

SB287 ENROLLED



1 SB287
2 ITYF66Z-3
3 By Senators Givhan, Jones, Bell, Hatcher
4 RFD: Veterans and Military Affairs
5 First Read: 04-Apr-24



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1 Enrolled, An Act,

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4 Relating to the Alabama Code of Military Justice; to
5 amend Sections 31-2A-1, 31-2A-2, 31-2A-6, 31-2A-7, 31-2A-12,
6 31-2A-15, 31-2A-16, 31-2A-19, 31-2A-22, 31-2A-26, 31-2A-29,
7 31-2A-30, 31-2A-34, 31-2A-35, 31-2A-36, 31-2A-38, 31-2A-46,
8 31-2A-51, 31-2A-52, 31-2A-54, 31-2A-58b, 31-2A-66, 31-2A-73,
9 31-2A-130, and 31-2A-136, Code of Alabama 1975; to add Section
10 31-2A-26a to the Code of Alabama 1975; and to repeal Sections
11 31-2A-99, 31-2A-100, 31-2A-101, 31A-2A-102, 31-2A-104,
12 31-2A-105, 31-2A-110, 31-2A-112a, 31-2A-112b, 31-2A-114, and
13 31-2A-143, Code of Alabama 1975.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 31-2A-1, 31-2A-2, 31-2A-6, 31-2A-7,
16 31-2A-12, 31-2A-15, 31-2A-16, 31-2A-19, 31-2A-22, 31-2A-26,
17 31-2A-29, 31-2A-30, 31-2A-34, 31-2A-35, 31-2A-36, 31-2A-38,
18 31-2A-46, 31-2A-51, 31-2A-52, 31-2A-54, 31-2A-58b, 31-2A-66,
19 31-2A-73, 31-2A-130, and 31-2A-136, Code of Alabama 1975, are
20 amended to read as follows:

21 "§31-2A-1

22 For the purposes of this code, ~~unless the context~~
23 ~~otherwise requires,~~ the following words have the following
24 meanings:

25 (1) ACCUSER. ~~A person~~ An individual who signs and swears
26 to charges, ~~any person~~ any individual who directs that charges
27 nominally be signed and sworn to by another, and any other
28 ~~person~~ individual who has an interest other than an official



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29 interest in the prosecution of the accused.

30 (2) CADET, or CANDIDATE, ~~or~~ MIDSHPMAN. A ~~person~~ An
31 individual who is enrolled in or attending a state military
32 academy, a regional training institute, or any other formal
33 education program for the purpose of becoming a commissioned
34 officer in the state military forces.

35 (3) CLASSIFIED INFORMATION. Information that meets all
36 of the following requirements:

37 a. Any information or material that has been determined
38 by an official of the United States, the State of Alabama, or
39 any state or territory pursuant to law, ~~and~~ Presidential
40 Executive order, Governor's Executive order, or regulation to
41 require protection against unauthorized disclosure for reasons
42 of national or state security.

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

45 (4) CLERK OF THE COURT. Includes all individuals
46 employed or assigned to serve in this position by a state
47 staff judge advocate to manage and maintain court records.
48 This individual may administer oaths for charges and warrants.

49 ~~(4)~~ (5) CODE. This chapter.

50 ~~(5)~~ (6) COMMANDING OFFICER. Includes only commissioned
51 officers of the state military forces and shall include
52 officers in charge only when administering nonjudicial
53 punishment under Section 31-2A-15 (Article 15). The term
54 "commander" has the same meaning as "commanding officer"
55 unless the context otherwise requires. A commander is any
56 general officer, the Adjutant General, or any other officer



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57 who, by virtue of position, is designated as a commanding
58 officer.

59 ~~(6)~~ (7) CONVENING AUTHORITY. Includes, in addition to
60 the ~~person~~ individual who convened the court, a commissioned
61 officer commanding for the time being or a successor in
62 command to the convening authority.

63 ~~(7)~~ (8) DAY. A calendar day, Unless ~~unless~~ otherwise
64 specified with respect to forfeiture of pay, ~~means calendar~~
65 ~~day and~~ the term is not synonymous with the term "unit
66 training assembly." Any punishment authorized by this code
67 which is measured in terms of days, ~~shall~~ when served in a
68 status other than annual field training, shall be construed to
69 mean succeeding duty days.

70 ~~(8)~~ (9) DUTY STATUS OTHER THAN STATE ACTIVE DUTY. Any
71 other type of duty not in federal service and not full-time
72 duty in the active service of the state; under an order issued
73 by authority of law and includes travel to and from such duty.

74 ~~(9)~~ (10) ENLISTED MEMBER. A person in an enlisted grade.

75 ~~(10)~~ (11) JUDGE ADVOCATE.

76 (a) A commissioned officer of the organized state
77 military forces who is a member in good standing of the bar of
78 the highest court of ~~a state~~ the State of Alabama, and who is
79 ~~either of the following:~~

80 ~~a.1. Certified~~ certified or designated as a judge
81 advocate in the Judge Advocate General's Corps of the Army,
82 Air Force, Navy, or the Marine Corps, or designated as a law
83 specialist as an officer of the Coast Guard, or a reserve
84 component of one of these.



