommissioned officer, or petty officer, while that officer
23 is in the execution of his or her office.

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

26 (3) Treats with contempt or is disrespectful in
27 language or deportment toward a warrant officer,

1 noncommissioned officer, or petty officer, while that officer
2 is in the execution of his or her office.

3 Article 92. Failure to obey order or regulation.

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

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

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

11 (3) Is derelict in the performance of his or her
12 duties.

13 Article 93. Cruelty and maltreatment.

14 Any person subject to this code who is guilty of
15 cruelty toward, or oppression or maltreatment of, any person
16 subject to his or her orders shall be punished as a
17 court-martial may direct.

18 Article 94. Mutiny or sedition.

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

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

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

1 (3) Fails to do his or her utmost to prevent and
2 suppress a mutiny or sedition being committed in his or her
3 presence, or fails to take all reasonable means to inform his
4 or her superior commissioned officer or commanding officer of
5 a mutiny or sedition which he or she knows or has reason to
6 believe is taking place is guilty of a failure to suppress or
7 report a mutiny or sedition.

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

12 Article 95. Resistance, flight, breach of arrest,
13 and escape.

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

16 (1) Resists apprehension.

17 (2) Flees from apprehension.

18 (3) Breaks arrest.

19 (4) Escapes from custody or confinement.

20 Article 96. Releasing prisoner without proper
21 authority.

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

1 Article 97. Unlawful detention.

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

6 Article 98. Noncompliance with procedural rules

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

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

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

15 Article 99. Misbehavior before the enemy.

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

19 (1) Runs away.

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

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

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

27 (5) Is guilty of cowardly conduct.

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

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

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

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

14 Article 100. Subordinate compelling surrender.

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

22 Article 101. Improper use of countersign.

23 Any person subject to this code who in time of war
24 discloses the parole or countersign to any person not entitled
25 to receive it or who gives to another, who is entitled to
26 receive and use the parole or countersign, a different parole
27 or countersign from that which, to his or her knowledge, he or

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

3 Article 102. Forcing a safeguard.

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

6 Article 103. Captured or abandoned property.

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

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

14 (1) Fails to carry out the duties prescribed in
15 subsection (a).

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

21 (3) Engages in looting or pillaging.

22 Article 104. Aiding the enemy.

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

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

1 (2) Without proper authority, knowingly harbors or
2 protects or gives intelligence to, or communicates or
3 corresponds with or holds any intercourse with the enemy,
4 either directly or indirectly.

5 Article 105. Misconduct as prisoner.

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

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

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

16 Article 106. [Reserved].

17 Article 106a. [Reserved].

18 Article 107. False official statements.

19 Any person subject to this code who, with intent to
20 deceive, signs any false record, return, regulation, order, or
21 other official document made in the line of duty, knowing it
22 to be false, or makes any other false official statement made
23 in the line of duty, knowing it to be false, shall be punished
24 as a court-martial may direct.

25 Article 108. Military property – Loss, damage,
26 destruction, or wrongful disposition.

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

5 (1) Sells or otherwise disposes of.

6 (2) Willfully or through neglect damages, destroys,
7 or loses.

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

10 Article 109. Property other than military property –
11 Waste, spoilage, or destruction.

12 Any person subject to this code who willfully or
13 recklessly wastes, spoils, or otherwise willfully and
14 wrongfully destroys or damages any property other than
15 military property of the United States or of any state shall
16 be punished as a court-martial may direct.

17 Article 110. Improper hazarding of vessel.

18 (a) Any person subject to this code who willfully
19 and wrongfully hazards or suffers to be hazarded any vessel of
20 the Armed Forces of the United States or any state military
21 forces shall suffer such punishment as a court-martial may
22 direct.

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

27 Article 111. [Reserved].

1 Article 112. Drunk on duty.

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

5 Article 112a. Wrongful use, possession, etc., of
6 controlled substances.

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

15 (b) The substances referred to in subsection (a) are
16 the following:

17 (1) Opium, heroin, cocaine, amphetamine, lysergic
18 acid diethylamide, methamphetamine, phencyclidine, barbituric
19 acid, and marijuana and any compound or derivative of any such
20 substance.

