

SENATE BILL NO. 690

January 18, 2024, Introduced by Senators KLINEFELT, POLEHANKI and MCCANN and referred to the Committee on Veterans and Emergency Services.

A bill to amend 1980 PA 523, entitled "Michigan code of military justice of 1980," by amending sections 2, 3, 6, 10, 15, 16, 17, 18, 19, 20, 23, 24, 26, 27, 29, 32, 34, 36, 43, 48, 52, 54, 58, 61, 65, 66, 67, 121, and 147 (MCL 32.1002, 32.1003, 32.1006, 32.1010, 32.1015, 32.1016, 32.1017, 32.1018, 32.1019, 32.1020, 32.1023, 32.1024, 32.1026, 32.1027, 32.1029, 32.1032, 32.1034, 32.1036, 32.1043, 32.1048, 32.1052, 32.1054, 32.1058, 32.1061, 32.1065, 32.1066, 32.1067, 32.1121, and 32.1147), sections 2, 3, 15, 16, 26, 27, and 29 as amended and section 121 as added by 2005 PA 186, and by adding sections 6a, 30a, 38a, 58a, 58b, 93a, 106, 106a, 112a, 120, 121a,

121b, 122, 123, 128, 131a, 131b, 131c, 132a, 134a, 134b, 134c, and 134d; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Accuser" means ~~a person~~**an individual** who signs and
3 swears to charges, ~~a person~~**an individual** who directs that charges
4 be signed and sworn to by another, or ~~a person~~**an individual** who
5 has an interest other than an official interest in the prosecution
6 of the accused.

7 (b) "Active service" means service, active state service, or
8 special duty required by law, regulation, or order of the governor.
9 Active service includes the continuing obligations of active
10 members of the national guard and the defense force by virtue of
11 their commissions, appointments, or enlistments.

12 (c) "Active state duty" means the actual weekend, annual
13 training, or special call up duty in the state military forces and
14 includes travel to and from the duty site or station.

15 (d) "Active state service" means military service in support
16 of civil authorities ordered by the governor or as provided by the
17 Michigan military act, **1967 PA 150, MCL 32.501 to 32.851.**

18 (e) "Apprehension" means the taking of ~~a person~~**an individual**
19 into custody.

20 (f) "Cadet" means **an individual who is enrolled in or**
21 **attending a state military academy, a regional training institute,**
22 **or any other formal education program for the purpose of becoming a**
23 **commissioned officer in the state military forces.**

24 (g) ~~(f)~~"Commanding officer" includes only a commissioned
25 officer.

26 (h) ~~(g)~~"Confinement" means the physical restraint of a

1 ~~person~~**-an individual.**

2 (i) ~~(h)~~"Controlled substance" means opium, heroin, cocaine,
3 amphetamine, lysergic acid diethylamide, methamphetamine,
4 phencyclidine, barbituric acid, marihuana, any compound or
5 derivative of any such substance, and any other substance that is
6 listed in schedules I through V of ~~section 202 of the controlled~~
7 ~~substances act,~~ 21 USC 812, including any subsequent amendments
8 ~~thereto.~~**to that act.**

9 (j) "Convening authority" includes either of the following:

10 (i) The person who convened the court.

11 (ii) A commissioned officer commanding for the time being or a
12 successor in command to the convening authority.

13 (k) ~~(i)~~"Correctional custody" means the physical restraint of
14 ~~a person~~**-an individual** during duty or nonduty while on active state
15 duty and includes extra duty, fatigue duty, or hard labor.

16 (l) "Defense counsel" means a commissioned officer of the state
17 military forces who is a member in good standing of the bar of this
18 state and who is appointed to represent an accused in a proceeding
19 under this code, or a civilian attorney who is a member in good
20 standing of the bar of this state, retained at personal expense of
21 the accused, if the accused elects nonmilitary representation.

22 (m) ~~(j)~~"Enlisted member" means ~~a person~~**-an individual** in an
23 enlisted grade.

24 (n) "Extra duty" means a duty in addition to those normally
25 assigned to the individual undergoing the punishment, and includes,
26 but is not limited to, fatigue duty and military duty of any kind.

27 (o) "Fatigue duty" means labor of a nonmilitary kind,
28 including, but not limited to, cleaning, digging, domestic duty, or
29 other similar types of work.

1 (p) ~~(k)~~ "Federal service" means military duty in the ~~armed~~
2 ~~forces~~ **Armed Forces** of the United States, including, without
3 limitation, the ~~army national guard~~ **Army National Guard** of the
4 United States and the ~~air national guard~~ **Air National Guard** of the
5 United States, while subject to the uniform code of military
6 justice, 10 USC ~~7~~ 801 to ~~946~~ **946a**.

7 (q) ~~(l)~~ "Grade" means a step or degree, in a graduated scale of
8 office or military rank, that is established and designated as a
9 grade by law or rule.

10 (r) ~~(m)~~ "Judge advocate" means ~~an officer who is designated as~~
11 ~~a judge advocate by the state judge advocate general.~~ **a commissioned**
12 **officer of the state military forces who is a member in good**
13 **standing of the bar of this state, and is either of the following:**

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

19 (ii) Certified as a nonfederally recognized judge advocate,
20 under regulations adopted under this code, by the senior judge
21 advocate of the commander of the force in the state military forces
22 of which the accused is a member, as competent to perform such
23 military justice duties required by this code, or, if no judge
24 advocate described in this subparagraph is available, then that
25 certification may be made by the senior judge advocate of the
26 commander of another force in the state military forces as the
27 convening authority directs.

28 (s) ~~(n)~~ "Military" includes each ~~armed force~~ **component of the**
29 **Armed Forces** of the United States and each component of the state

1 military establishment.

2 (t) ~~(e)~~ "Military court" means a court-martial, a court of
3 inquiry, or the military appeals tribunal.

4 (u) ~~(p)~~ "Military judge" means ~~a judge advocate designated as~~
5 ~~a military judge by the state judge advocate general or an official~~
6 of a general or special court-martial ~~appointed pursuant to~~
7 **detailed in accordance with** section 26.

8 (v) ~~(q)~~ "Minor offense" means an offense under a punitive
9 section of this ~~act~~ **code** that a commanding officer considers minor.

10 (w) ~~(r)~~ "Officer" means a commissioned or warrant officer.

11 (x) **"Special victims' counsel" means a judge advocate**
12 **designated as a special victims' counsel under 10 USC 1044e.**

13 (y) ~~(s)~~ "Staff judge advocate" means the commissioned officer
14 responsible for supervising the administration of military justice
15 within a command.

16 (z) ~~(t)~~ "State **staff** judge ~~advocate general~~ **advocate**" means
17 the commissioned officer responsible for supervising the
18 administration of ~~the~~ military justice in the state military
19 forces.

20 (aa) ~~(u)~~ "State military forces" means the national guard of
21 ~~the~~ **this** state, as **that term is** defined in 32 USC 101(3), and any
22 other **components of the state** military ~~force~~ **establishment**
23 organized under the laws of ~~the~~ **this** state.

24 (bb) ~~(v)~~ "Summary court officer" means an official appointed
25 pursuant to section 16(c) who is authorized to serve warrants.

26 (cc) ~~(w)~~ "Superior commissioned officer" means a commissioned
27 officer superior in rank or command.

28 (dd) ~~(x)~~ "Unit" means a regularly organized body of the
29 military. ~~that is not larger than a company or squadron.~~

1 **(ee) "Victim of an offense under this code" means an**
 2 **individual who has suffered direct physical, emotional, or**
 3 **pecuniary harm as a result of the commission of an offense under**
 4 **this code, or any other individual defined as a victim under the**
 5 **William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL**
 6 **780.751 to 780.834.**

7 Sec. 3. (1) This code applies to all members of the state
 8 military forces **at all times, except** when ~~not~~ in federal service. ~~7~~
 9 ~~and to all other persons lawfully called, ordered, drafted,~~
 10 ~~transferred or inducted into, or ordered to duty in or with the~~
 11 ~~state military forces, from the date they are required by the terms~~
 12 ~~of the call, order, or other directive. Persons subject to this~~
 13 ~~code shall include all persons serving in the state military forces~~
 14 ~~pursuant to title 32 of the United States Code and all persons of~~
 15 ~~the state military forces in active service.~~

16 (2) This code applies to ~~a person~~ **an individual** subject to
 17 this code while serving out of state and while going to and
 18 returning from the service out of state to the same extent as a
 19 ~~person~~ **an individual** serving within ~~the~~ **this** state.

20 (3) **Subject matter jurisdiction is established if the**
 21 **individual subject to this code was on any type of duty status with**
 22 **the state military forces at the time of the offense, including**
 23 **travel to and from the duty site or station or, if the individual**
 24 **subject to this code was not on any type of duty status with the**
 25 **state military forces at the time of the offense, a nexus exists**
 26 **between the offense and the state military forces.**

27 (4) ~~(3)~~ Courts-martial and courts of inquiry may be convened
 28 and held in units of the state military forces while serving out of
 29 state with the same jurisdiction and powers as if held within ~~the~~

1 **this** state. Offenses committed out of state may be tried and
 2 punished either out of state or within ~~the~~**this** state.