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85 ~~2. Certified as a non-federally recognized judge~~
86 ~~advocate, under regulations promulgated pursuant to this code,~~
87 ~~by the senior judge advocate of the commander of the force in~~
88 ~~the state military forces of which the accused is a member, as~~
89 ~~competent to perform such military justice duties required by~~
90 ~~this code. If there is no such judge advocate available, then~~
91 ~~such certification may be made by such senior judge advocate~~
92 ~~of the commander of another force in the state military~~
93 ~~forces, as the convening authority directs.~~

94 ~~b.~~ (b) In the instance when a judge advocate is detailed
95 under this code and is not a member of the bar of this state,
96 the judge advocate shall be deemed admitted pro hac vice,
97 subject to filing a certificate with the military judge
98 setting forth his or her qualifications, and with notice and
99 approval of the Alabama State Bar and Chief Justice of the
100 Alabama Supreme Court, that ~~counsel~~ the judge advocate is all
101 of the following:

102 1. A commissioned officer of the Armed Forces of the
103 United States or a component thereof.

104 2. A member in good standing of the bar of the highest
105 court of a state.

106 3. ~~Meets the qualifications~~ Qualified detailed in
107 accordance with paragraph a subsection (a).

108 ~~(11)~~ (12) MILITARY COURT. A court-martial or a court of
109 inquiry.

110 ~~(12)~~ (13) MILITARY JUDGE. An official of a general or
111 special court-martial detailed in accordance with ~~Section~~
112 Sections 31-2A-26 and 31-2A-26a (Article Articles 26 and 26a).



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113 ~~(13)~~(14) MILITARY OFFENSES. Those offenses prescribed
114 under Part X which are not also covered by federal or state
115 law.

116 ~~(14)~~(15) NATIONAL SECURITY. The national defense and
117 foreign relations of the United States.

118 ~~(15)~~(16) OFFICER. A commissioned or warrant officer.

119 ~~(16)~~ OFFICER IN CHARGE. A member of the naval militia,
120 the Navy, the Marine Corps, or the Coast Guard designated as
121 such by appropriate authority.

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

124 a. An official written transcript, written summary, or
125 other writing relating to the proceedings.

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

129 (18) RULES OF COURT. The applicable rules of court
130 shall be the Alabama Rules of Court, as applied in any state
131 or municipal court or appellate proceedings within the state.

132 ~~(18)~~(19) SENIOR FORCE COMMANDER. The commander of the
133 same ~~forces~~service ~~of~~within the state military forces as the
134 accused, with courts-martial convening authority, as delegated
135 by the Adjutant General.

136 ~~(19)~~(20) SENIOR FORCE ARMY OR AIR STAFF JUDGE ADVOCATE.
137 The ~~senior~~State Staff judge advocate Judge Advocate, or
138 delegate, of ~~for~~ the ~~commander~~Adjutant General of the same
139 ~~forces~~service ~~of~~within the state military forces as the accused
140 ~~and who is that commander's chief legal advisor.~~



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141 ~~(20)~~ (21) STATE. The State of Alabama.

142 (22) STATES. One of the several states, the District of
143 Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S.
144 Virgin Islands.

145 ~~(21)~~ (23) STATE ACTIVE DUTY. Full-time duty in the state
146 military forces under an order of the Governor or otherwise
147 issued by authority of law under Chapter 2 of ~~this title~~ Title
148 31 and paid in whole or in part by state funds, and includes
149 travel to and from such duty.

150 ~~(22)~~ (24) STATE MILITARY FORCES. The Alabama National
151 Guard, as defined in Title 32, United States Code, Section 271
152 of the Constitution of Alabama ~~1901~~ of 2022, and Section
153 31-2-3. The unorganized militia, state defense force, state
154 national guard, home guard, or any other name of any state
155 force that does not meet this definition shall ~~not be part of~~
156 ~~the "state military forces"~~ be under the jurisdiction and terms
157 of this code, as defined in Section 31-2-3.

158 ~~(23)~~ (25) SUPERIOR COMMISSIONED OFFICER. A commissioned
159 officer superior in rank or command."

160 "§31-2A-2

161 (a) This code applies to all members of the state
162 military forces at all times and in all places, ~~except it does~~
163 ~~not apply to a member for any offenses committed while in a~~
164 ~~duty status under Title 10 U.S.C.~~

165 (b) Subject matter jurisdiction is established if a
166 clear and convincing nexus exists between an offense, either
167 military or non-military, and the state military force. When a
168 member is in any duty status (State Active Duty (SAD), T.32



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169 ~~and T.10) under either Title 32 U.S.C. or State Active Duty~~
170 then a rebuttable presumption exists that the nexus is
171 established. A proper civilian court has primary jurisdiction
172 of an offense when an act or omission violates ~~both this code~~
173 ~~and civilian criminal law, foreign or domestic. In such a~~
174 ~~case, a court-martial may be initiated only after the civilian~~
175 ~~prosecutorial authority has declined to prosecute or dismissed~~
176 ~~the charge, provided jeopardy has not attached. Courts-martial~~
177 shall have primary jurisdiction over all military offenses
178 defined in this code. ~~Jurisdiction over attempted crimes,~~
179 ~~conspiracy crimes, solicitation, and accessory crimes must be~~
180 ~~determined by the underlying offense."~~

181 "§31-2A-6

182 (a) The ~~senior force judge advocates in~~Alabama Army or
183 Air National Guard State Staff Judge Advocate of each branch
184 of service within~~of the state's military forces~~Alabama
185 National Guard or that ~~judge advocate's~~State Staff Judge
186 Advocate's delegate or delegates shall make frequent
187 inspections in the field in supervision of the administration
188 of military justice ~~in~~for that ~~force~~branch of service.