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

26 (3) Any other substance not specified in subdivision
27 (1) or contained on a list prescribed by the President under

1 subdivision (2) that is listed in Schedules I through V of
2 Article 202 of the Controlled Substances Act, 21 U.S.C. § 812
3 or that is listed under Title 20 of the Code of Alabama 1975.

4 Article 112b. Wrongful possession, etc., of drug
5 paraphernalia.

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

14 Article 113. Misbehavior of sentinel.

15 Any sentinel or lookout who is found drunk or
16 sleeping upon his or her post, or leaves it before being
17 regularly relieved, shall be punished as a court-martial may
18 direct.

19 Article 114. Dueling.

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

25 Article 115. Malingering.

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

4 (1) Feigns illness, physical disablement, mental
5 lapse, or derangement.

6 (2) Intentionally inflicts self-injury.

7 Article 116. Riot or breach of peace.

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

11 Article 117. Provoking speeches or gestures.

12 Any person subject to this code who uses provoking
13 or reproachful words or gestures towards any other person
14 subject to this code shall be punished as a court-martial may
15 direct.

16 Article 118. [Reserved].

17 Article 119. [Reserved].

18 Article 120. [Reserved].

19 Article 121. Larceny and wrongful appropriation.

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

24 (1) With intent permanently to deprive or defraud
25 another person of the use and benefit of property or to
26 appropriate it to his or her own use or the use of any person

1 other than the owner, steals that property and is guilty of
2 larceny.

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

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

9 Article 122. [Reserved].

10 Article 123. Forgery.

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

14 (1) Falsely makes or alters any signature, to, or
15 any part of, any writing which would, if genuine, apparently
16 impose a legal liability on another or change his or her legal
17 right or liability to his or her prejudice.

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

22 Article 123a. Making, drawing, or uttering check,
23 draft, or order without sufficient funds.

24 (a) Any person subject to this code who, for the
25 procurement of any article or thing of value, with intent to
26 defraud, or For the payment of any past due obligation, or for
27 any other purpose, with intent to deceive; makes, draws,

1 utters, or delivers any check, draft, or order for the payment
2 of money upon any bank or other depository, knowing at the
3 time that the maker or drawer has not or will not have
4 sufficient funds in, or credit with, the bank or other
5 depository for the payment of that check, draft, or order in
6 full upon its presentment, shall be punished as a
7 court-martial may direct.

8 (b) The making, drawing, uttering, or delivering by
9 a maker or drawer of a check, draft, or order, payment of
10 which is refused by the drawee because of insufficient funds
11 of the maker or drawer in the drawee's possession or control,
12 is prima facie evidence of his or her intent to defraud or
13 deceive and of his or her knowledge of insufficient funds in,
14 or credit with, that bank or other depository, unless the
15 maker or drawer pays the holder the amount due within five
16 days after receiving notice, orally or in writing, that the
17 check, draft, or order was not paid on presentment. In this
18 article , the word "credit" means an arrangement or
19 understanding, express or implied, with the bank or other
20 depository for the payment of that check, draft, or order.

21 Article 124. [Reserved].

22 Article 125. [Reserved].

23 Article 126. [Reserved].

24 Article 127. Extortion.

25 Any person subject to this code who communicates
26 threats to another person with the intention thereby to obtain
27 anything of value or any acquittance, advantage, or immunity

1 is guilty of extortion and shall be punished as a
2 court-martial may direct.

3 Article 128. Assault.

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

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

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

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

17 Article 129. [Reserved].

18 Article 130. Housebreaking.

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

23 Article 131. Perjury.

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

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

4 (2) In any declaration, certificate, verification,
5 or statement under penalty of perjury as permitted under 28
6 U.S.C. § 1746, or Section 13A-10-100, et seq., Code of Alabama
7 1975, subscribes any false statement material to the issue or
8 matter of inquiry.