3 Sec. 6. (1) The ~~governor, on the recommendation of the~~
 4 adjutant general ~~,~~ shall appoint an officer of the state military
 5 forces as state **staff** judge advocate. ~~general.~~ To be eligible for
 6 appointment, an officer ~~shall~~**must** be licensed to practice law in
 7 this state, and have practiced law in this state for at least 5
 8 years, and ~~shall~~**must** be a commissioned officer of the rank of
 9 lieutenant colonel or higher in the judge advocate general's corps.

10 ~~(2) The adjutant general may appoint as many state judge~~
 11 ~~advocate general's assistants or legal officers as the adjutant~~
 12 ~~general considers necessary. To be eligible for appointment, the~~
 13 ~~person shall be licensed to practice law in this state and~~
 14 ~~otherwise meet the eligibility requirements of the judge advocate~~
 15 ~~general's corps.~~

16 (2) ~~(3)~~ The state **staff** judge advocate ~~general~~ or the state
 17 **staff** judge advocate ~~general's assistants~~**advocate's delegate** shall
 18 make frequent inspections in the field in the supervision of the
 19 administration of military justice.

20 (3) ~~(4)~~ Each convening authority shall communicate directly
 21 with its staff judge advocate or ~~legal officer~~**judge advocate** in
 22 matters relating to the administration of military justice. The
 23 staff judge advocate or ~~legal officer~~**judge advocate** of a command
 24 is entitled to communicate directly with the staff judge advocate
 25 or ~~legal officer~~**judge advocate** of a superior or subordinate
 26 command, or with the state **staff** judge advocate. ~~general.~~

27 (4) ~~(5) A person~~**An individual** who has acted as member,
 28 military judge, trial counsel, assistant trial counsel, defense
 29 counsel, assistant defense counsel, or investigating officer in a

1 court-martial case shall not act later as staff judge advocate or
2 ~~legal officer-judge advocate~~ to a reviewing authority or to the
3 military appeals tribunal or be a member of a reviewing authority
4 or a member of the military appeals tribunal on the same case.

5 **Sec. 6a. (1) A victim of an offense under this code has the**
6 **rights conferred by state law in nonmilitary courts, including, but**
7 **not limited to, all of the following:**

8 (a) The right to be reasonably protected from the accused.

9 (b) The right to reasonable, accurate, and timely notice
10 provided by military trial counsel of all of the following:

11 (i) A public hearing concerning the continuation of confinement
12 before the trial of the accused.

13 (ii) An investigation under section 32.

14 (iii) A court-martial relating to the offense, including all
15 related motions, hearings, pleas, sentencing hearings, alterations
16 or suspensions, and all related filed documents.

17 (iv) A public proceeding of the service clemency and parole
18 board relating to the offense.

19 (v) The release or escape of the accused, unless notice may
20 endanger the safety of any individual.

21 (c) The right to not be excluded from any public hearing or
22 proceeding described in subdivision (b), unless the military judge
23 or investigating officer under section 32, as applicable, after
24 receiving clear and convincing evidence, determines that testimony
25 by the victim of an offense under this code would be materially
26 altered if the victim heard other testimony at that hearing or
27 proceeding.

28 (d) The right to be reasonably heard at all of the following:

29 (i) A public hearing concerning the continuation of confinement

1 before the trial of the accused.

2 (ii) A sentencing hearing relating to the offense.

3 (iii) A proceeding involving clemency and parole related to the
4 offense.

5 (iv) Any public military proceedings, including appeals, in
6 connection with the victim's legal rights where those rights are
7 implicated.

8 (e) The reasonable right to confer beforehand with the counsel
9 representing the government at a proceeding described in
10 subdivision (b).

11 (f) The right to receive full restitution before a forfeiture
12 may be received by the military as provided by law.

13 (g) The right to proceedings free from unreasonable delay.

14 (h) The right to be treated with fairness and with respect for
15 the dignity and privacy of the victim of an offense under this
16 code.

17 (2) If a victim of an offense under this code is under 18
18 years of age but is not a member of the military, or is
19 incompetent, incapacitated, or deceased, the military judge shall
20 designate a representative of the estate of the victim, a family
21 member, or another suitable individual who must not be the accused
22 to assume the victim's rights under this section.

23 (3) This section shall not be construed to do any of the
24 following:

25 (a) Authorize a cause of action for damages.

26 (b) Create, enlarge, or imply a duty or obligation to a victim
27 of an offense under this code or other individual for breach of
28 which this state or any of its officers or employees could be held
29 liable for damages other than restitution.

1 (c) Impair the exercise of discretion under section 30 or 34.

2 (4) If the victim of an offense under this code believes that
3 an investigating officer ruling under section 32 or a court-martial
4 ruling violates the rights of the victim afforded by a provision
5 specified in subsection (7), the victim may file an interlocutory
6 appeal to the military appeals tribunal, and an automatic stay of
7 the military proceedings takes effect on the filing of the notice
8 of appeal until final disposition of the appeal in order to require
9 the investigating officer or the court-martial to comply with the
10 provision.

11 (5) If the victim of an offense under this code is subject to
12 an order to submit to a deposition, whether or not the victim is
13 available to testify at the court-martial trying the accused for
14 the offense, the victim may appeal that order in the same manner
15 described in subsection (4) to the military appeals tribunal to
16 quash the order.

17 (6) An appeal described in subsection (4) or (5) must be
18 forwarded directly to the chairperson of the military appeals
19 tribunal, by means that may be prescribed by the governor, and, to
20 the extent practicable, must have priority over all other
21 proceedings before the military appeals tribunal.

22 (7) Subsection (4) applies to the protections afforded by all
23 of the following:

24 (a) This section.

25 (b) Section 32.

26 (c) Military Rule of Evidence 412, relating to the admission
27 of evidence regarding a victim's sexual behavior or predisposition.

28 (d) Military Rule of Evidence 513, relating to the
29 psychotherapist-patient privilege.

1 (e) Military Rule of Evidence 514, relating to the victim
2 advocate-victim privilege.

3 (f) Military Rule of Evidence 615, relating to the exclusion
4 of witnesses.

5 (8) On notice by counsel for the government to counsel for the
6 accused of the name of an alleged victim of an offense under this
7 code whom counsel for the government intends to call as a witness
8 at a proceeding under this code, counsel for the accused shall make
9 any request to interview the victim through the special victims'
10 counsel or other counsel for the victim, if applicable.

11 (9) If requested by an alleged victim who is subject to a
12 request for interview under subsection (8), any interview of the
13 victim by counsel for the accused must take place only in the
14 presence of the counsel for the government, a counsel for the
15 victim, or, if applicable, a victim advocate.

16 Sec. 10. (1) ~~A person~~**An individual** subject to this code and
17 charged with an offense under this code ~~shall~~**must** be ordered into
18 arrest or confinement, as circumstances may require. If the ~~person~~
19 **individual** is charged only with an offense normally tried by a
20 summary court-martial, the ~~person~~**individual** shall not ordinarily
21 be placed in confinement.

22 (2) An arrest or confinement of a ~~person~~**an individual** who
23 fails or refuses to report to ~~his or her~~**the individual's** appointed
24 place of duty ~~shall~~**must** be executed pursuant to a warrant issued
25 by the convening authority in a form approved by the adjutant
26 general.

27 (3) A warrant of arrest ~~shall~~**must** be served by a ~~person~~**an**
28 **individual** authorized to serve a warrant of arrest in this state or
29 by military personnel designated for that purpose by the commanding

1 officer.

2 (4) ~~A person~~ **An individual** confined pursuant to ~~under~~ this
 3 code ~~shall~~ **must** be confined in a place of confinement under the
 4 control of the state military forces or in a jail in the county in
 5 which the accused resides or in which the ~~person's~~ **individual's**
 6 unit is located. **If none of these locations are feasible, an**
 7 **individual confined under this code may be confined in any county**
 8 **jail in this state.**

9 Sec. 15. (1) Under regulations ~~issued pursuant to~~ **promulgated**
 10 **under** this ~~act, code,~~ a commanding officer, in addition to or
 11 instead of an admonition or reprimand, may impose disciplinary
 12 punishment for a minor offense on an officer under ~~his or her~~ **that**
 13 **commanding officer's** command without the intervention of a court-
 14 martial with 1 of the following:

15 (a) Restrictions to certain specified limits, with or without
 16 suspension from duty, for not more than 15 consecutive ~~active state~~
 17 ~~duty~~ days.

18 (b) If imposed by an officer exercising general court-martial
 19 jurisdiction or an officer of general or flag rank in command:

20 (i) Arrest in quarters for not more than 15 consecutive ~~active~~
 21 ~~state duty~~ days.

22 (ii) Forfeiture of not more than 1/2 of 1 month's pay per month
 23 for 2 months.

24 (iii) Restrictions to certain specified limits with or without
 25 suspension from duty, for not more than 15 consecutive ~~duty~~ days.

26 (2) ~~(c) Upon~~ **Under regulations promulgated under this code, a**
 27 **commanding officer, in addition to or instead of an admonition or**
 28 **reprimand, may impose disciplinary punishment for a minor offense**
 29 **on other military personnel under his or her that commanding**

1 **officer's** command ~~, without the intervention of a court-martial~~
 2 **with** 1 or more of the following:

3 ~~(i) Correctional custody for not more than 7 consecutive duty~~
 4 ~~days.~~

5 (a) ~~(ii)~~ Forfeiture of not more than 7 duty days' pay.