189 (b) Convening authorities shall at all times
190 communicate directly with their judge advocates in matters
191 relating to the administration of military justice. The judge
192 advocate of any command is entitled to communicate directly
193 with the judge advocate of a superior or subordinate command,
194 or with ~~the~~ a State Staff Judge Advocate.

195 (c) No ~~person~~individual who has acted as member,
196 military judge, trial counsel, defense counsel, or



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197 investigating officer, or who has been a witness, in any case
198 may later act as a judge advocate providing legal advice to
199 ~~any~~the reviewing authority ~~upon~~concerning the same case."

200 "§31-2A-7

201 (a) Apprehension is the taking of ~~a person~~an individual
202 into custody.

203 (b) Any ~~person~~individual authorized by this code ~~or by~~
204 ~~Chapter 47 of Title 10, U.S.C., or by regulations~~regulation
205 ~~issued under either,~~ to apprehend persons subject to this
206 code, any marshal of a court-martial appointed pursuant to the
207 provisions of this code, and any peace officer or civil
208 officer having authority to apprehend offenders under the laws
209 of the United States or of ~~a state~~the State of Alabama, may do
210 so upon probable cause that an offense has been committed and
211 that the person apprehended committed it.

212 (c) Commissioned officers, warrant officers, petty
213 officers, and noncommissioned officers have authority to quell
214 quarrels, frays, and disorders among ~~persons~~individuals
215 subject to this code and to apprehend ~~persons~~individuals
216 subject to this code who take part therein.

217 (d) If an offender is apprehended outside the
218 ~~state~~State of Alabama, the offender's return to the area must
219 be in accordance with normal extradition procedures or by
220 reciprocal agreement, unless it is solely a military offense.

221 (e) No ~~person~~individual authorized by this article to
222 apprehend ~~persons~~individuals subject to this code or the place
223 where such offender is confined, restrained, held, or
224 otherwise housed may require payment of any fee or charge for



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225 ~~so~~receiving, apprehending, confining, restraining, holding,
226 or otherwise housing ~~a person~~an individual except as otherwise
227 provided by Section 31-2-106."

228 "§31-2A-12

229 No member of the Alabama National Guard may be placed
230 in confinement in immediate association with enemy prisoners
231 or other foreign nationals not members of the Armed Forces.
232 This section does not preclude an Alabama National Guard
233 service member from being confined in a state, county, or
234 municipal jail or detention facility that may also house
235 illegal immigrants, immigrants, or foreign nationals within
236 the same facility or holding cell."

237 "§31-2A-15

238 (a) Under such regulations as prescribed, any
239 commanding officer may impose disciplinary punishments for
240 minor offenses without the intervention of a court-martial
241 pursuant to this article. The Governor, the Adjutant General,
242 or an officer ~~or~~in a general or flag rank in command may
243 delegate the powers under this article to a principal
244 assistant who is a member of the Alabama National Guard.

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

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

249 (2) For all other purposes, one day shall equal one
250 calendar day.

251 (c) For the purposes of this ~~part~~section, all members
252 must be in military status when punishment is imposed.



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253 (d) Any commanding officer serving as a brigade
254 commander (Army) or wing/group/base or the commander of a
255 geographically separated unit (Air) may impose upon enlisted
256 members of the officer's command any of the following:

257 (1) An admonition.

258 (2) A reprimand.

259 (3) The withholding of privileges for up to six
260 consecutive months.

261 (4) The forfeiture of pay of up to ~~eight~~12 days' pay.

262 (5) A reduction to the next inferior pay grade, ~~if the~~
263 ~~grade from which demoted is within the promotion authority of~~
264 ~~the commander imposing the reduction~~ of an enlisted member who
265 is E-6 and below.

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

268 (7) Restriction to certain specified limits, with or
269 without suspension from duty, for not more than ~~eight~~14 days,
270 which need not be consecutive.

271 ~~(e) Any commanding officer of the grade of major or~~
272 ~~lieutenant commander, or above may impose upon enlisted~~
273 ~~members of the officer's command any of the following:~~

274 ~~(1) Any punishment authorized in subdivisions (1), (2),~~
275 ~~and (3) of subsection (d).~~

276 ~~(2) The forfeiture of pay of up to 12 days' pay.~~

277 ~~(3) A reduction to the lowest or any intermediate pay~~
278 ~~grade, if the grade from which demoted is within the promotion~~
279 ~~authority of the commanding officer imposing the reduction,~~
280 ~~but an enlisted member in a pay grade above E-4 may not be~~



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281 ~~reduced more than two pay grades.~~

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

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

287 ~~(f)~~ (e) The Governor, the Adjutant General, an officer
288 exercising general court-martial convening authority, or an
289 officer of a general or flag rank in command may impose both
290 of the following:

291 (1) Upon officers of the officer's command, any
292 punishment authorized in subdivisions ~~(1), (2), (3),~~ (1) - (4),
293 (6), and ~~(5)~~ (7) of subsection ~~(e)~~ (d).

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

296 ~~(g)~~ (f) Whenever any of those punishments are combined
297 to run consecutively, the total length of the combined
298 punishment cannot exceed the authorized duration of the
299 longest punishment in the combination, and there must be an
300 apportionment of punishments so that no single punishment in
301 the combination exceeds its authorized length under this
302 article.

