

SENATE BILL No. 810

November 1, 2001, Introduced by Senator PETERS and referred to the Committee on Senior Citizens and Veterans Affairs.

A bill to amend 1980 PA 523, entitled "Michigan code of military justice of 1980," by amending sections 2, 3, 4, 7, 8, 9, 13, 14, 15, 16, 25, 26, 27, 29, 80, 84, 85, 92, 94, 99, 103, 105, 107, 108, 112, 113, 132, and 134 (MCL 32.1002, 32.1003, 32.1004, 32.1007, 32.1008, 32.1009, 32.1013, 32.1014, 32.1015, 32.1016, 32.1025, 32.1026, 32.1027, 32.1029, 32.1080, 32.1084, 32.1085, 32.1092, 32.1094, 32.1099, 32.1103, 32.1105, 32.1107, 32.1108, 32.1112, 32.1113, 32.1132, and 32.1134), section 16 as amended by 1990 PA 300, and by adding sections 50a, 88, 109, and 121.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Accuser" means a person who signs and swears to
- 3 charges, a person who directs that charges be signed and sworn to

1 by another, or a person who has an interest other than an
2 official interest in the prosecution of the accused.

3 (B) "ACTIVE SERVICE" MEANS SERVICE, ACTIVE STATE SERVICE, OR
4 SPECIAL DUTY REQUIRED BY LAW, REGULATION, OR ORDER OF THE
5 GOVERNOR. ACTIVE SERVICE INCLUDES THE CONTINUING OBLIGATIONS OF
6 ACTIVE MEMBERS OF THE NATIONAL GUARD AND THE DEFENSE FORCE BY
7 VIRTUE OF THEIR COMMISSIONS, APPOINTMENTS, OR ENLISTMENTS.

8 (C) ~~(b)~~ "Active state duty" means the actual weekend,
9 annual training, or special call up duty in the state military
10 forces and includes travel to and from the duty site or station.

11 (D) "ACTIVE STATE SERVICE" MEANS MILITARY SERVICE IN SUPPORT
12 OF CIVIL AUTHORITIES ORDERED BY THE GOVERNOR OR AS PROVIDED BY
13 THE MICHIGAN MILITARY ACT.

14 (E) "APPREHENSION" MEANS THE TAKING OF A PERSON INTO
15 CUSTODY.

16 (F) ~~(c)~~ "Commanding officer" includes only a commissioned
17 officer.

18 (G) "CONFINEMENT" MEANS THE PHYSICAL RESTRAINT OF A PERSON.

19 (H) "CONTROLLED SUBSTANCE" MEANS OPIUM, HEROIN, COCAINE,
20 AMPHETAMINE, LYSERGIC ACID DIETHYLAMIDE, METHAMPHETAMINE, PHENCY-
21 CLIDINE, BARBITURIC ACID, MARIHUANA, ANY COMPOUND OR DERIVATIVE
22 OF ANY SUCH SUBSTANCE, AND ANY OTHER SUBSTANCE THAT IS LISTED IN
23 SCHEDULES I THROUGH V OF SECTION 202 OF THE CONTROLLED SUBSTANCES
24 ACT, 21 U.S.C. 812, INCLUDING ANY SUBSEQUENT AMENDMENTS THERETO.

25 (I) "CORRECTIONAL CUSTODY" MEANS THE PHYSICAL RESTRAINT OF A
26 PERSON DURING DUTY OR NONDUTY WHILE ON ACTIVE STATE DUTY AND
27 INCLUDES EXTRA DUTY, FATIGUE DUTY, OR HARD LABOR.

1 (J) ~~(d)~~ "Enlisted member" means a person in an enlisted
2 grade.

3 (K) "FEDERAL SERVICE" MEANS MILITARY DUTY IN THE ARMED
4 FORCES OF THE UNITED STATES, INCLUDING, WITHOUT LIMITATION, THE
5 ARMY NATIONAL GUARD OF THE UNITED STATES AND THE AIR NATIONAL
6 GUARD OF THE UNITED STATES, WHILE SUBJECT TO THE UNIFORM CODE OF
7 MILITARY JUSTICE, TITLE 10, CHAPTER 47, UNITED STATES CODE.

8 (L) ~~(e)~~ "Grade" means a step or degree, in a graduated
9 scale of office or military rank, that is established and desig-
10 nated as a grade by law or rule.

11 (M) ~~(f)~~ "Judge advocate" means an officer ~~of the judge~~
12 ~~advocate general's corps~~ who is designated as a judge advocate
13 BY THE STATE JUDGE ADVOCATE GENERAL.

14 (N) ~~(g)~~ "Military" includes each armed force of the United
15 States AND EACH COMPONENT OF THE STATE MILITARY ESTABLISHMENT.

16 (O) ~~(h)~~ "Military court" means a court-martial, a court of
17 inquiry, or the military appeals tribunal.

18 (P) ~~(i)~~ "Military judge" means A JUDGE ADVOCATE DESIGNATED
19 AS A MILITARY JUDGE BY THE STATE JUDGE ADVOCATE GENERAL OR an
20 official of a general or special court-martial ~~detailed~~
21 APPOINTED pursuant to section 26.

22 (Q) "MINOR OFFENSE" MEANS AN OFFENSE UNDER A PUNITIVE SEC-
23 TION OF THIS ACT THAT A COMMANDING OFFICER CONSIDERS MINOR.

24 (R) ~~(j)~~ "Officer" means a commissioned or warrant
25 officer.

1 (S) ~~(k)~~ "Staff judge advocate" means the commissioned
2 officer responsible for supervising the administration of
3 military justice within a command.

4 (T) ~~(l)~~ "State judge advocate general" means the commis-
5 sioned officer responsible for supervising the administration of
6 the military justice in the state military forces.

7 (U) ~~(m)~~ "State military forces" means the national guard
8 of the state, as defined in 70A Stat. 596, 32 U.S.C. 101(3), and
9 any other military force organized under the laws of the state.

10 (V) ~~(n)~~ "Summary court officer" means an official
11 ~~detailed~~ APPOINTED pursuant to section 16(c) who is authorized
12 to serve warrants.