6 (b) ~~(iii)~~ Reduction to the next inferior pay grade, if the ~~grade~~
 7 ~~from which the person is demoted is within the promotion authority~~
 8 ~~of the officer imposing the reduction or an officer subordinate to~~
 9 ~~the officer who imposes the reduction.~~ **individual is in the pay**
 10 **grade of E4 or below.**

11 (c) ~~(iv)~~ Extra duties, including fatigue or other duties for
 12 not more than 15 consecutive ~~duty~~ days and not more than 2 hours
 13 per day. **No extra duties may be imposed that constitute known**
 14 **safety or health hazards to the individual, that constitute cruel**
 15 **or unusual punishment, or that are not sanctioned by the customs of**
 16 **the military. Extra duties assigned as punishment of**
 17 **noncommissioned officers or any other enlisted individuals must not**
 18 **be of a kind that demeans the recipient's grade or position.**

19 (d) ~~(v)~~ Restrictions to certain specified limits, with or
 20 without suspension from duty, for not more than 15 consecutive ~~duty~~
 21 days.

22 (e) ~~(d)~~ If imposed by an officer of the ~~grade~~ **rank** of major or
 23 above ~~upon~~ **on** other military personnel under ~~his or her~~ **that**
 24 **officer's** command, **the punishment may include 1 or more of the**
 25 **following:**

26 ~~(i) Correctional custody for not more than 15 consecutive duty~~
 27 ~~days.~~

28 (i) ~~(ii)~~ Forfeiture of not more than 15 duty days' pay.

29 (ii) ~~(iii)~~ Reduction to the lowest or an intermediate pay grade,

1 if the grade from which demoted is within the promotion authority
 2 of the officer imposing the reduction, ~~or the officer imposing the~~
 3 ~~reduction is a brigade, wing, base, or post commander,~~ except that
 4 an enlisted member in a pay grade above E4 may not be reduced more
 5 than 2 pay grades.

6 **(iii) ~~(iv)~~** Extra duties, including fatigue or other duties, for
 7 not more than 15 consecutive ~~duty~~ days. **No extra duties may be**
 8 **imposed that constitute known safety or health hazards to the**
 9 **individual, that constitute cruel or unusual punishment, or that**
 10 **are not sanctioned by customs of the military. Extra duties**
 11 **assigned as punishment of noncommissioned officers or any other**
 12 **enlisted individuals must not be of a kind that demeans the**
 13 **recipient's grade or position.**

14 **(iv) ~~(v)~~** Restrictions to certain specified limits, with or
 15 without suspension from duty, for not more than 15 consecutive ~~duty~~
 16 days.

17 **(3) ~~(2)~~** Two or more disciplinary punishments of arrest in
 18 quarters, ~~correctional custody,~~ extra duties, and restriction shall
 19 **must** not be combined to run consecutively in the maximum amount
 20 imposed for each. If any of those punishments are combined to run
 21 consecutively, the commanding officer shall apportion the
 22 punishment.

23 ~~(3) If practicable, correctional custody shall not be served~~
 24 ~~in immediate association with persons awaiting trial or held in~~
 25 ~~confinement pursuant to trial by court martial.~~

26 (4) An officer in charge may impose upon an enlisted member
 27 assigned to the unit of which the officer is in charge a punishment
 28 authorized under subsection ~~(1)(e)~~ **(2)** as the adjutant general
 29 concerned may specifically prescribe by rule.

1 ~~(5) The officer who imposes the punishment authorized in~~
 2 ~~subsection (4), or the officer's successor in command, may suspend~~
 3 ~~probationally any part or amount of the unexecuted punishment~~
 4 ~~imposed and may suspend probationally a reduction in grade or a~~
 5 ~~forfeiture imposed under subsection (4), whether or not executed.~~
 6 ~~In addition, the officer may remit or mitigate any part or amount~~
 7 ~~of the unexecuted punishment imposed and may set aside in whole or~~
 8 ~~in part the punishment, whether executed or unexecuted, and restore~~
 9 ~~all rights, privileges, and property affected. The officer also may~~
 10 ~~mitigate reduction in grade to forfeiture or detention of pay.~~

11 (5) ~~(6) When mitigating arrest in quarters to restriction,~~
 12 ~~correctional custody to extra duties or restriction, or both, or~~
 13 ~~extra duties to restrictions, the mitigated punishment shall not be~~
 14 ~~for a greater period than the punishment mitigated. When mitigating~~
 15 ~~forfeiture of pay to detention of pay, the amount of the detention~~
 16 ~~shall not be greater than the amount of the forfeiture.~~**The officer**
 17 **who imposes the punishment, or the successor in command, may, at**
 18 **any time, suspend, set aside, mitigate, or remit any part or amount**
 19 **of the punishment and restore all rights, privileges, and property**
 20 **affected. The officer may also mitigate reduction in grade to**
 21 **forfeiture of pay, mitigate arrest in quarters to restriction, or**
 22 **mitigate extra duties to restriction. The mitigated punishment may**
 23 **not be for a greater period than the punishment mitigated. When**
 24 **mitigating reduction in grade to forfeiture of pay, the amount of**
 25 **the forfeiture may not be greater than the amount that could have**
 26 **been imposed initially under this section by the officer who**
 27 **imposed the punishment mitigated.**

28 (6) ~~(7) A person~~**An individual** punished under this section who
 29 considers the punishment received as unjust or disproportionate to

1 the offense, through the proper channel, may appeal to the next
2 superior authority. The appeal ~~shall~~**must** be made not later than 45
3 days after the punishment is adjudged. The appeal ~~shall~~**must** be
4 promptly forwarded and decided, and the ~~person~~**individual** punished
5 ~~shall~~**must** not be required to undergo the punishment adjudged
6 before a decision on the appeal is rendered. ~~The officer who~~
7 ~~imposes the punishment, the officer's successor in command, or~~
8 ~~superior authority is authorized to suspend, set aside, or remit~~
9 ~~any part or amount of the punishment and to restore all rights,~~
10 ~~privileges, and property affected.~~ **The superior authority may**
11 **exercise the same powers to mitigate the punishment imposed as may**
12 **be exercised under subsection (5) by the officer who imposed the**
13 **punishment.** The authority who is to act on the appeal shall refer
14 the case to a judge advocate for consideration and advice before
15 acting ~~upon~~**on** the appeal.

16 (7) ~~(8)~~—The imposition and enforcement of disciplinary
17 punishment under this section for an act or omission is not a bar
18 to trial by court-martial for a serious crime or offense growing
19 out of the same act or omission and not properly punishable under
20 this section. The fact that disciplinary punishment has been
21 enforced may be shown by the accused ~~upon~~**at** trial, and ~~when so~~**if**
22 shown ~~shall~~**must** be considered in determining the measure of
23 punishment to be adjudged in the event of a finding of guilty.

24 (8) ~~(9)~~—The adjutant general, by regulation, may prescribe the
25 form of records to be kept of proceedings under this section and
26 may also prescribe that certain categories of those proceedings
27 ~~shall~~**must** be in writing.

28 (9) ~~(10)~~ ~~Before being informed of the disciplinary action to~~
29 ~~be taken under this section, the person to be punished has the~~

1 ~~right to demand trial by court-martial for the offense.~~ **Before**
 2 **disciplinary action is taken by the commanding officer or officer**
 3 **in charge under this section, the commanding officer or officer in**
 4 **charge shall determine whether arrest in quarters or restriction**
 5 **are to be considered as punishments. If the officer determines that**
 6 **the punishment options may include arrest in quarters or**
 7 **restriction, the accused must be notified of the right to demand**
 8 **trial by court-martial. If the officer determines that the**
 9 **punishment options will not include arrest in quarters or**
 10 **restriction, the accused must be notified that there is no right to**
 11 **trial by court-martial in lieu of nonjudicial punishment.**

12 (10) ~~(11)~~—If a punishment of forfeiture of pay and allowance
 13 is imposed as provided in this section, the forfeiture may apply to
 14 pay or allowances becoming due on or after the date of the
 15 punishment but ~~shall~~ **must** not apply to pay and allowances accrued
 16 before the date.

17 Sec. 16. The 3 kinds of courts-martial in the state military
 18 forces are:

19 (a) General courts-martial, consisting of a military judge and
 20 not less than ~~5~~ **8** members; or only a military judge, if before the
 21 court is assembled the accused, knowing the identity of the
 22 military judge and after consultation with defense counsel,
 23 requests in writing a court composed only of the military judge and
 24 the military judge approves.

25 (b) Special courts-martial consisting of a military judge and
 26 not less than ~~3~~ **4** members; or only a military judge, if the accused
 27 under the same conditions as those prescribed in subdivision (a),
 28 requests a court composed only of the military judge.

29 (c) Summary courts-martial, consisting of 1 commissioned

1 officer of field grade rank or above who is certified for that duty
 2 by the state **staff** judge advocate ~~general~~ and who is not a member
 3 of the accused's unit.