303 ~~(h)~~ (g) Prior to the offer of non-judicial punishment,
304 the commanding officer shall determine whether restriction
305 shall be considered as a punishment. ~~Should the commanding~~
306 ~~officer determine that the punishment option may include~~
307 ~~restriction,~~ The determination of whether restriction is a
308 punishment option does not prohibit the accused ~~shall be~~



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309 ~~notified of the~~ from requesting his or her right to demand
310 trial by special court-martial. ~~Should the commanding officer~~
311 ~~determine that the punishment option will not include~~
312 ~~restriction, the accused shall be notified that there is no~~
313 ~~right to trial by court-martial in lieu of non-judicial~~
314 ~~punishment.~~

315 ~~(i)~~ (h) The officer who imposes the punishment, or the
316 successor in command, at any time, may suspend, set aside,
317 mitigate, or remit any part or amount of the punishment and
318 restore all rights, privileges, and property affected. The
319 officer also may do either of the following:

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

321 (2) Mitigate extra duties to restriction.

322 The mitigated punishment shall not be for a greater
323 period than the punishment mitigated. When mitigating
324 reduction in grade to forfeiture of pay, the amount of the
325 forfeiture shall not be greater than the amount that could
326 have been imposed initially under this article by the officer
327 who imposed the punishment mitigated.

328 ~~(j)~~ (i) ~~A person~~ An individual punished under this
329 article who considers the punishment unjust or
330 disproportionate to the offense, through the proper channel,
331 may appeal to the next superior authority within ~~45~~ 30 days
332 after the punishment is either announced or sent to the
333 accused, as the commander may determine. The appeal shall be
334 promptly forwarded and decided. During the pendency of the
335 appeal, the punishment shall not be implemented. The superior
336 authority may exercise the same powers with respect to the



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337 punishment imposed as may be exercised under subsection ~~(i)~~(h)
338 by the officer who imposed the punishment. Before acting on an
339 appeal from a punishment, the authority that is to act on the
340 appeal may refer the case to a judge advocate for
341 consideration and advice.

342 ~~(k)~~(j) The imposition and enforcement of disciplinary
343 punishment under this article for any act or omission is not a
344 bar to trial by court-martial or a civilian court of competent
345 jurisdiction for a serious crime or offense growing out of the
346 same act or omission and not properly punishable under this
347 article; however, the fact that a disciplinary punishment has
348 been enforced may be shown by the accused upon trial and, when
349 ~~so~~ shown, it shall be considered in determining the measure of
350 punishment to be adjudged in the event of a finding of guilty.

351 ~~(l)~~(k) Whenever a punishment of forfeiture of pay is
352 imposed under this article, the forfeiture may apply to pay
353 accruing before, on, or after the date that punishment is
354 imposed.

355 ~~(m)~~(l) Regulations may prescribe the form of records to
356 be kept of proceedings under this article and may require that
357 certain categories of those proceedings be in writing.

358 ~~(n)~~(m) The accused shall be informed of the location of
359 and right to consult counsel with regard to any non-judicial
360 punishment. The Commander shall ensure the ~~member~~accused is
361 given appropriate means to contact counsel."

362 "§31-2A-16

363 The three kinds of courts-martial in the state military
364 forces are:



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365 (1) General courts-martial, consisting of either of the
366 following:

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

368 b. Only a military judge, if before the court is
369 assembled the accused, knowing the identity of the military
370 judge and after consultation with defense counsel, requests
371 orally on the record or in writing a court composed only of a
372 military judge and the military judge approves.

373 (2) Special courts-martial, consisting of ~~either of the~~
374 following:

375 a. A military judge ~~and not less than three~~
376 ~~members~~ alone.

377 b. ~~Only a~~ The military judge, if one has been shall be
378 detailed to the court, ~~and the accused under the same~~
379 ~~conditions as those prescribed in paragraph b. of subdivision~~
380 ~~(1) so requests~~ by the State Staff Judge Advocate of either
381 the Alabama Army or Air National Guard.

382 c. The military judge may hear cases arising from any
383 service or branch within the state military forces.

384 (3) Summary courts-martial, consisting of one
385 commissioned officer."

386 "§31-2A-19

387 Subject to Section 31-2A-17 (Article 17), special
388 courts-martial have jurisdiction to try ~~persons~~ individuals
389 subject to this code for ~~any offense~~ military-specific offenses
390 made punishable by this code, and under such limitations as
391 the Governor may prescribe, may adjudge any punishment not
392 forbidden by this code except dishonorable discharge,



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393 dismissal, confinement for more than six months, or forfeiture
394 of pay exceeding 24 days.~~, which must be completed within one~~
395 ~~year~~ Additional punishments under this section include
396 reduction of soldiers or airmen in the rank of E-6 and below
397 to the rank of E-1. Soldiers or airmen in the rank of E-7
398 through E-9 can be reduced to the rank of E-4. Officers may be
399 reduced in rank to the highest rank where the officer last
400 served honorably before the underlying offense occurred."

401 "§31-2A-22

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

404 (1) The Governor.

405 (2) The Adjutant General.

406 (3) ~~A~~Any General Officer ~~who is designated as a~~
407 ~~commander~~ serving in the Alabama Army or Air National Guard.