13 (W) ~~(o)~~ "Superior commissioned officer" means a commis-
14 sioned officer superior in rank or command.

15 (X) "UNIT" MEANS A REGULARLY ORGANIZED BODY OF THE MILITARY
16 THAT IS NOT LARGER THAN A COMPANY OR SQUADRON.

17 Sec. 3. (1) This code ~~shall apply~~ APPLIES to all members
18 of the ~~Michigan national guard while on active state duty~~ STATE
19 MILITARY FORCES WHEN NOT IN FEDERAL SERVICE, AND TO ALL OTHER
20 PERSONS LAWFULLY CALLED, ORDERED, DRAFTED, TRANSFERRED OR
21 INDUCTED INTO, OR ORDERED TO DUTY IN OR WITH THE STATE MILITARY
22 FORCES, FROM THE DATE THEY ARE REQUIRED BY THE TERMS OF THE CALL,
23 ORDER, OR OTHER DIRECTIVE. PERSONS SUBJECT TO THIS CODE SHALL
24 INCLUDE ALL PERSONS SERVING IN THE STATE MILITARY FORCES PURSUANT
25 TO TITLE 32 OF THE UNITED STATES CODE AND ALL PERSONS OF THE
26 STATE MILITARY FORCES IN ACTIVE SERVICE.

1 (2) This code ~~shall apply~~ APPLIES to a person subject to
2 this code while serving out of state and while going to and
3 returning from the service out of state to the same extent as a
4 person serving within the state.

5 (3) Courts-martial and courts of inquiry may be convened and
6 held in units of the state military forces while serving out of
7 state with the same jurisdiction and powers as if held within the
8 state. Offenses committed out of state may be tried and punished
9 either out of state or within the state.

10 Sec. 4. (1) Subject to the limitation of actions under sec-
11 tion 43, a person ~~charged with having committed, while in a~~
12 ~~status in which the person was subject to this act, an offense~~
13 ~~under this code may be relieved from amenability to trial by~~
14 ~~court-martial by reason of the termination of the status~~ WHO IS
15 SUBJECT TO THIS CODE AND CHARGED WITH AN OFFENSE UNDER THIS CODE
16 IS NOT RELIEVED FROM A TRIAL BY COURT-MARTIAL BECAUSE HIS OR HER
17 MILITARY SERVICE IS TERMINATED.

18 (2) Each person discharged from the state military forces
19 who is later charged with having fraudulently obtained his or her
20 discharge, except as provided in section 43, is subject to trial
21 by court-martial on that charge and is, after apprehension,
22 subject to this code while in the custody of the military for
23 that trial. Upon conviction of fraudulently obtaining a
24 discharge, the person is subject to trial by court-martial for an
25 offense under this code committed before the fraudulent
26 discharge.

1 Sec. 7. ~~(1) For purposes of this section, "apprehension"~~
2 ~~means the taking of a person into custody.~~

3 (1) ~~(2)~~ A person authorized under the rules issued pursu-
4 ant to this code to apprehend a person subject to this code, a
5 marshal of a court-martial appointed pursuant to this code, or a
6 law enforcement officer of this state OR A POLITICAL SUBDIVISION
7 OF THIS STATE may apprehend a person subject to this code upon
8 reasonable belief that an offense UNDER THIS CODE has been com-
9 mitted and that the person apprehended committed the offense.

10 (2) ~~(3)~~ Each commissioned officer, warrant officer, and
11 noncommissioned officer is authorized to quell quarrels, frays,
12 or disorders among persons subject to this code and to apprehend
13 persons subject to this code who take part in a quarrel, fray, or
14 disorder.

15 (3) ~~(4)~~ Except as otherwise specifically provided in this
16 code, a civil law enforcement officer or marshal of a
17 court-martial shall not demand or require payment of a fee or
18 charge of any nature for apprehending or placing in confinement a
19 person subject to this code.

20 Sec. 8. A civil law enforcement officer ~~having authority~~
21 ~~under the laws~~ of this state ~~to apprehend offenders of this~~
22 ~~code~~ may apprehend a person charged with the violation of sec-
23 tion 85 and deliver the person into the custody of the state mil-
24 itary forces.

25 Sec. 9. (1) As used in this section, ~~:(a) "Arrest"~~
26 "ARREST" means the restraint of a person by an order not imposed

1 as a punishment for an offense, directing the person to remain
2 within certain specified limits.

3 ~~(b) "Confinement" means the physical restraint of a~~
4 ~~person.~~

5 (2) An officer or enlisted member of the state military
6 forces accused of an offense in violation of this code may be
7 placed in arrest by his or her military superior.

8 (3) A person shall not be ordered into arrest or confinement
9 except ~~for~~ UPON probable cause.

10 (4) This section ~~shall~~ DOES not limit the authority of a
11 person authorized to apprehend an offender of this code to secure
12 the custody of an alleged offender until the proper authority is
13 notified.

14 Sec. 13. (1) Except as provided in section 15 of article
15 ~~I~~ I of the state constitution of 1963, ~~all offenses~~ A PERSON
16 CHARGED WITH A VIOLATION under this code ~~are bailable~~ IS ENTI-
17 TLED TO BAIL.

18 (2) Before ~~conviction~~ TRIAL, a person ~~shall be bailable~~
19 ~~as~~ IS ENTITLED TO BAIL IN AN AMOUNT determined by the military
20 judge.

21 (3) The amount of bail shall NOT be EXCESSIVE, AND THE MILI-
22 TARY JUDGE SHALL CONSIDER ALL OF THE FOLLOWING:

23 ~~(a) Not excessive.~~

24 (A) ~~(b) Commensurate with the~~ THE nature of the offense
25 charged.

26 (B) ~~(c) Considerate of the~~ THE past conduct of the
27 accused.

1 (C) ~~(d) Considerate of the~~ THE financial ability of the
2 accused.

3 Sec. 14. (1) It is the intent of the legislature that trial
4 by court-martial ~~shall~~ be limited to the ~~military offenses~~
5 VIOLATIONS defined in ~~sections 77 to 134~~ ARTICLE 10.