4 Sec. 17. ~~(1) Court-martial jurisdiction over a person accused~~
 5 ~~of an offense against this code attaches during a duly authorized~~
 6 ~~period of active state duty.~~

7 ~~(2) An accused will normally be tried for an offense during a~~
 8 ~~duly authorized period of active state duty.~~ **Subject to this code,**
 9 **the Michigan Army National Guard and Michigan Air National Guard**
 10 **each have court-martial jurisdiction over its members.**

11 Sec. 18. A general court-martial has jurisdiction to try
 12 ~~persons~~ **an individual** subject to this code for an offense made
 13 punishable by this code and may adjudge any of the following
 14 punishments:

15 (a) **Confinement of not more than 2 years.**

16 (b) ~~(a)~~ A fine of not more than ~~\$200.00~~ **\$2,500.00** for a single
 17 offense.

18 (c) ~~(b)~~ Forfeiture of **all** pay and allowances. ~~of not more than~~
 19 ~~\$200.00 for a single offense.~~

20 (d) ~~(c)~~ A reprimand.

21 (e) **Restitution.**

22 (f) ~~(d)~~ Dismissal, ~~or~~ dishonorable discharge, **or bad conduct**
 23 **discharge.**

24 (g) ~~(e)~~ Reduction of a ~~noncommissioned officer~~ **an enlisted**
 25 **member** to an inferior grade.

26 (h) ~~(f)~~ A combination of the punishments under subdivisions
 27 (a) to ~~(e)~~. **(g)**.

28 Sec. 19. **(1)** A special court-martial has jurisdiction to try a
 29 ~~person~~ **an individual** subject to this code ~~, except an officer,~~ for

1 an offense for which the ~~person~~**individual** may be punished under
 2 this code. A special court-martial ~~has~~**may adjudge** the same ~~powers~~
 3 ~~of punishment~~**punishments** as a general court-martial except that
 4 the ~~fine or forfeiture of pay and allowances imposed by a special~~
 5 ~~court-martial may not be more than \$100.00 for a single~~
 6 ~~offense.~~**special court-martial may not adjudge the punishments of**
 7 **dishonorable discharge, dismissal, confinement for more than 1**
 8 **year, a fine of more than \$1,000.00, forfeiture of pay exceeding**
 9 **2/3 pay per month, or forfeiture of pay for more than 1 year.**

10 (2) A bad conduct discharge, a confinement for more than 6
 11 months, or a forfeiture of pay for more than 6 months may not be
 12 adjudged if charges and specifications are referred to a special
 13 court-martial consisting of a military judge alone.

14 Sec. 20. (1) A summary court-martial has jurisdiction to try a
 15 ~~person~~**an individual** subject to this code, except an officer **or a**
 16 **cadet**, for an offense made punishable by this code.

17 (2) ~~A person shall~~**An individual must** not be tried by a
 18 summary court-martial if, before trial, the ~~person~~**individual**
 19 objects to a summary court-martial. If objection to trial by
 20 summary court-martial is made by an accused, trial may be ordered
 21 by special or general court-martial, as appropriate.

22 (3) A summary court-martial may ~~sentence a person to~~**adjudge**
 23 **the same punishments as a general court-martial except that the**
 24 **summary court-martial may not adjudge the punishments of dismissal,**
 25 **dishonorable discharge or bad conduct discharge, confinement for**
 26 **more than 25 days, a fine of not more than \$25.00 for a single**
 27 **offense, to \$500.00, or forfeiture of more than 2/3 of 1 month's**
 28 **pay. and allowances of not more than \$25.00 for a single offense,**
 29 **to reduction of an enlisted member to an inferior grade, or to a**

1 ~~combination of these punishments.~~

2 Sec. 23. ~~The~~ **Except as otherwise provided in this section, the**
 3 commanding officer of a garrison, fort, post, camp, air base,
 4 auxiliary air base, or other place where troops are on duty, or of
 5 a division, brigade, regiment, wing, group, detached battalion,
 6 separate squadron, or other detached command, may convene a special
 7 court-martial. A special court-martial may also be convened by
 8 superior competent authority. If the commanding officer is an
 9 accuser, the court shall be convened by superior competent
 10 authority. **A commanding officer shall not convene a special court-**
 11 **martial without the written consent of the adjutant general.**

12 Sec. 24. ~~The~~ **Except as otherwise provided in this section, the**
 13 commanding officer of a garrison, fort, post, camp, air base,
 14 auxiliary air base, or other place where troops are on duty, or of
 15 a division, brigade, regiment, wing, group, detached battalion,
 16 detached squadron, detached company, or other detachment, may
 17 convene a summary court-martial consisting of 1 commissioned
 18 officer who meets the qualifications of section 16(c). **A commanding**
 19 **officer shall not convene a summary court-martial without the**
 20 **written consent of the adjutant general.**

21 Sec. 26. (1) ~~The person convening a general or special court-~~
 22 ~~martial shall request the state judge advocate general to appoint a~~
 23 **Subject to this section, a military judge to the must be detailed**
 24 **to each** general or special court-martial.

25 (2) ~~The state judge advocate general may appoint an assistant~~
 26 ~~judge advocate to serve as a~~ **A military judge who is must be** a
 27 commissioned officer, ~~who is licensed to practice law in this~~
 28 state, ~~and who is certified~~ **to be qualified, by reason of**
 29 **education, training, experience, and judicial temperament, for that**

1 duty **as a military judge** by the state **staff** judge advocate.

2 (3) A military judge must be detailed by the state staff judge
3 advocate.

4 (4) The convening authority and any member of the staff of the
5 convening authority shall not prepare or review any report
6 concerning the effectiveness, fitness, or efficiency of the
7 military judge detailed under subsection (1) that relates to the
8 military judge's performance of duty as a military judge.

9 (5) An individual is not eligible to act as military judge in
10 a case if that individual is the accuser, is a witness for the
11 prosecution, or has acted as investigating officer or as a counsel
12 in that same case.

13 (6) ~~(3) The~~ A military judge shall not consult with the
14 members of the court except in the presence of the accused, trial
15 counsel, and defense counsel, ~~nor shall the military judge and~~
16 **shall not** vote with the members of the court.

17 (7) ~~(4) The~~ A military judge shall rule finally on all matters
18 of law, rule finally on all motions, and except as otherwise
19 provided, decide all other questions raised at the trial of the
20 accused.

21 Sec. 27. (1) For each general and special court-martial, the
22 ~~authority convening the court~~ **authority** shall request the state
23 **staff** judge advocate to detail trial counsel and defense counsel,
24 and those assistants as the convening authority considers
25 appropriate. ~~A person~~ **An individual** who has acted as investigating
26 officer, military judge, or court member in any case shall not act
27 later as trial counsel, assistant trial counsel, or, unless
28 expressly requested by the accused, as defense counsel or assistant
29 defense counsel in the same case. ~~A person~~ **An individual** who has

1 acted for the prosecution shall not act later in the same case for
2 the defense, nor shall ~~a person~~ **an individual** who has acted for the
3 defense act later in the same case for the prosecution.

4 (2) Military trial counsel or military defense counsel for a
5 general or special courts-martial shall be licensed to practice law
6 in this state and certified as competent to perform those duties by
7 the state **staff** judge advocate. ~~general.~~

8 Sec. 29. (1) A member of a general or special courts-martial
9 shall not be absent or excused after the accused has been arraigned
10 except for physical disability or as a result of a challenge or by
11 order of the convening authority for good cause.

12 (2) If a general court-martial is reduced below ~~5-8~~ members,
13 the trial may not proceed unless the convening authority appoints
14 new members sufficient in number to provide not less than ~~5-8~~
15 members. When the new members have been sworn, the trial may
16 proceed after the recorded testimony of each witness previously
17 examined has been read to the court-martial in the presence of the
18 military judge, the accused, and counsel.

19 (3) If a special court-martial is reduced below ~~3-4~~ members,
20 the trial may not proceed unless the convening authority appoints
21 new members sufficient in number to provide not less than ~~3-4~~
22 members. When the new members have been sworn, the trial shall
23 proceed as if no evidence had previously been introduced, unless a
24 verbatim record of the testimony of previously examined witnesses
25 or a stipulation of that testimony is read to the court-martial in
26 the presence of the accused and counsel.

27 **Sec. 30a. (1) A military judge may be appointed to conduct**
28 **proceedings to review, or otherwise act on, the following matters**
29 **before referral of charges and specifications to court-martial in**

1 accordance with regulations promulgated under this code:

2 (a) Prereferral investigative subpoenas.

3 (b) Prereferral warrants or orders for electronic
4 communications.

5 (c) Prereferral matters referred by an appellate court.

6 (d) Prereferral matters under section 6a(2).

7 (2) The regulations promulgated under subsection (1) must
8 include both of the following as considered appropriate by the
9 adjutant general:

10 (a) Procedures for the review of rulings that may be ordered
11 under this section.

12 (b) Limitations on the relief that may be ordered under this
13 section.

14 (3) If a matter in a proceeding under this section becomes a
15 subject at issue with respect to charges that have been referred to
16 a general or special court-martial, the matter must be transferred
17 to the military judge detailed to the court-martial.

18 Sec. 32. (1) A charge or specification ~~shall~~**must** not be
19 referred to a general ~~court-martial~~**court-martial** for trial until a
20 thorough and impartial investigation of all matters set forth in
21 the charge or specification has been made. The conduct of this
22 investigation is the responsibility of the officer exercising
23 special court-martial jurisdiction over the accused and ~~shall~~**must**
24 include inquiry as to the truth of the matter set forth in the
25 charges, consideration of the form of charges, and a recommendation
26 as to the disposition ~~which~~**that** should be made of the case in the
27 interest of justice and discipline. The investigating officer shall
28 submit a formal report to the convening authority, the state **staff**
29 judge advocate, and the accused. This report ~~shall~~**must** include **all**

1 **of** the following:

2 (a) A statement of the name, organization, or address of
3 counsel and information as to the presence or absence of counsel
4 throughout the proceedings if counsel has been requested by the
5 accused.