408 (b) If any ~~such~~ commanding officer is an accuser, the
409 court shall be convened by superior competent authority and
410 may in any case be convened by ~~such~~the superior authority if
411 considered desirable by the authority."

412 "§31-2A-26

413 (a) A military judge shall be detailed to each general
414 ~~and special~~ court-martial. The military judge shall preside
415 over each open session of the court-martial to which the
416 military judge has been detailed.

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

418 (1) An active or retired commissioned officer.

419 (2) A member in good standing of the bar of the highest
420 court of a state or a member of the bar of a federal court for



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421 at least five years.

422 (3) Either a certified military judge or a judge of a
423 court of competent jurisdiction who is approved by the
424 Adjutant General.

425 (c) In the instance when a military judge is not a
426 member of the bar of the highest court of the state, the
427 military judge shall be deemed admitted pro hac vice, subject
428 to filing a certificate with the state judge advocate setting
429 forth such qualifications provided in subsection (b) and with
430 notice and approval of the State Bar and Chief Justice of the
431 Alabama Supreme Court.

432 (d) The military judge of a general ~~or special~~
433 court-martial shall be designated by the state judge advocate,
434 or a designee, for detail by the convening authority. Neither
435 the convening authority nor any staff member of the convening
436 authority shall prepare or review any report concerning the
437 effectiveness, fitness, or efficiency of the military judge
438 ~~se~~who is detailed, which relates to performance of duty as a
439 military judge.

440 (e) No ~~person~~individual is eligible to act as military
441 judge in a case if that ~~person~~individual is the accuser or a
442 witness, or has acted as investigating officer or a counsel in
443 the same case.

444 (f) The military judge of a court-martial may not
445 consult with the members of the court except in the presence
446 of the accused, trial counsel, and defense counsel nor vote
447 with the members of the court."

448 "§31-2A-29



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449 (a) No member of a general or special court-martial may
450 be absent or excused after the court has been assembled for
451 the trial of the accused unless excused as a result of a
452 challenge, excused by the military judge for physical
453 disability or other good cause, or excused by order of the
454 convening authority for good cause.

455 (b) Whenever a general court-martial, other than a
456 general court-martial composed of a military judge only, is
457 reduced below five members, the trial may not proceed unless
458 the convening authority details new members sufficient in
459 number to provide not less than the applicable minimum number
460 of five members. The trial may proceed with the new members
461 present after the recorded evidence previously introduced
462 before the members of the court has been read to the court in
463 the presence of the military judge, the accused, and counsel
464 for both sides.

465 (c) If the military judge of a general court-martial is
466 unable to proceed with the trial as a result of a challenge,
467 because of physical disability, or for other good cause, trial
468 shall proceed, subject to any applicable conditions of Section
469 31-2A-16(1)b. (Article 16(1)b.), after the detail of a new
470 military judge as if no evidence had previously been
471 introduced, unless a verbatim record of the evidence
472 previously introduced or a stipulation thereof is read in
473 court in the presence of the new military judge, the accused,
474 and counsel for both sides.

475 ~~(c) Whenever a special court-martial, other than a~~
476 ~~special court-martial composed of a military judge only, is~~



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477 ~~reduced below three members, the trial may not proceed unless~~
478 ~~the convening authority details new members sufficient in~~
479 ~~number to provide not less than three members. The trial shall~~
480 ~~proceed with the new members present as if no evidence had~~
481 ~~been introduced previously at the trial, unless a verbatim~~
482 ~~record of the evidence previously introduced before the~~
483 ~~members of the court or a stipulation thereof is read to the~~
484 ~~court in the presence of the military judge, the accused, and~~
485 ~~counsel for both sides.~~

486 (d) If the military judge of a special court-martial
487 ~~composed of a military judge only~~ is unable to proceed with
488 the trial as a result of a challenge, because of physical
489 disability, ~~as a result of a challenge,~~ or for other good
490 cause, the trial shall proceed, subject to any applicable
491 conditions of ~~Section 31-2A-16(1)b. or (2)b. (Article 16(1)b.~~
492 ~~or (2)b.)~~ Section 31-2A-16(2)b. and c. (Article 16(2)b. and
493 c.), after the detail of a new military judge as if no
494 evidence had previously been introduced, unless a verbatim
495 record of the evidence previously introduced or a stipulation
496 thereof is read in court in the presence of the new military
497 judge, the accused, and counsel for both sides."

498 "§31-2A-30

499 (a) Charges and specifications shall be signed by a
500 ~~person~~ an individual subject to this code under oath before
501 either a commissioned officer or the clerk of the court as
502 authorized by Section 31-2A-136(a) (Article 136(a)) to
503 administer oaths and shall state both of the following:

504 (1) ~~That the~~ The signer has personal knowledge of, or



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505 has investigated, the matters set forth therein.

506 (2) ~~That the~~The charges and specifications are true in
507 fact to the best of the signer's knowledge and belief.

508 (b) Upon the preferring of charges, the proper
509 authority shall take immediate steps to determine what
510 disposition should be made thereof in the interest of justice
511 and discipline, and the person accused shall be informed of
512 the charges as soon as practicable."

513 "§31-2A-34

514 (a) Before directing the trial of any charge by general
515 or special court-martial, the convening authority shall refer
516 it to a judge advocate for consideration and advice. The
517 convening authority may refer a specification under a charge
518 to a special court-martial after advice from the servicing
519 judge advocate. This advice of counsel to the convening
520 authority can be either in writing or verbal.