6 (2) A person subject to this code who is on active state
7 duty and who is accused of ~~an~~ A CRIMINAL offense against civil
8 authority shall be delivered, upon request, to the civil author-
9 ity for trial.

10 (3) If delivery is made to a civil authority of a person
11 undergoing sentence of a court-martial ~~,~~ and the delivery, if
12 followed by conviction in a civil tribunal, interrupts the execu-
13 tion of the sentence of the court-martial, the offender, after
14 having answered to the civil authorities for the offense ~~,~~ and
15 upon the request of competent military authority, shall be
16 returned to military custody for the completion of his or her
17 sentence.

18 Sec. 15. ~~(1) As used in this section:~~

19 ~~(a) "Correctional custody" means the physical restraint of a~~
20 ~~person during duty or nonduty hours while on active state duty~~
21 ~~and may include extra duties, fatigue duty, or hard labor.~~

22 ~~(b) "Minor offense" means an offense under the punitive sec-~~
23 ~~tions of this act which in the discretion of the commanding offi-~~
24 ~~cer is minor.~~

25 ~~(2) The authority provided in this section may be limited by~~
26 ~~a rule promulgated by the adjutant general pursuant to section~~
27 ~~147.~~

1 (1) ~~(3) A~~ UNDER REGULATIONS ISSUED PURSUANT TO THIS ACT, A
2 commanding officer, in addition to or instead of an admonition or
3 reprimand, may impose ~~1 of the following~~ disciplinary
4 ~~punishments~~ PUNISHMENT for A minor ~~offenses~~ OFFENSE on an
5 officer under ~~the commanding officer's~~ HIS OR HER command with-
6 out the intervention of a court-martial WITH 1 OF THE FOLLOWING:

7 (a) Restrictions to certain specified limits, with or with-
8 out suspension from duty, for not more than 15 consecutive active
9 state duty days.

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

13 (i) Arrest in quarters for not more than 15 consecutive
14 active state duty days.

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

17 (iii) Restrictions to certain specified limits with or with-
18 out suspension from duty, for not more than 15 consecutive
19 ~~active state~~ duty days.

20 ~~(iv) Detention of not more than 1/2 of 1 month's pay per~~
21 ~~month for 3 months.~~

22 ~~(4) Except as provided in subsection (2), a commanding offi-~~
23 ~~cer, in addition to or instead of an admonition or reprimand, may~~
24 ~~impose 1 of the following disciplinary punishments for minor~~
25 ~~offenses upon personnel, other than an officer, under the com-~~
26 ~~manding officer's command without the intervention of a~~
27 ~~court-martial.~~

1 ~~(a) Correctional custody for not more than 7 consecutive~~
2 ~~active state duty days.~~

3 ~~(b) Forfeiture of not more than 7 active state duty days'~~
4 ~~pay.~~

5 ~~(c) Reduction to the next inferior pay grade, if the grade~~
6 ~~from which demoted is within the promotion authority of the offi-~~
7 ~~cer imposing the reduction or an officer subordinate to the offi-~~
8 ~~cer who imposes the reduction.~~

9 ~~(d) Extra duties, including fatigue or other duties for not~~
10 ~~more than 14 consecutive active state duty days, and not more~~
11 ~~than 2 hours per day.~~

12 ~~(e) Restriction to certain specified limits, with or without~~
13 ~~suspension from duty, for not more than 14 consecutive active~~
14 ~~state duty days.~~

15 ~~(f) Detention of not more than 14 days' pay.~~

16 ~~(g) If imposed by an officer of the grade of major or~~
17 ~~above:~~

18 ~~(i) Correctional custody for not more than 15 consecutive~~
19 ~~active state duty days.~~

20 ~~(ii) Forfeiture of not more than 1/2 of 1 month's pay per~~
21 ~~month for 2 months.~~

22 ~~(iii) Reduction to the lowest or an intermediate pay grade,~~
23 ~~if the grade from which demoted is within the promotion authority~~
24 ~~of the officer imposing the reduction or an officer subordinate~~
25 ~~to the 1 who imposes the reduction, except that an enlisted~~
26 ~~member in a pay grade above E-4 may not be reduced more than 2~~
27 ~~pay grades.~~

1 ~~(iv) Extra duties, including fatigue or other duties, for~~
2 ~~not more than 15 consecutive active state duty days.~~

3 ~~(v) Restrictions to certain specified limits, with or with-~~
4 ~~out suspension from duty, for not more than 15 consecutive active~~
5 ~~state duty days.~~

6 ~~(vi) Detention of not more than 1/2 of 1 month's pay per~~
7 ~~month for 3 months.~~

8 (C) UPON OTHER MILITARY PERSONNEL UNDER HIS OR HER COMMAND,
9 1 OR MORE OF THE FOLLOWING:

10 (i) CORRECTIONAL CUSTODY FOR NOT MORE THAN 7 CONSECUTIVE
11 DUTY DAYS.

12 (ii) FORFEITURE OF NOT MORE THAN 7 DUTY DAYS' PAY.

13 (iii) REDUCTION TO THE NEXT INFERIOR PAY GRADE, IF THE GRADE
14 FROM WHICH THE PERSON IS DEMOTED IS WITHIN THE PROMOTION AUTHOR-
15 ITY OF THE OFFICER IMPOSING THE REDUCTION OR AN OFFICER SUBORDI-
16 NATE TO THE OFFICER WHO IMPOSES THE REDUCTION.

17 (iv) EXTRA DUTIES, INCLUDING FATIGUE OR OTHER DUTIES FOR NOT
18 MORE THAN 15 CONSECUTIVE DUTY DAYS AND NOT MORE THAN 2 HOURS PER
19 DAY.

20 (v) RESTRICTIONS TO CERTAIN SPECIFIED LIMITS, WITH OR WITH-
21 OUT SUSPENSION FROM DUTY, FOR NOT MORE THAN 15 CONSECUTIVE DUTY
22 DAYS.

23 (D) IF IMPOSED BY AN OFFICER OF THE GRADE OF MAJOR OR ABOVE
24 UPON OTHER MILITARY PERSONNEL UNDER HIS OR HER COMMAND:

25 (i) CORRECTIONAL CUSTODY FOR NOT MORE THAN 15 CONSECUTIVE
26 DUTY DAYS.