6 (b) A summarized statement of all relevant testimony including
7 the names and units, if applicable, of the ~~persons~~**individuals**
8 giving testimony.

9 (c) A statement indicating all sources of information
10 considered by that officer in reaching conclusions or making
11 recommendations.

12 (d) A statement of the names and units of all witnesses
13 essential to the defense or prosecution of the case.

14 (2) Before an investigation initiated ~~pursuant to~~**under** this
15 code, the accused ~~shall~~**must** be informed of the accused's rights
16 under section 31, including the right to counsel, in the manner
17 provided in that section, and, in addition, ~~shall~~**must** be informed
18 of **all of** the following:

19 (a) The offense of which the accused is suspected, accused, or
20 charged.

21 (b) The name of the accuser and the witnesses against the
22 accused ~~which~~**that** are known by the investigating officer.

23 (c) The fact that charges are about to be investigated.

24 (d) The accused's right to cross-examine witnesses and to
25 present anything by way of statement or otherwise the accused may
26 desire in the accused's own behalf, either in defense, extenuation,
27 or mitigation.

28 (3) At an investigation, full opportunity ~~shall~~**must** be given
29 to the accused to cross-examine witnesses if ~~they~~**the witnesses** are

1 available, and to present anything the accused may desire in the
2 accused's own behalf, either in defense or mitigation, and the
3 investigation officer shall examine available witnesses requested
4 by the accused.

5 (4) If an investigation of the subject matter of an offense
6 has been conducted before the accused is charged with the offense,
7 and if the accused was present at the investigation and afforded
8 the opportunities for representation, cross-examination, and
9 presentation prescribed in subsections (2) and (3), further
10 investigation of that charge is not necessary under this section
11 unless it is demanded by the accused after the accused is informed
12 of the charge. A demand for further investigation entitles the
13 accused to recall witnesses for further cross-examination and to
14 offer new evidence in the accused's own behalf.

15 Sec. 34. (1) Before directing the trial of a charge by a
16 general court-martial, the convening authority shall refer the
17 charge to the state **staff** judge advocate for consideration and
18 advice. The convening authority shall not refer a charge to a
19 general court-martial for trial unless the convening authority has
20 found that the charge alleges an offense under this code and is
21 warranted by evidence indicated in the report of the investigation.

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

28 Sec. 36. ~~(1) All procedure shall be in conformity with this~~
29 ~~code, with rules which may be promulgated by the adjutant general,~~

1 ~~and where not inconsistent, with the manual for courts-martial~~
 2 ~~United States, 1969.~~

3 ~~(2) The rules of evidence generally recognized in this state~~
 4 ~~as applied to criminal cases shall apply in cases before military~~
 5 ~~courts.~~ **The Military Rules of Evidence and the Rules for Courts-**
 6 **Martial as promulgated in the most recent version of the Manual for**
 7 **Courts-Martial must, as recognized in military criminal cases in**
 8 **the courts of the military, apply to a court-martial convened under**
 9 **this code to the extent practical and to the extent that the**
 10 **Military Rules of Evidence and the Rules for Courts-Martial as**
 11 **promulgated in the most recent version of the Manual for Courts-**
 12 **Martial do not conflict with state substantive law. The adjutant**
 13 **general may promulgate supplemental regulations to govern matters**
 14 **not provided for in the Manual for Courts-Martial.**

15 **Sec. 38a. The accused in a proceeding under this code must be**
 16 **permitted to request a military defense counsel of choice who, if**
 17 **reasonably available, must be detailed to represent the accused and**
 18 **who, if not a member of the bar of this state, may represent the**
 19 **accused on a pro hac vice motion to the court approved by the**
 20 **military judge.**

21 **Sec. 43. (1) ~~A person~~ An individual** charged with desertion or
 22 absence without leave when the governor, by proclamation has
 23 declared a ~~grave~~ state of emergency, or with aiding the enemy, or
 24 mutiny, shall be tried and punished at any time without limitation.

25 **(2) ~~A person~~ An individual** charged with an offense under this
 26 code is not liable to be tried by court-martial or punished under
 27 section 15 if the offense was committed more than ~~2~~**5** years before
 28 the receipt of sworn charges and specifications by an officer
 29 exercising summary court-martial jurisdiction over the command, or

1 before the imposition of punishment under section 15.

2 (3) Periods in which the accused was outside of ~~the~~**this**
3 state, in the custody of civil authorities, or in the hands of the
4 enemy ~~shall~~**must** be excluded in computing the period of limitations
5 prescribed in this section.

6 (4) **Periods in which the accused is absent without authority**
7 **or is fleeing from justice must be excluded in computing the period**
8 **of limitation prescribed in this section.**

9 Sec. 48. A military court may punish for contempt ~~a person~~**an**
10 **individual** subject to this code who ~~wilfully~~**willfully** and
11 unlawfully refuses to be sworn or to affirm as a witness, or who
12 refuses to answer a legal or proper question, or who uses a
13 menacing word, sign, or gesture in the court's presence, or who
14 disturbs the court proceedings by riot or disorder. The punishment
15 for contempt in a summary court-martial proceeding ~~shall~~**must** be
16 ~~imprisonment~~**confinement** for not more than 25 days ~~,~~ or a fine of
17 not more than ~~\$25.00,~~ **\$500.00**, or both. The punishment for contempt
18 in any other military court ~~shall~~**must** be ~~imprisonment~~**confinement**
19 for not more than 100 days ~~,~~ or a fine of not more than ~~\$100.00,~~
20 **\$2,500.00**, or both.

21 Sec. 52. (1) ~~A person shall~~**An individual must** not be
22 convicted of an offense **in a general or special court-martial,**
23 **except under any of the following circumstances:**

24 (a) **After a plea of guilty under section 45.**

25 (b) **By a military judge in a court-martial with a military**
26 **judge alone under section 16.**

27 (c) **In a court-martial with members under section 16, by the**
28 **concurrence of ~~2/3~~**3/4** of the members present at the time the vote**
29 **is taken.**

1 (2) Each sentence ~~shall~~**imposed by a court-martial must** be
2 determined by the concurrence of ~~2/3~~**3/4** of the members present at
3 the time that the vote is taken.

4 (3) Any other question to be decided by the members of a
5 general or special court-martial ~~shall~~**must** be determined by a
6 majority vote, but the determination to reconsider a finding of
7 guilty or reconsider a sentence, to decrease or lessen the
8 sentence, may be made by a lesser vote ~~which~~**that** indicates that
9 the reconsideration is not opposed by the number of votes required
10 for that finding or sentence. ~~A tie vote on a motion for a finding~~
11 ~~of not guilty or on a motion relating to the question of the~~
12 ~~accused's sanity is a determination against the accused. A tie vote~~
13 ~~on any other question is a determination in favor of the accused.~~

14 Sec. 54. (1) Each general and special court-martial shall keep
15 a separate record of the proceedings in each case. The record ~~shall~~
16 **must** be authenticated by the signature of the military judge. If
17 the record cannot be authenticated by the military judge by reason
18 of death, disability, or absence, the record ~~shall~~**must** be
19 authenticated by the trial counsel. If both the military judge and
20 the trial counsel are unavailable for the reasons set forth in this
21 subsection, the record ~~shall~~**must** be authenticated by 2 members.

22 (2) Each summary court-martial shall keep a separate record of
23 the proceedings in each case. The record ~~shall~~**must** reflect the
24 pleas of the accused to the charges and specifications, the
25 findings and sentence, and the action by the convening authority.

26 (3) After final action by the convening authority, the
27 original record of trial of each court-martial ~~shall~~**must** be filed
28 in the office of the state **staff** judge advocate, ~~general~~, 1 copy
29 ~~shall~~**must** be filed in the office of the staff judge advocate of

1 the command concerned, 1 copy ~~shall~~**must** be filed in the
2 headquarters of the special court-martial convening authority over
3 the accused, and 1 copy ~~shall~~**must** be given to the accused.

4 Sec. 58. (1) A sentence of confinement issued by a court-
5 martial may be carried into execution by confinement in a place
6 allowed by section 10 as designated by the convening authority. A
7 ~~person~~**An individual** confined is subject to the same discipline and
8 treatment as a ~~person~~**an individual** imprisoned by a civil court of
9 ~~the~~**this** state.

10 (2) The omission of the words ~~,"hard labor"~~ from a sentence
11 of a court-martial adjudging confinement does not deprive the
12 authority executing that sentence of the power to require hard
13 labor as a part of the punishment.

14 (3) The keeper or officer in charge of a county jail shall
15 receive a ~~person~~**an individual** ordered into confinement before
16 trial by the convening authority and a ~~person~~**an individual**
17 sentenced to confinement by a military court and shall confine the
18 ~~persons~~**individual** according to law. A keeper or officer in charge
19 shall not require payment of a fee or compensation for receiving or
20 confining the prisoner.