521 (b) The convening authority may not refer a
522 specification under a charge to a general ~~or special~~
523 court-martial for trial unless the convening authority has
524 been advised in writing by a judge advocate of all of the
525 following:

526 (1) The specification alleges an offense under this
527 code.

528 (2) The specification is warranted by the evidence
529 indicated in the report of investigation under Section
530 31-2A-32 (Article 32), if there is such a report.

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



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533 ~~(b)~~ (c) The advice of the judge advocate under
534 ~~subsection~~ subsections (a) and (b) with respect to a
535 specification under a charge shall include a written and
536 signed statement by the judge advocate containing both of the
537 following:

538 (1) Conclusions with respect to each matter set forth
539 ~~in subsection~~ subsections (a) and (b).

540 (2) Recommended action that the convening authority
541 should take regarding the specification. If the specification
542 is referred for trial, the recommendation of the judge
543 advocate shall accompany the specification.

544 ~~(e)~~ (d) If the charges or specifications are not correct
545 formally or do not conform to the substance of the evidence
546 contained in the report of the investigating officer, formal
547 corrections, and such changes in the charges and
548 specifications as are needed to make them conform to the
549 evidence, may be made."

550 "§31-2A-35

551 The trial counsel shall serve or ~~caused~~ cause to be
552 served upon the accused a copy of the charges. No
553 ~~person~~ individual, against the ~~person's~~ individual's objection,
554 may be brought to trial before a general court-martial case
555 within a period of 45 days after the service of charges upon
556 the accused, or in a special court-martial, within a period of
557 ~~45~~ 30 days after the service of charges upon the accused."

558 "§31-2A-36

559 Pretrial, trial, and post-trial procedures, including
560 modes of proof, for court-martial cases arising under this



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561 code, and for courts of inquiry, may be prescribed by the
562 Governor or the Adjutant General by rules, or as otherwise
563 provided by law, which shall apply the principles of law and
564 the rules of court under the State of Alabama, to include: (i)
565 the Alabama Rules of Evidence; (ii) Alabama Rules of Criminal
566 Procedure; (iii) Alabama Rules of Juvenile Procedure; and (iv)
567 Alabama Rules of Appellate Procedure~~evidence generally~~
568 ~~recognized in military criminal cases in the courts of the~~
569 ~~Armed Forces but which may not be contrary to or inconsistent~~
570 ~~with this code."~~

571 "§31-2A-38

572 (a) The trial counsel of a general or special
573 court-martial shall prosecute in the name of the state, and,
574 under the direction of the court, shall prepare the record of
575 the proceedings.

576 (b) (1) The accused has the right to be represented in
577 defense before a general or special court-martial or at an
578 investigation under Section 31-2A-32 (Article 32) as provided
579 in this subsection.

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

582 (3) The accused may be represented by either of the
583 following:

584 a. ~~By military~~Military counsel detailed under Section
585 31-2A-27 (Article 27).

586 b. ~~By military~~Military counsel of the accused's own
587 selection if that counsel is reasonably available as
588 determined under subdivision (7).



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

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

597 (6) The accused is not entitled to be represented by
598 more than one military counsel. However, the ~~person~~individual
599 authorized under rules prescribed under Section 31-2A-27
600 (Article 27) to detail counsel, in that ~~person's~~individual's
601 sole discretion:

602 a. May detail additional military counsel as assistant
603 defense counsel.

604 b. If the accused is represented by military counsel of
605 the accused's own selection under paragraph (3)b., may approve
606 a request from the accused that military counsel detailed
607 under paragraph (3)a. act as associate defense counsel.

608 (7) The ~~senior force judge advocate~~State Staff Judge
609 Advocate of the same force of which the accused is a member,
610 shall determine whether the military counsel selected by an
611 accused is reasonably available.

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

614 (1) Forward for attachment to the record of proceedings
615 a brief of such matters as counsel determines should be
616 considered in behalf of the accused on review, including any



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617 objection to the contents of the record which counsel
618 considers appropriate.

619 (2) Assist the accused in the submission of any matter
620 under Section 31-2A-60 (Article 60).

621 (3) Take other action authorized by this code."

622 "§31-2A-46

623 The trial counsel, the defense counsel, and the
624 court-martial shall have equal opportunity to obtain witnesses
625 and other evidence as prescribed by regulations and provided
626 by law. Process issued in court-martial cases to compel
627 witnesses to appear and testify and to compel the production
628 of other evidence shall apply the principles of law and the
629 ~~rules of courts-martial generally recognized in military~~
630 ~~criminal cases in the courts of the Armed Forces of the United~~
631 ~~States, but which may not be contrary to or inconsistent with~~
632 ~~this code~~ Alabama Rules of Criminal Procedure. Process shall
633 run to any part of the United States, or the territories,
634 commonwealths, and possessions, and may be executed by civil
635 officers as prescribed by the laws of the place where the
636 witness or evidence is located or outside of the ~~United~~
637 ~~States~~ State of Alabama. A court-martial convened under this
638 code may subpoena and compel the presence of witnesses and the
639 production of documents in the same manner as a circuit court
640 in a criminal case. Such subpoena, however, shall be signed
641 and issued by the assigned military judge and shall comply
642 with the requirements of Chapter 21 of Title 12. ~~Any reference~~
643 ~~therein to the issuance of process by a clerk of court shall~~
644 ~~not apply in a court-martial proceeding."~~



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645 "§31-2A-51

646 (a) Voting by members of a general ~~or special~~
647 court-martial on the findings and on the sentence shall be by
648 secret written ballot. The junior member of the court shall
649 count the votes. The count shall be checked by the president,
650 who shall forthwith announce the result of the ballot to the
651 members of the court.