1 (ii) FORFEITURE OF NOT MORE THAN 15 DUTY DAYS' PAY.

2 (iii) REDUCTION TO THE LOWEST OR AN INTERMEDIATE PAY GRADE,
3 IF THE GRADE FROM WHICH DEMOTED IS WITHIN THE PROMOTION AUTHORITY
4 OF THE OFFICER IMPOSING THE REDUCTION OR THE OFFICER IMPOSING THE
5 REDUCTION IS A BRIGADE, WING, BASE, OR POST COMMANDER, EXCEPT
6 THAT AN ENLISTED MEMBER IN A PAY GRADE ABOVE E4 MAY NOT BE
7 REDUCED MORE THAN 2 PAY GRADES.

8 (iv) EXTRA DUTIES, INCLUDING FATIGUE OR OTHER DUTIES, FOR
9 NOT MORE THAN 15 CONSECUTIVE DUTY DAYS.

10 (v) RESTRICTIONS TO CERTAIN SPECIFIED LIMITS, WITH OR WITH-
11 OUT SUSPENSION FROM DUTY, FOR NOT MORE THAN 15 CONSECUTIVE DUTY
12 DAYS.

13 (2) ~~-(5)-~~ Two or more disciplinary punishments of arrest in
14 quarters, correctional custody, extra duties, and restriction
15 shall not be combined to run consecutively in the maximum amount
16 imposed for each. If any of those punishments are combined to
17 run consecutively, ~~there shall be an apportionment. In addi-~~
18 ~~tion, forfeiture of pay shall not be combined with detention of~~
19 ~~pay without an apportionment.~~ THE COMMANDING OFFICER SHALL
20 APPORTION THE PUNISHMENT.

21 (3) ~~-(6)-~~ If practicable, correctional custody shall not be
22 served in immediate association with persons awaiting trial or
23 held in confinement pursuant to trial by court-martial.

24 (4) ~~-(7)-~~ An officer in charge may impose upon an enlisted
25 member assigned to the unit of which the officer is in charge a
26 punishment authorized under subsection ~~-(4)(a) to (f)-~~ (1)(C) as

1 the adjutant general concerned may specifically prescribe by
2 rule.

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

14 (6) ~~(9)~~ When mitigating arrest in quarters to restriction,
15 correctional custody to extra duties or restriction, or both, or
16 extra duties to restrictions, the mitigated punishment shall not
17 be for a greater period than the punishment mitigated. When mit-
18 igating forfeiture of pay to detention of pay, the amount of the
19 detention shall not be greater than the amount of the
20 forfeiture. ~~When mitigating reduction in grade to forfeiture or~~
21 ~~detention of pay, the amount of the forfeiture or detention shall~~
22 ~~not be greater than the amount that could have been imposed ini-~~
23 ~~tially under this section by the officer who imposed the punish-~~
24 ~~ment mitigated.~~

25 (7) ~~(10)~~ A person punished under this section who consid-
26 ers the punishment received as unjust or disproportionate to the
27 offense, through the proper channel, may appeal to the next

1 superior authority. THE APPEAL SHALL BE MADE NOT LATER THAN 45
2 DAYS AFTER THE PUNISHMENT IS ADJUDGED. The appeal shall be
3 promptly forwarded and decided, and the person punished shall not
4 be required to undergo the punishment adjudged before a decision
5 on the appeal is rendered. The officer who imposes the punish-
6 ment, the officer's successor in command, or superior authority
7 ~~shall have power~~ IS AUTHORIZED to suspend, set aside, or remit
8 any part or amount of the punishment and to restore all rights,
9 privileges, and property affected. THE AUTHORITY WHO IS TO ACT
10 ON THE APPEAL SHALL REFER THE CASE TO A JUDGE ADVOCATE FOR CON-
11 sideration AND ADVICE BEFORE ACTING UPON THE APPEAL. ~~However,~~
12 ~~the authority who is to act on the appeal shall refer the case to~~
13 ~~the state judge advocate general or a member of the state judge~~
14 ~~advocate general's staff for indorsement before acting on the~~
15 ~~appeal. The superior authority may exercise the same powers with~~
16 ~~respect to punishment imposed as may be exercised under subsec-~~
17 ~~tion (8) by the officer who imposed the punishment. Before~~
18 ~~acting on an appeal from a punishment of 1 of the following pun-~~
19 ~~ishments, the authority who is to act on the appeal shall refer~~
20 ~~the case to the state judge advocate general for consideration~~
21 ~~and advice, and may so refer the case upon appeal from a punish-~~
22 ~~ment imposed under subsection (7):~~

23 (a) ~~Arrest in quarters for more than 7 active state duty~~
24 ~~days.~~

25 (b) ~~Correctional custody for more than 7 active state duty~~
26 ~~days.~~

1 ~~(c) Forfeiture of more than 7 days' pay.~~

2 ~~(d) Reduction of 1 or more pay grades from the fourth or a~~
3 ~~higher pay grade.~~

4 ~~(e) Extra duties for more than 14 active state duty days.~~

5 ~~(f) Restriction for more than 14 active state duty days.~~

6 ~~(g) Detention of more than 14 days' pay.~~

7 (8) ~~(11)~~ The imposition and enforcement of disciplinary
8 punishment under this section for an act or omission is not a bar
9 to trial by court-martial for a serious crime or offense growing
10 out of the same act or omission and not properly punishable under
11 this section. The fact that disciplinary punishment has been
12 enforced may be shown by the accused upon trial, and when so
13 shown shall be considered in determining the measure of punish-
14 ment to be adjudged in the event of a finding of guilty.

15 (9) ~~(12)~~ The adjutant general, ~~concerned,~~ by ~~rule~~
16 REGULATION, may prescribe the form of records to be kept of pro-
17 ceedings under this section and may also prescribe that certain
18 categories of those proceedings shall be in writing.