21 ~~(4) If a sentence of confinement is imposed, the convening~~
22 ~~authority shall issue a writ in the following or similar form:~~

23 ~~STATE OF MICHIGAN)~~

24 ~~)~~

25 ~~COUNTY OF _____)~~

26 ~~To duly authorized law officers of _____ county, state of~~
27 ~~Michigan:~~

28 ~~WHEREAS, _____ of _____ in the county~~

29 ~~(name of accused) (unit designation)~~

1 of _____, a member of the Michigan national guard,
2 was on the ____ day of _____, 19____, tried by a court-martial
3 and found guilty of _____

4 (offense)

5 in violation of the Michigan code of military justice of 1979
6 and was sentenced to serve _____ days' imprisonment; and

7 WHEREAS, as the sentence was approved and ordered executed by the
8 convening authority on the ____ day of _____, 19____.

9 THEREFORE, you are commanded to take _____ and

10 (name of accused)

11 commit him or her to the keeper of the jail, who is commanded to
12 receive _____ and keep him or her safely

13 (name of accused)

14 for the term of ____ days, after which he or she shall be
15 released.

16 This writ shall be returned to the convening authority not later
17 than 60 days after the issuance of the writ.

18 Dated at _____ in the county of _____ this _____
19 day of _____, 19____.

20 _____
21 (name, rank, branch, organization, and
22 designation as convening authority)

23 (5) A fine imposed as a sentence of a court-martial shall be
24 paid at the time of approval of the sentence by the convening
25 authority. Upon failure to pay the fine, the convening authority
26 shall order the accused committed to a location designated pursuant
27 to section 10 until the fine is paid or until 1 day is served for
28 each \$1.00 of the fine imposed.

29 (6) The commitment to the appropriate location will be in the

1 following or similar form:

2 STATE OF MICHIGAN)

3)

4 COUNTY OF _____)

5 To the sheriff of _____ county, state of
6 Michigan.

7 WHEREAS _____ of _____ in the
8 (name of accused) (unit designation)

9 county of _____, a member of the Michigan national
10 guard, was on the ___ day of ____, 19__ tried by a
11 court-martial and found guilty of _____ in
12 (offense)

13 violation of the Michigan code of military justice of 1979 and was
14 sentenced to pay a fine of _____ dollars; and

15 WHEREAS, the fine has not been paid;

16 NOW, THEREFORE, by authority of the state of Michigan, you are
17 commanded to take _____
18 (name of accused)

19 and commit him or her to the keeper of the jail in the county of
20 _____, who is commanded to receive _____
21 (name of accused)

22 and keep him or her safely until he or she pays the sum above
23 mentioned, or shall have served 1 day for each \$1.00 of the fine
24 imposed, after which time he or she shall be released.

25 This writ shall be returned to the convening authority not later
26 than 60 days after the issuance of the writ.

27 Dated at _____ in the county of _____ this _____
28 day of _____, 19_____.

29 _____

~~(name, rank, branch, organization, and
designation as convening authority)~~

(4) ~~(7)~~The proceeds of all fines in summary, special, and general courts-martial cases shall ~~must~~ be paid to the general fund of this state. The costs of prosecution shall ~~must~~ be paid out of the funds appropriated to the office of the adjutant general.

Sec. 58a. (1) A court-martial sentence of an enlisted member in a pay grade above E1, as approved by the convening authority, that includes a dishonorable or bad conduct discharge or confinement reduces that member to pay grade E1 effective on the date of that approval.

(2) If the sentence of a member who is reduced in pay grade under subsection (1) is set aside or disapproved, or, as finally approved, does not include any punishment provided in subsection (1), the rights and privileges that the individual was deprived of because of that reduction must be restored, including pay and allowances.

Sec. 58b. (1) A court-martial sentence described in subsection (4) must result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole.

(2) A forfeiture under this section takes effect on the date determined under section 57 and may be deferred as provided in that section.

(3) The pay and allowances forfeited, in the case of a general court-martial, must be all pay and allowances due that member during any period of confinement or parole and, in the case of a special court-martial, must be 2/3 of all pay due that member during that period.

(4) A court-martial sentence covered by this section is any

1 sentence that includes either of the following:

2 (a) Confinement for more than 6 months.

3 (b) Confinement for 6 months or less and a dishonorable or bad
4 conduct discharge or dismissal.

5 (5) If an accused has dependents, the convening authority may
6 waive any or all of the forfeitures of pay and allowances required
7 by subsection (1) or (3) for a period of not more than 6 months.

8 Any amount of pay or allowances that, except if waived under this
9 subsection, would be forfeited must be paid, as the convening
10 authority or other person taking action directs, to the dependents
11 of the accused.

12 (6) If the sentence of a member who forfeits pay and
13 allowances under subsection (1) or (3) is set aside or disapproved
14 or, as finally approved, does not provide for a punishment referred
15 to in subsection (4), the member must be paid the pay and
16 allowances that the member would have been paid, except for the
17 forfeiture, for the period during which the forfeiture was in
18 effect.

19 Sec. 61. Except as provided in section 71 and before taking
20 action in a general court-martial, the convening authority shall
21 refer the record of each general court-martial to the state **staff**
22 judge advocate who shall review the record and submit a written
23 opinion on the record to the convening authority. The review ~~shall~~
24 **must** include a summary of the evidence in the case, an opinion as
25 to the adequacy and weight of the evidence, the effect of any error
26 or irregularity reflecting the proceedings, and a specific
27 recommendation as to the action to be taken by the convening
28 authority. If the final action of the court resulted in an
29 acquittal of the charges and specifications, the opinion ~~shall~~**must**

1 be limited to questions of jurisdiction.

2 Sec. 65. (1) If the convening authority is the governor, the
3 action on the review of a record of trial ~~shall be~~ **is** final.

4 (2) ~~In all other cases:~~ **If the convening authority is not the**
5 **governor, all of the following apply:**

6 (a) If the convening authority has taken final action in a
7 general court-martial case, the convening authority shall forward
8 the entire record including the action on the case and the opinion
9 of the staff judge advocate or ~~legal officer~~ **judge advocate** to the
10 state **staff** judge advocate ~~general~~ for review.

11 (b) If the sentence of a special court-martial as approved by
12 the convening authority includes a bad conduct discharge, whether
13 or not suspended, the record ~~shall~~ **must** be forwarded to the officer
14 exercising general court-martial jurisdiction over the command, to
15 be reviewed in the same manner as a record of trial by a general
16 court-martial. If the sentence as approved by an officer exercising
17 general court-martial jurisdiction includes a bad conduct
18 discharge, whether or not suspended, the entire record, including
19 the officer's action on the sentence and the opinion of the staff
20 judge advocate, ~~shall~~ **must** be forwarded to the state **staff** judge
21 advocate ~~general~~ for review.

22 (c) All other special and summary courts-martial records ~~shall~~
23 **must** be forwarded to a judge advocate and ~~shall~~ **must** be acted ~~upon,~~
24 **on**, transmitted, and disposed of as prescribed by rules promulgated
25 ~~pursuant to~~ **under** section 147.

26 (3) The state **staff** judge advocate ~~general~~ shall review the
27 record of trial in each case forwarded for review as provided in
28 this section. If the sentence as approved affects a general officer
29 or extends to the dismissal of an officer, the state **staff** judge

1 advocate ~~general~~ shall submit a written opinion on the sentence to
 2 the governor. If the final action of the court-martial in a case
 3 forwarded to the state **staff** judge advocate ~~general~~ results in an
 4 acquittal of the charges and specifications, the opinion of the
 5 state **staff** judge advocate ~~general shall be~~ **is** limited to questions
 6 of jurisdiction.

7 (4) In each case reviewable by the state **staff** judge advocate
 8 ~~general which~~ **that** does not affect a general officer or extend to
 9 the dismissal of an officer, the state **staff** judge advocate ~~general~~
 10 shall take final action.

11 (5) In a case reviewable by the governor in which the governor
 12 is not the convening authority and in a case reviewable by the
 13 state **staff** judge advocate, ~~general,~~ the governor or the state
 14 judge **staff** advocate ~~general shall have~~ **has the** authority to do any
 15 of the following:

16 (a) Act only with respect to the findings and sentence as
 17 approved by the convening authority.

18 (b) Affirm only those findings of guilty, and the sentence or
 19 that part or amount of the sentence as the governor or the state
 20 **staff** judge advocate ~~general~~ finds correct in law and fact and
 21 determines on the basis of the entire record should be approved.

22 (c) Weigh the evidence, judge the credibility of witnesses,
 23 and determine controverted questions of fact, recognizing that the
 24 trial court saw and heard the witnesses.

25 (d) Order a rehearing if the governor or the state **staff** judge
 26 advocate ~~general~~ sets aside the findings and sentence, except if
 27 the setting aside is based on lack of sufficient evidence to
 28 support the findings.

29 (e) Order that the charges be dismissed if the governor or the

1 state **staff** judge advocate ~~general~~ sets aside the findings and
2 sentence and does not order a rehearing.

3 (6) Unless the governor is to take further action, the state
4 **staff** judge advocate ~~general~~ shall instruct the convening authority
5 to take action pursuant to the state **staff** judge advocate's
6 decision on a review. If a rehearing has been ordered, but the
7 convening authority finds a rehearing impracticable, the state
8 **staff** judge advocate ~~general~~ may dismiss the charges.