652 (b) The military judge shall rule upon all questions of
653 law and all interlocutory questions arising during the
654 proceedings. Any such ruling made by the military judge upon
655 any question of law or any interlocutory question other than
656 the factual issue of mental responsibility of the accused is
657 final and constitutes the ruling of the court. However, the
658 military judge may change the ruling at any time during the
659 trial. Unless the ruling is final, if any member objects
660 thereto, the court shall be cleared and closed and the
661 question decided by a voice vote as provided in Section
662 31-2A-52 (Article 52), beginning with the junior in rank.

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

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

670 (2) In the case being considered, if there is a
671 reasonable doubt as to the guilt of the accused, the doubt
672 must be resolved in favor of the accused and the accused must



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673 be acquitted.

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

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

679 (d) Subsections (a), (b), and (c) do not apply to a
680 court-martial composed of a military judge only. The military
681 judge of ~~such~~ a court-martial shall determine all questions of
682 law and fact arising during the proceedings and, if the
683 accused is convicted, adjudge an appropriate sentence. The
684 military judge of such a court-martial shall make a general
685 finding, and in addition, on request, shall find the facts
686 specially. If an opinion or memorandum of decision is filed,
687 it will be sufficient if the findings of fact appear therein."

688 "§31-2A-52

689 (a) No person may be convicted of an offense except as
690 provided in Section 31-2A-45(b) (Article 45(b)) or by the
691 concurrence of two-thirds of the members present at the time
692 the vote is taken.

693 (b) All other questions to be decided by the members of
694 a general ~~or special~~ court-martial shall be determined by a
695 majority vote, but a determination to reconsider a finding of
696 guilty or to reconsider a sentence, with a view toward
697 decreasing it, may be made by any lesser vote which indicates
698 that the reconsideration is not opposed by the number of votes
699 required for that finding or sentence. A tie vote on a
700 challenge disqualifies the member challenged. A tie vote on a



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701 motion relating to the question of the accused's sanity is a
702 determination against the accused. A tie vote on any other
703 question is a determination in favor of the accused.

704 (c) Pursuant to its authority under Article XV, Section
705 271 of the Constitution of Alabama of ~~1901~~2022, the
706 Legislature finds and declares that Article I, Section 11 of
707 the Constitution of Alabama of ~~1901~~2022, does not apply to a
708 court-martial proceeding. Courts-martial existed before the
709 existence of the ~~Constitution~~ constitution, and their
710 existence is recognized in the ~~Constitution~~ constitution.
711 Further, courts-martial are an executive agency belonging to
712 the executive branch, not the judicial branch, and were
713 created by the Legislature pursuant to its authority under
714 Article XV, Section 271, to provide for disciplining the
715 militia."

716 "§31-2A-54

717 (a) Each general and special court-martial shall keep a
718 separate record of the proceedings in each case brought before
719 it, and the record shall be authenticated by the signature of
720 the military judge. If the record cannot be authenticated by
721 the military judge by reason of his or her death, disability,
722 or absence, it shall be authenticated by the signature of the
723 trial counsel or by that of a member, if the trial counsel is
724 unable to authenticate it by reason of his or her death,
725 disability, or absence. In a court-martial consisting of only
726 a military judge, the record shall be authenticated by the
727 court reporter under the same conditions which would impose
728 such a duty on a member under this subsection.



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

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

734 (c) Each summary court-martial shall keep a separate
735 record of the proceedings in each case, and the record shall
736 be authenticated in the manner as may be prescribed by
737 regulations.

738 (d) A copy of the record of the proceedings of each
739 general and special court-martial shall be given to the
740 accused as soon as it is authenticated and once the accused
741 provides timely notice of appeal."

742 "§31-2A-58b

743 (a) (1) A court-martial sentence described in
744 subdivision (2) shall result in the forfeiture of pay, or of
745 pay and allowances, due that member during any period of
746 confinement or parole. The forfeiture pursuant to this article
747 shall take effect on the date determined under Section
748 31-2A-57(a) (Article 57(a)) and may be deferred as provided by
749 that article. The pay and allowances forfeited, in the case of
750 a general court-martial, shall be all pay and allowances due
751 that member during such period and, in the case of a special
752 court-martial, shall be two-thirds of all pay due that member
753 during such period.

754 (2) A sentence covered by this article is any sentence
755 that includes ~~either of the following:~~

756 ~~a. Confinement for more than six months.~~



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757 ~~b. Confinement for six months or less and a bad-conduct~~
758 ~~discharge or dismissal~~ confinement for any period of time.

759 (b) In a case involving an accused who has dependents,
760 the convening authority or other person acting under Section
761 31-2A-60 (Article 60) may waive any or all of the forfeitures
762 of pay and allowances required by subsection (a) for a period
763 not to exceed six months. Any amount of pay or allowances
764 that, except for a waiver under this subsection, would be
765 forfeited shall be paid, as the convening authority or other
766 person taking action directs, to the dependents of the
767 accused.