19 (10) ~~(13)~~ Before being informed of the disciplinary action
20 to be taken under this section, the person to be punished ~~shall~~
21 ~~have~~ HAS the right to demand trial by court-martial for the
22 offense ONLY IF THE COMMANDING OFFICER CONSIDERING DISCIPLINARY
23 ACTION UNDER THIS SECTION ADVISES THE PERSON TO BE PUNISHED THAT
24 CORRECTIONAL CUSTODY MAY BE CONSIDERED AS POTENTIAL PUNISHMENT.

25 (11) ~~(14)~~ If a punishment of forfeiture of pay and allow-
26 ance is imposed as provided in this section, the forfeiture may
27 apply to pay or allowances becoming due on or after the date of

1 the punishment but shall not apply to pay and allowances accrued
2 before the date.

3 Sec. 16. The 3 kinds of courts-martial in the state mili-
4 tary forces are:

5 (a) General courts-martial, consisting of a military judge
6 and not less than 5 members; or only a military judge, if before
7 the court is assembled the accused, knowing the identity of the
8 military judge and after consultation with defense counsel,
9 requests in writing a court composed only of the military judge
10 and the military judge approves.

11 (b) Special courts-martial consisting of a military judge
12 and not less than 3 members; or only a military judge, if the
13 accused under the same conditions as those prescribed in subdivi-
14 sion (a), requests a court composed only of the military judge.

15 (c) Summary courts-martial, consisting of 1 commissioned
16 officer OF FIELD GRADE RANK OR ABOVE WHO IS CERTIFIED FOR THAT
17 DUTY BY THE STATE JUDGE ADVOCATE GENERAL AND who is not a member
18 of the accused's unit.

19 Sec. 25. (1) Members for all courts-martial shall be
20 selected at random pursuant to regulations issued by the state
21 adjutant general not inconsistent with this section.

22 (2) A commissioned officer on duty with the state military
23 forces is eligible to serve on all courts-martial for the trial
24 of a person who may lawfully be brought before the court-martial
25 for trial.

26 (3) A warrant officer on duty with the state military forces
27 is eligible to serve on general and special courts-martial for

1 the trial of a person, other than a commissioned officer, who may
2 lawfully be brought before the court-martial for trial.

3 (4) An enlisted member of the state military forces who is
4 not a member of the same unit as the accused is eligible to serve
5 on general and special courts-martial for the trial of any
6 enlisted member who may lawfully be brought before the
7 court-martial for trial, but the enlisted member shall serve as a
8 member of a court only if, before the convening of the court, the
9 accused personally requested in writing that enlisted members
10 serve on the court-martial. After the request, the accused may
11 not be tried by a general or special courts-martial the member-
12 ship of which does not include enlisted members in a number com-
13 prising at least 1/3 of the total membership of the court, unless
14 eligible enlisted members cannot be obtained on account of physi-
15 cal conditions or military exigencies. If the members cannot be
16 obtained, the court may be convened and the trial held without
17 them, but the convening authority shall make a detailed written
18 statement, to be appended to the record, stating why enlisted
19 members could not be obtained. ~~In this subsection, "unit" means~~
20 ~~any regularly organized body of the state military forces not~~
21 ~~larger than a company, a squadron, or a body corresponding to a~~
22 ~~company or squadron.~~

23 (5) Unless unavoidable, a person subject to this code shall
24 not be tried by a court-martial which has a member junior to the
25 person in rank or grade. When convening a court-martial, the
26 convening authority shall detail as a member of the court-martial
27 a person who is best qualified for the duty by reason of age,

1 education, training, experience, length of service, and judicial
2 temperament. A person is not eligible to serve as a member of a
3 general or special court-martial if the person is the accuser or
4 a witness for the prosecution or has acted as investigating offi-
5 cer or as counsel in the same case.

6 Sec. 26. (1) The ~~authority~~ PERSON convening a general or
7 special ~~courts-martial~~ COURT-MARTIAL shall request the state
8 judge advocate GENERAL to ~~detail as~~ APPOINT A military judge
9 ~~of the court-martial a commissioned officer who is licensed to~~
10 ~~practice law in this state, and who is certified to be qualified~~
11 ~~for duty by the state judge advocate~~ TO THE GENERAL OR SPECIAL
12 COURT-MARTIAL.

13 (2) ~~A person is not eligible to act as a military judge in~~
14 ~~a case if the person is the accuser or a witness for the prosecu-~~
15 ~~tion or has acted as investigating officer or a counsel in the~~
16 ~~same case.~~ THE STATE JUDGE ADVOCATE GENERAL MAY APPOINT AN
17 ASSISTANT JUDGE ADVOCATE TO SERVE AS A MILITARY JUDGE WHO IS A
18 COMMISSIONED OFFICER, WHO IS LICENSED TO PRACTICE LAW IN THIS
19 STATE, AND WHO IS CERTIFIED FOR THAT DUTY BY THE STATE JUDGE
20 ADVOCATE.

21 (3) The military judge shall not consult with the members of
22 the court except in the presence of the accused, trial counsel,
23 and defense counsel, nor shall the military judge vote with the
24 members of the court.

25 (4) The military judge shall rule finally on all matters of
26 law, rule finally on all motions, and except as otherwise

1 provided, decide all other questions raised at the trial of the
2 accused.

3 Sec. 27. (1) For each general and special court-martial,
4 the authority convening the court shall request the state judge
5 advocate to detail trial counsel and defense counsel, and those
6 assistants as the convening authority considers appropriate. A
7 person who has acted as investigating officer, military judge, or
8 court member in any case shall not act later as trial counsel,
9 assistant trial counsel, or, unless expressly requested by the
10 accused, as defense counsel or assistant defense counsel in the
11 same case. A person who has acted for the prosecution shall not
12 act later in the same case for the defense, nor shall a person
13 who has acted for the defense act later in the same case for the
14 prosecution.

15 (2) Military trial counsel or military defense counsel for a
16 general or special courts-martial shall be licensed to practice
17 law in this state and certified as competent to perform those
18 duties by the state judge advocate GENERAL.

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

24 (2) If a general court-martial is reduced below 5 members,
25 the trial may not proceed unless the convening authority appoints
26 new members sufficient in number to provide not less than 5
27 members. When the new members have been sworn, the trial may

1 proceed after the recorded testimony of each witness previously
2 examined has been read to the court-martial in the presence of
3 the ~~law officer~~ MILITARY JUDGE, the accused, and counsel.