9 (7) The state **staff** judge advocate ~~general~~ may constitute 1 or
10 more boards of review, each composed of not fewer than 3 officers
11 of the organized militia or retired list, ~~each of whom shall be a~~
12 ~~member of the bar of this state, which board of review that~~ shall
13 review the record of a trial by court-martial referred to it by the
14 state **staff** judge advocate. ~~general. The~~ **Each officer appointed to**
15 **a board of review must be a member of the bar of this state. A**
16 board of review ~~shall have~~ **has** the same authority and powers on the
17 review of a record ~~as that~~ the state **staff** judge advocate ~~general~~
18 has under this section.

19 (8) A finding or sentence of a court-martial ~~shall~~ **must** not be
20 held incorrect on the ground of an error of law unless the error
21 materially prejudices the substantial rights of the accused.

22 (9) A reviewing authority with the power to approve or affirm
23 a finding of guilty may approve or affirm so much of the finding
24 ~~which that~~ includes a lesser included offense.

25 Sec. 66. (1) Upon the final military review of a sentence of a
26 general court-martial or of a sentence to a dishonorable discharge
27 by a special court-martial, the accused has the right to be
28 represented by counsel before the reviewing authority.

29 (2) Upon the request of an accused entitled to be represented,

1 the convening authority shall appoint a commissioned officer who is
 2 a member of the bar of this state to represent the accused before
 3 the reviewing authority or before the staff judge advocate, and
 4 before the state **staff** judge advocate, ~~general,~~ in the review of
 5 cases specified in subsection (1).

6 (3) An accused entitled to be represented may be represented
 7 by civilian counsel if provided by the accused before the reviewing
 8 authority, the staff judge advocate, or ~~legal officer~~ **judge**
 9 **advocate** and before the state **staff** judge advocate. ~~general.~~

10 Sec. 67. (1) A military appeals tribunal is established and
 11 located for administrative purposes only in the department of
 12 military **and veterans** affairs. The tribunal shall consist of 5
 13 members appointed by the governor, by and with the advice and
 14 consent of the senate, for a term of 4 years. Initial appointments
 15 to the military appeals tribunal ~~shall~~ **must** be 1 member for a 2-
 16 year term, 2 members for a 3-year term, and 2 members for a 4-year
 17 term. The term of office of all successor members ~~shall~~ **must** be for
 18 a 4-year ~~period.~~ **term**. A member appointed to fill a vacancy
 19 occurring before the expiration of the term for which ~~his or her~~
 20 **that member's** predecessor was appointed shall be appointed only for
 21 the unexpired term of the predecessor. A member may be reappointed
 22 and a vacancy shall be filled for an unexpired term in the same
 23 manner as an appointment is made for a full term. ~~A person~~ **An**
 24 **individual** is eligible for appointment to the military appeals
 25 tribunal if the ~~person~~ **individual** is a commissioned officer or a
 26 civilian and licensed to practice law in this state.

27 (2) The governor shall appoint the chairperson of the
 28 tribunal. The chairperson ~~shall have~~ **has** general supervisory
 29 control of and ~~be~~ **is** in charge of the assignment of the work of the

1 tribunal.

2 (3) A majority of the tribunal ~~shall constitute~~ **constitutes** a
3 quorum. The military appeals tribunal shall sit as a panel of 3
4 members. The concurrence of 2 members ~~shall be~~ **is** necessary for a
5 decision of the tribunal.

6 (4) A member of the military appeals tribunal may be removed
7 by the governor, upon notice and hearing, for neglect of duty, ~~or~~
8 malfeasance in office, or for mental or physical disability.

9 (5) Subject to appropriations by the legislature, the military
10 appeals tribunal shall have the legal, technical, and secretarial
11 assistance as the chairperson considers necessary.

12 (6) The members of the military appeals tribunal while
13 actually sitting in review of a matter submitted to ~~their~~ **the**
14 **tribunal's** jurisdiction by this code, and while traveling to and
15 from the session, ~~shall~~ **must** be paid daily compensation equal to
16 1/250 of the state salary paid to circuit court judges, together
17 with the actual cost of ~~their~~ **the members'** meals, lodging, and
18 actual travel expenses or the amount set by the existing
19 appropriation if private transportation is utilized.

20 (7) The military appeals tribunal ~~shall have~~ **has** appellate
21 jurisdiction, upon the petition of an accused, to hear and review
22 the record in all decisions of a court-martial after the review
23 provided in this ~~article~~ **section** has been completed.

24 (8) The accused has not more than 60 calendar days, from the
25 time of the receipt of actual notice of the final action on the
26 accused's case, under this code to petition the military appeals
27 tribunal for review. The tribunal shall act ~~upon~~ **on** the petition
28 not more than 60 calendar days after the receipt of the petition.
29 The military appeals tribunal may grant a stay or defer service of

1 the sentence of confinement or any other punishment under this code
2 until the tribunal's final decision in the case.

3 (9) In a case reviewable under subsection ~~(6)~~, **(7)**, the
4 military appeals tribunal shall act only with respect to the
5 findings and sentence as finally approved and ordered executed by
6 the convening authority.

7 (10) If the military appeals tribunal sets aside the findings
8 and sentence, ~~it~~ **the tribunal** may, except where the setting aside
9 is based on lack of sufficient evidence in the record to support
10 the findings, order a rehearing. If the tribunal sets aside the
11 findings and sentence and does not order a rehearing, the tribunal
12 shall order that the charges be dismissed. After the military
13 appeals tribunal acts on the case, the record ~~shall~~ **must** be
14 returned to the state **staff** judge advocate, ~~general~~, who shall
15 notify the convening authority of the tribunal's decision. If
16 further action is required, the state **staff** judge advocate ~~general~~
17 shall instruct the convening authority to take action pursuant to
18 that decision. If the tribunal ~~has ordered~~ **orders** a rehearing, but
19 the convening authority finds a rehearing impracticable, the state
20 **staff** judge advocate ~~general~~ shall dismiss the charges.

21 **Sec. 93a. (1) An individual subject to this code must be**
22 **punished as a court-martial directs if all of the following apply:**

23 (a) **The individual is an officer or a noncommissioned officer.**

24 (b) **The individual is in a training leadership position with**
25 **respect to a specially protected junior member of the military.**

26 (c) **The individual engages in prohibited sexual activity with**
27 **a specially protected junior member of the military.**

28 (2) **An individual subject to this code must be punished as a**
29 **court-martial directs if that individual is a military recruiter**

1 and engages in a prohibited sexual activity with either of the
2 following:

3 (a) An applicant that individual is recruiting to enlist in
4 military service.

5 (b) A specially protected junior member of the military who is
6 enlisted under a delayed entry program.

7 (3) Consent is not a defense for any conduct at issue in a
8 prosecution under this section.

9 (4) As used in this section:

10 (a) "Military recruiter" means an individual who has the
11 primary duty to recruit individuals for military service.

12 (b) "Prohibited sexual activity" means the penetration,
13 however slight, of the penis into the vulva or anus or mouth,
14 contact between the mouth and the penis, vulva, scrotum, or anus,
15 or the penetration, however slight, of the vulva or penis or anus
16 of another by any part of the body or any object, with an intent to
17 abuse, humiliate, harass, or degrade any individual or to arouse or
18 gratify the sexual desire of any individual. Prohibited sexual
19 activity also means touching by any part of the body or an object,
20 or causing another individual to touch, either directly or through
21 the clothing, the vulva, penis, scrotum, anus, groin, breast, inner
22 thigh, or buttocks of any individual, with an intent to abuse,
23 humiliate, harass, or degrade any individual or to arouse or
24 gratify the sexual desire of any individual.

25 (c) "Specially protected junior member of the military" means
26 any of the following:

27 (i) A member of the military who is assigned to, or is awaiting
28 assignment to, basic training or other initial active duty for
29 training, including a member who is enlisted under a delayed entry

1 program.

2 (ii) A member of the military who is a cadet, an officer
3 candidate, or a student in any other officer qualification program.

4 (iii) A member of the military in any program that is identified
5 as a training program for initial career qualification.

6 (d) "Training leadership position" means, with respect to a
7 specially protected junior member of the military, a drill
8 instructor position or other leadership position in a basic
9 training program, an officer candidate school, a reserve officers'
10 training corps unit, a training program for entry into the
11 military, or a training program for initial career qualification.

12 Sec. 106. An individual subject to this code who wrongfully
13 and willfully impersonates an officer, a noncommissioned officer, a
14 petty officer, an agent of superior authority of any component of
15 the military, or an official of a government must be punished as a
16 court-martial directs.

17 Sec. 106a. An individual subject to this code who is not
18 authorized to wear an insignia, decoration, badge, ribbon, device,
19 or lapel button and who wrongfully wears that insignia, decoration,
20 badge, ribbon, device, or lapel button on the individual's uniform
21 or civilian clothing must be punished as a court-martial directs.

22 Sec. 112a. (1) An individual subject to this code who
23 wrongfully uses, possesses, manufactures, distributes, imports into
24 the customs territory of the United States, exports from the United
25 States, or introduces into an installation, vessel, vehicle, or
26 aircraft used by or under the control of the Armed Forces of the
27 United States or of any state military forces a substance described
28 in subsection (2) must be punished as a court-martial directs.

29 (2) Subsection (1) applies to both of the following

1 substances:

2 (a) Any controlled substance.