768 (c) If the sentence of a member who forfeits pay and
769 allowances under subsection (a) is set aside or disapproved
770 or, as finally approved, does not provide for a punishment
771 referred to in subdivision (a)(2), the member shall be paid
772 the pay and allowances which the member would have been paid,
773 except for the forfeiture, for the period during which the
774 forfeiture was in effect."

775 "§31-2A-66

776 The Governor shall establish a Military Court-Martial
777 Review Panel which shall be composed of one or more panels,
778 and each ~~such~~ panel shall be composed of not less than three
779 appellate military judges. The military judges selected for
780 the Military Court-Martial Review Panel shall be active, ~~or~~
781 retired, or an individual who served for a minimum of eight
782 years as a judge advocates ~~advocate of the Department of~~
783 ~~Defense of the United States~~ within the Alabama Army or Air
784 National Guard. Further composition and selection of judges



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785 for the panel shall be established by regulation pursuant to
786 Sections 131 and 271 of the ~~Official Recompilation of the~~
787 Constitution of Alabama of ~~1901~~2022, as amended. For the
788 purpose of reviewing courts-martial cases, the body may sit in
789 panels or as a whole in accordance with the rules prescribed
790 by the Governor. All appeals of decisions of courts-martial
791 shall proceed directly to the Military Court-Martial Review
792 Panel."

793 "§31-2A-73

794 (a) At any time within ~~two years~~30 days after notice of
795 approval by the convening authority of a court-martial
796 sentence, the accused may petition the Adjutant General for a
797 new trial on the grounds of newly discovered evidence or fraud
798 on the court-martial.

799 (b) At any time within ~~45~~30 days of discovery of ~~fraud~~
800 ~~on the court-martial or~~ newly discovered evidence or fraud on
801 the court-martial, the accused may petition for a new trial
802 with the Military Court-Martial Review Panel. In the event the
803 accused's case is pending before the Alabama Supreme Court,
804 the appeal shall be stayed until the Military Court-Martial
805 Review Panel rules on the petition."

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807 "§31-2A-130

808 Any ~~person~~individual subject to this code is guilty of
809 criminal trespass and shall be punished as a court-martial may
810 direct if he or she is convicted of either of the following:

811 (1) ~~who unlawfully enters~~Knowingly enters or remains
812 unlawfully in a ~~the~~ building or upon real property which is



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813 fenced or enclosed in a manner designed to exclude intruders.

814 ~~(2) structure of another with intent to commit a~~
815 ~~criminal offense therein is guilty of housebreaking and shall~~
816 ~~be punished as a court-martial may direct~~Knowingly enters or
817 remains unlawfully in or on a premises."

818 "§31-2A-136

819 (a) The following persons may administer oaths for the
820 purposes of military administration, including military
821 justice:

822 (1) All judge advocates.

823 (2) All summary courts-martial.

824 (3) All adjutants, assistant adjutants, acting
825 adjutants, and personnel adjutants.

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

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

830 (1) ~~The president~~ President of the United States,
831 military judge, and trial counsel, and the clerk of court for
832 all general and special courts-martial.

833 (2) The president and the counsel for the court of any
834 court of inquiry.

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

836 (4) ~~All persons~~ individuals detailed to conduct an
837 investigation.

838 (5) All recruiting officers.

839 (6) All other ~~persons~~ individuals designated by
840 regulations of the Armed Forces of the United States or by



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841 statute.

842 (c) The signature without seal of any ~~such~~ person
843 listed in subsection (a) or (b), together with the title of
844 his or her office, is prima facie evidence of the person's
845 authority."

846 Section 2. Section 31-2A-26a is added to the Code of
847 Alabama 1975, as follows:

848 §31-2A-26a

849 (a) A military judge shall be detailed to each special
850 court-martial. The military judge shall preside over each open
851 session of the special court-martial to which the military
852 judge has been detailed.

853 (b) A military judge shall be both of the following:

854 (1) A judge advocate who is a member in good standing
855 of the Alabama National Guard.

856 (2) A member in good standing of the State Bar of
857 Alabama for at least five years.

858 (c) The military judge of a special court-martial shall
859 be designated by a state staff judge advocate, or a designee,
860 for detail by the convening authority. Neither the convening
861 authority nor any staff member of the convening authority
862 shall prepare or review any report concerning the
863 effectiveness, fitness, or efficiency of the military judge
864 who is detailed, which relates to performance of duty as a
865 military judge.

866 (d) No individual is eligible to act as military judge
867 in a case if that individual is the accuser or a witness, or
868 has acted as investigating officer or a counsel in the same



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869 case.

870 (e) The military judge of a special court-martial may
871 not consult or communicate with any party, or party's
872 representative, regarding a matter before them except in the
873 presence of the accused, or defense counsel and trial counsel.

874 Section 3. Sections 31-2A-99, 31-2A-100, 31-2A-101,
875 31A-2A-102, 31-2A-104, 31-2A-105, 31-2A-110, 31-2A-112a,
876 31-2A-112b, 31-2A-114, and 31-2A-143, Code of Alabama 1975,
877 are repealed.

878 Section 4. This act shall become effective on October
879 1, 2024.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB287

Senate 16-Apr-24

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives

Passed: 30-Apr-24

By: Senator Givhan