4 (3) If a special court-martial is reduced below 3 members,
5 the trial may not proceed unless the convening authority appoints
6 new members sufficient in number to provide not less than 3
7 members. When the new members have been sworn, the trial shall
8 proceed as if no evidence had previously been introduced, unless
9 a verbatim record of the testimony of previously examined wit-
10 nesses or a stipulation of that testimony is read to the
11 court-martial in the presence of the accused and counsel.

12 SEC. 50A. (1) IT IS AN AFFIRMATIVE DEFENSE IN A TRIAL BY
13 COURT-MARTIAL THAT, AT THE TIME OF THE COMMISSION OF THE ACTS
14 CONSTITUTING THE OFFENSE, THE ACCUSED, AS A RESULT OF A SEVERE
15 MENTAL DISEASE OR DEFECT, WAS UNABLE TO APPRECIATE THE NATURE AND
16 QUALITY OR THE WRONGFULNESS OF THE ACTS AND THEREFORE LACKED
17 MENTAL RESPONSIBILITY. MENTAL DISEASE OR DEFECT DOES NOT OTHER-
18 WISE CONSTITUTE A DEFENSE.

19 (2) THE ACCUSED HAS THE BURDEN, UNDER SUBSECTION (1), OF
20 PROVING THE DEFENSE OF LACK OF MENTAL RESPONSIBILITY BY CLEAR AND
21 CONVINCING EVIDENCE.

22 (3) WHENEVER LACK OF MENTAL RESPONSIBILITY OF THE ACCUSED
23 WITH RESPECT TO AN OFFENSE IS PROPERLY AT ISSUE, THE MILITARY
24 JUDGE, OR THE PRESIDENT OF A COURT-MARTIAL WITHOUT A MILITARY
25 JUDGE, SHALL INSTRUCT THE MEMBERS OF THE COURT AS TO THE DEFENSE
26 OF LACK OF MENTAL RESPONSIBILITY UNDER THIS SECTION AND SHALL
27 CHARGE THEM TO FIND THE ACCUSED 1 OF THE FOLLOWING:

1 (A) GUILTY.

2 (B) NOT GUILTY.

3 (C) NOT GUILTY ONLY BY REASON OF LACK OF MENTAL
4 RESPONSIBILITY.

5 (4) NOTWITHSTANDING SECTION 52, THE ACCUSED SHALL BE FOUND
6 NOT GUILTY ONLY BY REASON OF LACK OF MENTAL RESPONSIBILITY IF A
7 MAJORITY OF THE MEMBERS OF THE COURT-MARTIAL PRESENT AT THE TIME
8 THE VOTE IS TAKEN DETERMINE THAT THE DEFENSE OF LACK OF MENTAL
9 RESPONSIBILITY HAD BEEN ESTABLISHED OR, IN THE CASE OF A
10 COURT-MARTIAL COMPOSED OF A MILITARY JUDGE ONLY, THE MILITARY
11 JUDGE DETERMINES THAT THE DEFENSE OF LACK OF MENTAL RESPONSIBIL-
12 ITY HAS BEEN ESTABLISHED.

13 Sec. 80. (1) An act, done with the specific intent to
14 commit an offense under this code, amounting to more than mere
15 preparation, even though failing to effect its commission, is an
16 attempt to commit that offense.

17 (2) A person subject to this code who attempts to commit an
18 offense punishable by this code shall be punished as a
19 court-martial directs, unless otherwise specifically prescribed.

20 (3) A person subject to this code may be convicted of an
21 attempt to commit an offense ~~although~~ EVEN IF it appears on the
22 trial FROM EVIDENCE PRESENTED AT THE TRIAL OR FROM A GUILTY PLEA
23 that the offense was ~~consummated~~ COMPLETE.

24 Sec. 84. A person subject to this code who effects an
25 enlistment or appointment in or a separation from the state mili-
26 tary forces of a person who is known to that person to be
27 ineligible for the enlistment, appointment, or separation because

1 it is prohibited by law, rule, REGULATION, or order shall be
2 punished as a court-martial directs.

3 Sec. 85. (1) A member of the state military forces is
4 guilty of desertion if the member commits 1 of the following
5 acts:

6 (a) Without proper authority goes or remains absent from his
7 or her unit, organization, or place of duty with intent to remain
8 away permanently.

9 (b) Quits his or her unit, organization, or place of duty
10 with intent to avoid hazardous duty or to shirk important
11 service.

12 (c) Without being regularly separated from 1 of the forces
13 of the state military forces, enlists or accepts an appointment
14 in the same or another state military force without fully dis-
15 closing the fact that he or she has not been regularly
16 separated.

17 (2) Notwithstanding subsection (1), a member of the state
18 military forces shall not be, in time of peace or order, prohib-
19 ited from accepting bona fide employment in another state or
20 ~~leave~~ LEAVING the boundaries of this state in pursuance of a
21 vocation, education, or profession ~~—~~ if before so doing ~~—~~ the
22 member fully informs the member's commanding officer of the
23 absence from the state and the reasons for the absence. However,
24 the commanding officer may waive this requirement.

25 (3) An officer of the state military forces who, having
26 tendered his or her resignation and before due notice of the
27 acceptance of the resignation, quits his or her post or proper

1 duties without leave and with intent to remain away permanently
2 ~~—~~ is guilty of desertion.

3 (4) A person found guilty of desertion ~~or attempted~~
4 ~~desertion~~ shall be punished as a court-martial directs.

5 SEC. 88. (1) A PERSON SUBJECT TO THIS ACT SHALL NOT USE
6 CONTEMPTUOUS WORDS AGAINST THE PRESIDENT, VICE PRESIDENT, CON-
7 GRESS, SECRETARY OF DEFENSE, A SECRETARY OF A MILITARY DEPART-
8 MENT, THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF MILITARY AND
9 VETERANS AFFAIRS, OR THE GOVERNOR OR THE LEGISLATURE OF THIS
10 STATE WHILE HE OR SHE IS ON DUTY, OR AGAINST THE GOVERNOR OR THE
11 LEGISLATURE OF ANY OTHER STATE, TERRITORY, COMMONWEALTH, OR POS-
12 SESSION WHILE HE OR SHE IS ON DUTY AND PRESENT IN THAT STATE,
13 TERRITORY, COMMONWEALTH, OR POSSESSION.