3 (b) Any substance not specified in subdivision (a) that is
4 listed on a schedule of controlled substances prescribed by the
5 President of the United States for the purposes of the uniform code
6 of military justice, 10 USC 801 to 946a.

7 Sec. 120. (1) An individual subject to this code is guilty of
8 sexual assault and must be punished as a court-martial directs if
9 the individual engages in sexual contact with another individual by
10 any of the following means:

11 (a) By forcible compulsion.

12 (b) By engaging in sexual conduct with an individual who is
13 incapable of consent because the individual is any of the
14 following:

15 (i) Physically helpless.

16 (ii) Mentally defective.

17 (iii) Mentally incapacitated.

18 (c) By abuse of authority.

19 (2) As used in this section, "sexual contact" means touching
20 by any part of the body or an object, or causing another individual
21 to touch, either directly or through the clothing, the vulva,
22 penis, scrotum, anus, groin, breast, inner thigh, or buttocks of
23 any individual, with an intent to abuse, humiliate, harass, or
24 degrade any individual or to arouse or gratify the sexual desire of
25 any individual.

26 Sec. 121. (1) ~~A person~~ **An individual** subject to this code who
27 unlawfully takes, obtains, or withholds from the United States,
28 this state, ~~or~~ any other state, **or any person**, any property, money,
29 or article of any kind with the intent to permanently deprive the

1 owner of the property, money, or article of any kind, is guilty of
2 larceny.

3 (2) ~~A person~~ **An individual** who violates this section ~~is~~
4 ~~punishable~~ **must be punished** as a court-martial directs.

5 **Sec. 121a. (1) An individual subject to this code who,**
6 **knowingly and with intent to defraud, uses a stolen credit card,**
7 **debit card, or other access device, a revoked, canceled, or**
8 **otherwise invalid credit card, debit card, or other access device,**
9 **or a credit card, debit card, or other access device without the**
10 **authorization of a person whose authorization is required for that**
11 **use to obtain money, property, services, or anything else of value**
12 **must be punished as a court-martial directs.**

13 (2) As used in this section, "access device" means any card,
14 plate, code, account number, electronic serial number, mobile
15 identification number, personal identification number, or other
16 telecommunications service, equipment, or instrument identifier, or
17 other means of account access that can be used, alone or in
18 conjunction with another access device, to obtain money, goods,
19 services, or any other thing of value, or that can be used to
20 initiate a transfer of funds, except for a transfer originated
21 solely by paper instrument.

22 **Sec. 121b. An individual subject to this code who, with intent**
23 **to defraud, knowingly uses false pretenses to obtain services must**
24 **be punished as a court-martial directs.**

25 **Sec. 122. An individual subject to this code who takes**
26 **anything of value from an individual or in the presence of another,**
27 **against that individual's will, by means of force or violence or**
28 **fear of immediate or future injury to the individual or property,**
29 **or to the individual or property of a relative or member of the**

1 individual's family or of anyone in the individual's company at the
2 time of the robbery, is guilty of robbery and must be punished as a
3 court-martial directs.

4 Sec. 123. (1) An individual subject to this code must be
5 punished as a court-martial directs if the individual does any of
6 the following:

7 (a) Knowingly accesses a government computer with an
8 unauthorized purpose, and by doing so obtains classified
9 information, with reason to believe that information could be used
10 to the injury of the United States or to the advantage of any
11 foreign nation, and intentionally communicates, delivers,
12 transmits, or causes to be communicated, delivered, or transmitted
13 that information to any person not entitled to receive it.

14 (b) Intentionally accesses a government computer with an
15 unauthorized purpose and obtains classified or other protected
16 information from that government computer.

17 (c) Knowingly causes the transmission of a program,
18 information, code, or command and, as a result of that conduct,
19 intentionally causes damage without authorization to a government
20 computer.

21 (2) As used in this section, "computer" means that term as
22 defined in 18 USC 1030.

23 Sec. 128. An individual subject to this code who unlawfully
24 and with force or violence attempts to do bodily harm to another
25 individual, offers to do bodily harm to another individual, or does
26 bodily harm to another individual, is guilty of assault and must be
27 punished as a court-martial directs.

28 Sec. 131a. An individual subject to this code who induces and
29 procures another individual to take an oath, and to falsely

1 testify, depose, or state upon that oath, must be punished as a
2 court-martial directs if all of the following conditions are
3 satisfied:

4 (a) The oath is administered with respect to a matter for
5 which that oath is required or authorized by law.

6 (b) The oath is administered by an individual having authority
7 to do so.

8 (c) Upon the oath, the other individual willfully makes or
9 subscribes to a statement.

10 (d) The statement is material.

11 (e) The statement is false.

12 (f) When the statement is made or subscribed to, the
13 individual subject to this code and the other individual do not
14 believe that the statement is true.

15 Sec. 131b. An individual subject to this code who engages in
16 conduct in the case of an individual against whom the accused had
17 reason to believe there were or would be criminal or disciplinary
18 proceedings pending, with intent to influence, impede, or otherwise
19 obstruct the due administration of justice, must be punished as a
20 court-martial directs.

21 Sec. 131c. An individual subject to this code who, having
22 reason to believe that an adverse administrative proceeding is
23 pending against another individual subject to this code, wrongfully
24 acts with the intent to influence, impede, or obstruct the conduct
25 of the proceeding, or otherwise to obstruct the due administration
26 of justice, must be punished as a court-martial directs.

27 Sec. 132a. (1) An individual subject to this code must be
28 punished as a court-martial directs if, with the intent to
29 retaliate against another individual for reporting or planning to

1 report a criminal offense, or making or planning to make a
2 protected communication, or with the intent to discourage another
3 individual from reporting a criminal offense or making or planning
4 to make a protected communication, the individual subject to this
5 code does either of the following:

6 (a) Wrongfully takes or threatens to take an adverse personnel
7 action against another individual.

8 (b) Wrongfully withholds or threatens to withhold a favorable
9 personnel action with respect to another individual.

10 (2) As used in this section:

11 (a) "Covered individual or organization" means a recipient of
12 a communication specified in 10 USC 1034(b)(1)(B)(i) to (v).

13 (b) "Inspector general" means that term as defined in 10 USC
14 1034(j).

15 (c) "Protected communication" means either of the following:

16 (i) A lawful communication to a member of Congress or an
17 inspector general.

18 (ii) A communication to a covered individual or organization in
19 which a member of the military complains of or discloses
20 information that the member reasonably believes constitutes
21 evidence of either of the following:

22 (A) A violation of law or regulation, including a law or
23 regulation prohibiting sexual harassment or unlawful
24 discrimination.

25 (B) Gross mismanagement, a gross waste of funds, an abuse of
26 authority, or a substantial and specific danger to public health or
27 safety.

28 Sec. 134a. An individual subject to this code who is drunk and
29 disorderly and, under the circumstances, the conduct is to the

1 prejudice of good order and discipline in the Armed Forces of the
2 United States or of the state military forces, or of a nature to
3 bring discredit upon the Armed Forces of the United States or the
4 state military forces, must be punished as a court-martial directs.

5 Sec. 134b. (1) An individual subject to this code who
6 wrongfully engages in extramarital conduct with another individual
7 subject to this code and, at the time, is married to someone else
8 or knows the other individual is married to someone else, must be
9 punished as a court-martial directs.

10 (2) As used in this section, "extramarital conduct" means any
11 of the following acts engaged in by individuals of the same or
12 opposite sex:

13 (a) Genital to genital sexual intercourse.

14 (b) Oral to genital sexual intercourse.

15 (c) Anal to genital sexual intercourse.

16 (d) Oral to anal sexual intercourse.

17 Sec. 134c. (1) An individual subject to this code who sells or
18 furnishes alcoholic liquor to a minor must be punished as a court-
19 martial directs.

20 (2) As used in this section:

21 (a) "Alcoholic liquor" means that term as defined in section
22 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL
23 436.1105.

24 (b) "Minor" means an individual less than 21 years of age.

25 Sec. 134d. An individual subject to this code must be punished
26 as a court-martial directs if the individual does any of the
27 following:

28 (a) Repetitively engages in behavior that involves unwelcome
29 sexual advances.

1 (b) Requests sexual favors from or offers sexual favors to a
2 subordinate.

3 (c) Engages in other verbal or physical conduct of a sexual
4 nature if any of the following apply:

5 (i) Submission to or rejection of the conduct is made either
6 explicitly or implicitly a term or condition of an individual's
7 job, pay, or career.

8 (ii) Submission to or rejection of the conduct by an individual
9 is used as a basis for career or employment decisions affecting
10 that individual.

11 (iii) The conduct has the purpose or effect of unreasonably
12 interfering with an individual's work performance or creates an
13 intimidating, hostile, or offensive working environment.

14 Sec. 147. The adjutant general ~~or the state judge advocate~~
15 ~~general shall provide for the promulgation of~~ **promulgate** rules
16 ~~pursuant to Act No. 306 of the Public Acts of 1969, as amended,~~
17 ~~being sections 24.201 to 24.315 of the Michigan Compiled Laws, to~~
18 ~~carry out the purposes of~~ **implement** this code **under the**
19 **administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to**
20 **24.328.**

21 Enacting section 1. Section 21 of the Michigan code of
22 military justice of 1980, 1980 PA 523, MCL 32.1021, is repealed.