9 Article 132. Frauds against the government.

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

13 (1) Knowing it to be false or fraudulent, makes any
14 claim against the United States, the state, or any officer
15 thereof or who, for the purpose of obtaining the approval,
16 allowance, or payment of any claim against the United States,
17 the state, or any officer thereof.

18 (2) For the purpose of obtaining the approval,
19 allowance, or payment of any claim against the United States,
20 the state, or any officer thereof makes or uses any writing or
21 other paper knowing it to contain any false or fraudulent
22 statements, makes any oath, affirmation, or certification to
23 any fact or to any writing or other paper knowing the oath,
24 affirmation or certification to be false, or forges or
25 counterfeits any signature upon any writing or other paper, or
26 uses any such signature knowing it to be forged or
27 counterfeited.

1 (3) Having charge, possession, custody, or control
2 of any money, or other property of the United States or the
3 state, furnished or intended for the Armed Forces of the
4 United States or the state military forces, knowingly delivers
5 to any person having authority to receive it, any amount
6 thereof less than that for which he or she receives a
7 certificate or receipt.

8 (4) Being authorized to make or deliver any paper
9 certifying the receipt of any property of the United States or
10 the state, furnished or intended for the Armed Forces of the
11 United States or the state military forces, makes or delivers
12 to any person such writing without having full knowledge of
13 the truth of the statements therein contained and with intent
14 to defraud the United States or the state.

15 Article 133. Conduct unbecoming an officer and a
16 gentleman.

17 Any commissioned officer, cadet, candidate, or
18 midshipman who is convicted of conduct unbecoming an officer
19 and a gentleman shall be punished as a court-martial may
20 direct.

21 Article 134. General article.

22 Though not specifically mentioned in this code, all
23 disorders and neglects to the prejudice of good order and
24 discipline in the state military forces and all conduct of a
25 nature to bring discredit upon the state military forces shall
26 be taken cognizance of by a court-martial and punished at the
27 discretion of a military court. However, where a crime

1 constitutes an offense that violates both this code and the
2 criminal laws of the state where the offense occurs or
3 criminal laws of the United States, jurisdiction of the
4 military court must be determined in accordance with Article
5 2(b).

6 PART XI. MISCELLANEOUS PROVISIONS.

7 Article 135. Courts of inquiry.

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

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

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

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

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

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

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

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

15 Article 136. Authority to administer oaths and to
16 act as notary.

17 (a) The following persons may administer oaths for
18 the purposes of military administration, including military
19 justice:

20 (1) All judge advocates.

21 (2) All summary courts-martial.

22 (3) All adjutants, assistant adjutants, acting
23 adjutants, and personnel adjutants.

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

26 (b) The following persons may administer oaths
27 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.

26 Article 138. Complaints of wrongs.

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

13 Article 139. [Reserved].

14 Article 140. Delegation by the Governor.

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

19 Article 141. [Reserved].

20 Article 142. [Reserved].

21 Article 143. Uniformity of interpretation.

22 This code shall be so construed as to effectuate its
23 general purpose to make it uniform, so far as practical, with
24 the Uniform Code of Military Justice, Chapter 47 of Title 10,
25 U.S.C. in conformance with Section 272 of the Official
26 Recompilation of the Constitution of Alabama of 1901, as
27 amended. .

1 Article 144. Immunity for action of military courts.

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

6 Article 145. Severability.

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

12 Article 146. Short Title.

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

15 Article 147.

16 The act repeals Sections 31-2-92 to 31-2-98,
17 inclusive, and Sections 31-2-101, 31-2-103, and 31-2-127, Code
18 of Alabama 1975.

19 Article 148.

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

23 Article 149.

24 This act shall become effective upon passage and
25 approval by the Governor, and upon the adoption of
26 implementing guidelines signed by the Governor and promulgated

1 by the Adjutant General in accordance with Section 31-2-58,
2 Code of Alabama 1975.