14 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF AN
15 OFFENSE PUNISHABLE AS A COURT-MARTIAL MAY DIRECT.

16 Sec. 92. A person subject to this code shall be punished as
17 a court-martial directs if the person commits 1 of the following
18 acts:

19 (a) Violates or fails to obey a lawful general order, ~~or~~
20 rule, OR REGULATION.

21 (b) Having knowledge of a lawful order issued by a member of
22 the armed forces which it is the person's duty to obey, fails to
23 obey that order.

24 (c) Is derelict in the performance of duties.

25 Sec. 94. (1) A person subject to this code:

26 (a) Who, with the intent to usurp or override a lawful
27 military authority, refuses, in concert with another person, to

1 obey an order or otherwise do his or her duty or creates any
2 violence or disturbance is guilty of mutiny.

3 (b) Who, with the intent to cause the overthrow or destruc-
4 tion of a lawful civil authority, creates, in concert with
5 another person, revolt, violence, or other disturbance against
6 that authority is guilty of sedition.

7 (c) Who fails to do the utmost to prevent and suppress an
8 offense of mutiny or sedition being committed in the person's
9 presence — or fails to take all reasonable means to inform a
10 superior officer or commanding officer of an offense of mutiny or
11 sedition which the person knows OF or has reason to believe is
12 taking place is guilty of a failure to suppress or report a
13 mutiny or sedition.

14 (2) A person who is found guilty of attempted mutiny,
15 mutiny, sedition, or failure to suppress or report a mutiny or
16 sedition shall be punished as a court-martial directs.

17 Sec. 99. A person subject to this code who before or in the
18 presence of the enemy OR DURING THE PERFORMANCE OF DUTY IN A
19 PEACETIME EMERGENCY OR CIVIL DISTURBANCE OPERATION commits 1 of
20 the following acts shall be punished as a court-martial directs:

21 (a) Runs away.

22 (b) Abandons, surrenders, or delivers up a command, unit,
23 place, or military property which it is the person's duty to
24 defend.

25 (c) Through disobedience, neglect, or intentional misconduct
26 endangers the safety of a command, unit, place, or military
27 property.

1 (d) Casts away arms or ammunition.

2 (e) Is guilty of cowardly conduct.

3 (f) Quits a place of duty to plunder or pillage.

4 (g) Causes false alarms in a command, unit, or place under
5 the control of the armed forces of the United States, the state
6 military forces, or the military forces of any other state or
7 territory.

8 (h) ~~Wilfully~~ WILLFULLY fails to do the person's utmost to
9 encounter, engage, capture, or destroy enemy troops, combatants,
10 vessels, aircraft, or any other thing which it is the person's
11 duty to encounter, engage, capture, or destroy.

12 (i) Does not afford all practicable relief and assistance to
13 troops, combatants, vessels, or aircraft of the armed forces
14 belonging to the United States, TO their allies, or to any other
15 state or to the state military forces if engaged in battle.

16 (J) WILLFULLY FAILS TO DO HIS OR HER UTMOST TO SUPPRESS
17 CIVIL DISTURBANCE WHILE ENGAGED IN AN EMERGENCY RESPONSE
18 OPERATION.

19 Sec. 103. (1) A person subject to this code shall secure
20 all public property taken in the ~~course of active state~~
21 PERFORMANCE OF HIS OR HER duty and shall give notice and turn
22 over to the proper authority without delay all captured or aban-
23 doned property in the person's possession, custody, or control.

24 (2) A person subject to this code shall be punished as a
25 court-martial directs if the person commits 1 of the following
26 acts:

1 (a) Fails to carry out the duties prescribed in subsection
2 (1).

3 (b) Buys, sells, trades, or in any way deals in or disposes
4 of captured or abandoned property, from which the person receives
5 or expects a profit, benefit, or advantage to the person or
6 another directly or indirectly connected with the person.

7 (c) Engages in looting or pillaging.

8 Sec. 105. (1) A person subject to this code who, while in
9 the hands of ~~the enemy~~ A CAPTOR in time of declared state emer-
10 gency, ~~commits 1 of the following acts shall be punished as a~~
11 ~~court-martial directs~~ OR CIVIL DISTURBANCE EMERGENCY SHALL NOT
12 DO ANY OF THE FOLLOWING:

13 (a) ~~For the purpose of securing~~ TO SECURE favorable treat-
14 ment by the person's captors, ~~acts~~ ACT without proper authority
15 in a manner contrary to law, custom, ~~or~~ rule, OR REGULATION to
16 the detriment of others. ~~of whatever nationality held by the~~
17 ~~enemy as civilian or military prisoners.~~

18 (b) While in a position of authority over those persons,
19 ~~maltreats~~ MALTREAT them without justifiable cause.

20 (2) A PERSON WHO VIOLATES THIS SECTION SHALL BE PUNISHED AS
21 A COURT-MARTIAL DIRECTS.

22 Sec. 107. A person subject to this code who, with the
23 intent to deceive, signs a false record, return, rule, order, or
24 other official document, knowing the document to be false, or
25 makes any other false ~~document knowing the document to be false,~~
26 ~~or other false~~ official statement knowing the statement to be
27 false shall be punished as a court-martial directs.

1 Sec. 108. (1) A person subject to this code ~~who, without~~
2 ~~proper authority sells or otherwise disposes of; wilfully or~~
3 ~~through neglect damages, destroys, or loses; or wilfully or~~
4 ~~through neglect suffers to be lost, damaged, destroyed, sold, or~~
5 ~~wrongfully disposed of military property of the United States or~~
6 ~~of this state~~ SHALL NOT, WITHOUT PROPER AUTHORITY, DO ANY OF THE
7 FOLLOWING:

8 (A) SELL OR OTHERWISE DISPOSE OF MILITARY PROPERTY OF THE
9 UNITED STATES OR THIS STATE.

10 (B) WILLFULLY OR NEGLIGENTLY DAMAGE, DESTROY, OR LOSE MILI-
11 TARY PROPERTY OF THE UNITED STATES OR THIS STATE.

12 (C) WILLFULLY OR NEGLIGENTLY ALLOW DAMAGE, DESTRUCTION, OR
13 LOSS OF MILITARY PROPERTY OF THE UNITED STATES OR THIS STATE.

14 (2) A PERSON WHO VIOLATES THIS SECTION shall be punished as
15 a court-martial directs.

16 SEC. 109. (1) A PERSON SUBJECT TO THIS CODE, WHILE ON DUTY
17 OR IN THE COURSE OF DUTY, SHALL NOT WILLFULLY OR RECKLESSLY
18 WASTE, SPOIL, OR DESTROY ANY PROPERTY THAT IS NOT PROPERTY OF THE
19 UNITED STATES OR OF THIS STATE.

20 (2) A PERSON WHO VIOLATES THIS SECTION SHALL BE PUNISHED AS
21 A COURT-MARTIAL DIRECTS.

22 Sec. 112. (1) A person subject to this code, who is ~~found~~
23 ~~under the influence of intoxicating liquor and disorderly while~~
24 ~~in uniform or while on state military property~~ NOT A SENTINEL OR
25 A LOOK-OUT AS DESCRIBED IN SECTION 113, SHALL NOT BE UNDER THE
26 INFLUENCE OF INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE WHILE
27 IN UNIFORM, WHILE ON MILITARY PROPERTY, OR WHILE ON DUTY.

1 (2) A PERSON WHO VIOLATES THIS SECTION shall be punished as
2 a court-martial directs.

3 Sec. 113. A sentinel or guard subject to this code who is
4 found under the influence of intoxicating liquor OR A CONTROLLED
5 SUBSTANCE or sleeping upon his or her post or who leaves a post
6 before being relieved shall be punished as a court-martial
7 directs.

8 SEC. 121. (1) A PERSON SUBJECT TO THIS CODE WHO UNLAWFULLY
9 TAKES, OBTAINS, OR WITHHOLDS FROM THE UNITED STATES, THIS STATE,
10 OR ANY OTHER STATE, ANY PROPERTY, MONEY, OR ARTICLE OF ANY KIND
11 WITH THE INTENT TO PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY,
12 MONEY, OR ARTICLE OF ANY KIND, IS GUILTY OF LARCENY.

13 (2) A PERSON WHO VIOLATES THIS SECTION IS PUNISHABLE AS A
14 COURT-MARTIAL DIRECTS.

15 Sec. 132. (1) A person subject to this code shall ~~be pun-~~
16 ~~ished as a court-martial directs if the person commits~~ 1 not
17 commit any of the following acts:

18 (a) Knowing the claim to be false or fraudulent, ~~makes~~
19 MAKE a claim against the United States, this state, or an officer
20 of the United States or this state.

21 (b) Knowing the claim to be false or fraudulent, ~~presents~~
22 PRESENT to a person in the civil or military service of the
23 United States or this state for approval or payment a claim
24 against the United States, this state, or an officer of the
25 United States or this state.

26 (c) ~~Who, for~~ FOR the purpose of obtaining the approval,
27 allowance, or payment of a claim against the United States, this

1 state, or any officer of the United States or this state, ~~does~~
2 DO ANY 1 of the following:

3 (i) ~~Makes~~ MAKE or ~~uses~~ USE a writing or other paper
4 knowing the writing or paper contains a false or fraudulent
5 statement.

6 (ii) ~~Makes~~ MAKE an oath to a fact, writing, or other paper
7 knowing the oath to be false.

8 (iii) ~~Forges~~ FORGE or ~~counterfeits~~ COUNTERFEIT a signa-
9 ture upon a writing or other paper or ~~uses~~ USE a signature
10 knowing the signature to be forged or counterfeited.

11 (d) ~~Who, having~~ HAVING charge, possession, custody, or
12 control of money or other property of the United States or this
13 state, furnished or intended for the armed forces of the United
14 States or this state, knowingly ~~delivers~~ DELIVER to a person
15 having authority to receive the money or property, an amount less
16 than that for which the person receives a certificate or
17 receipt.

18 (e) ~~Who, being~~ BEING authorized to make or deliver a paper
19 certifying the receipt of property of the United States or this
20 state, furnished or intended for the armed forces of the United
21 States or this state, ~~makes~~ MAKE or ~~delivers~~ DELIVER to a
22 person the writing without having full knowledge of the truth of
23 the statements contained in the paper and with intent to defraud
24 the United States or this state.

25 (F) MAKE A FALSE OR FRAUDULENT USE OF A CREDIT CARD, TELE-
26 PHONE, TELEPHONE CALLING CARD, OR OTHER ACCESS DEVICE ISSUED BY
27 THE UNITED STATES OR THIS STATE.

1 (2) A PERSON WHO VIOLATES THIS SECTION SHALL BE PUNISHED AS
2 A COURT-MARTIAL DIRECTS.

3 Sec. 134. (1) ~~Though not specifically mentioned in this~~
4 ~~code, a disorder and neglect to the prejudice of good order and~~
5 ~~discipline in the military forces of this state, other than an~~
6 ~~offense reserved for punishment to the civil courts under this~~
7 ~~code, shall be taken cognizance of by a general, special, or sum-~~
8 ~~mary court-martial, pursuant to the nature and degree of the~~
9 ~~offense, and punished in the discretion of the court.~~ A PERSON
10 SUBJECT TO THIS CODE SHALL NOT THROUGH DISORDER OR NEGLECT TO THE
11 PREJUDICE OF GOOD ORDER AND DISCIPLINE OR THROUGH CONDUCT BRING
12 DISCREDIT UPON THE ARMED FORCES OF THE UNITED STATES OR OF THIS
13 STATE.

14 (2) A PERSON WHO VIOLATES SUBSECTION (1) SHALL BE PUNISHED
15 BY A GENERAL, SPECIAL, OR SUMMARY COURT-MARTIAL AS DETERMINED BY
16 THE NATURE AND DEGREE OF THE VIOLATION.