

HOUSE BILL No. 4638

April 20, 2005, Introduced by Rep. Garfield and referred to the Committee on Veterans Affairs and Homeland Security.

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 charges,
3 a person who directs that charges be signed and sworn to by

1 another, or a person who has an interest other than an official
2 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 GOVERNOR.
5 ACTIVE SERVICE INCLUDES THE CONTINUING OBLIGATIONS OF ACTIVE
6 MEMBERS OF THE NATIONAL GUARD AND THE DEFENSE FORCE BY VIRTUE OF
7 THEIR COMMISSIONS, APPOINTMENTS, OR ENLISTMENTS.

8 (C) ~~-(b)-~~ "Active state duty" means the actual weekend, annual
9 training, or special call up duty in the state military forces and
10 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 THE
13 MICHIGAN MILITARY ACT.

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

15 (F) ~~-(e)-~~ "Commanding officer" includes only a commissioned
16 officer.

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

18 (H) "CONTROLLED SUBSTANCE" MEANS OPIUM, HEROIN, COCAINE,
19 AMPHETAMINE, LYSERGIC ACID DIETHYLAMIDE, METHAMPHETAMINE,
20 PHENCYCLIDINE, BARBITURIC ACID, MARIHUANA, ANY COMPOUND OR
21 DERIVATIVE OF ANY SUCH SUBSTANCE, AND ANY OTHER SUBSTANCE THAT IS
22 LISTED IN SCHEDULES I THROUGH V OF SECTION 202 OF THE CONTROLLED
23 SUBSTANCES ACT, 21 USC 812, INCLUDING ANY SUBSEQUENT AMENDMENTS
24 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 FORCES**
4 **OF THE UNITED STATES, INCLUDING, WITHOUT LIMITATION, THE ARMY**
5 **NATIONAL GUARD OF THE UNITED STATES AND THE AIR NATIONAL GUARD OF**
6 **THE UNITED STATES, WHILE SUBJECT TO THE UNIFORM CODE OF MILITARY**
7 **JUSTICE, 10 USC, 801 TO 946.**

8 (l) ~~-(e)-~~ "Grade" means a step or degree, in a graduated scale
9 of office or military rank, that is established and designated as a
10 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 **BY**
13 **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)-~~ **APPOINTED**
21 pursuant to section 26.

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

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

25 (S) ~~-(k)-~~ "Staff judge advocate" means the commissioned
26 officer responsible for supervising the administration of military
27 justice within a command.

(T) ~~(l)~~ "State judge advocate general" means the commissioned officer responsible for supervising the administration of the military justice in the state military forces.

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

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

(W) ~~(o)~~ "Superior commissioned officer" means a commissioned officer superior in rank or command.

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

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

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

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

6 Sec. 4. (1) Subject to the limitation of actions under section
7 43, a person ~~charged with having committed, while in a status in~~
8 ~~which the person was subject to this act, an offense under this~~
9 ~~code may be relieved from amenability to trial by court-martial by~~
10 ~~reason of the termination of the status~~ **WHO IS SUBJECT TO THIS**
11 **CODE AND CHARGED WITH AN OFFENSE UNDER THIS CODE IS NOT RELIEVED**
12 **FROM A TRIAL BY COURT-MARTIAL BECAUSE HIS OR HER MILITARY SERVICE**
13 **IS TERMINATED.**

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

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

24 (1) ~~-(2)~~ A person authorized under the rules issued pursuant
25 to this code to apprehend a person subject to this code, a marshal
26 of a court-martial appointed pursuant to this code, or a law
27 enforcement officer of this state **OR A POLITICAL SUBDIVISION OF**

1 **THIS STATE** may apprehend a person subject to this code upon
 2 reasonable belief that an offense **UNDER THIS CODE** has been
 3 committed and that the person apprehended committed the offense.

4 (2) ~~—(3)—~~ Each commissioned officer, warrant officer, and
 5 noncommissioned officer is authorized to quell quarrels, frays, or
 6 disorders among persons subject to this code and to apprehend
 7 persons subject to this code who take part in a quarrel, fray, or
 8 disorder.

9 (3) ~~—(4)—~~ Except as otherwise specifically provided in this
 10 code, a civil law enforcement officer or marshal of a court-martial
 11 shall not demand or require payment of a fee or charge of any
 12 nature for apprehending or placing in confinement a person subject
 13 to this code.

14 Sec. 8. A civil law enforcement officer ~~having authority~~
 15 ~~under the laws~~ of this state ~~to apprehend offenders of this code~~
 16 may apprehend a person charged with the violation of section 85 and
 17 deliver the person into the custody of the state military forces.

18 Sec. 9. (1) As used in this section, ~~—(a) "Arrest"—~~ **"ARREST"**
 19 means the restraint of a person by an order not imposed as a
 20 punishment for an offense, directing the person to remain within
 21 certain specified limits.

22 ~~———(b) "Confinement" means the physical restraint of a person.~~

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

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

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

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

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

(3) The amount of bail shall **NOT** be **EXCESSIVE, AND THE MILITARY JUDGE SHALL CONSIDER ALL OF THE FOLLOWING:**

~~—— (a) Not excessive.~~

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

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

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

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

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

(3) If delivery is made to a civil authority of a person undergoing sentence of a court-martial ~~—~~ and the delivery, if

1 followed by conviction in a civil tribunal, interrupts the
 2 execution of the sentence of the court-martial, the offender, after
 3 having answered to the civil authorities for the offense —, and
 4 upon the request of competent military authority, shall be returned
 5 to military custody for the completion of his or her sentence.

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

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

10 ~~—— (b) "Minor offense" means an offense under the punitive~~
 11 ~~sections of this act which in the discretion of the commanding~~
 12 ~~officer is minor.~~

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

15 (1) ~~—(3) A~~ **UNDER REGULATIONS ISSUED PURSUANT TO THIS ACT, A**
 16 commanding officer, in addition to or instead of an admonition or
 17 reprimand, may impose ~~—1 of the following~~ disciplinary
 18 ~~punishments~~ **PUNISHMENT** for **A** minor ~~—offenses~~ **OFFENSE** on an
 19 officer under ~~the commanding officer's~~ **HIS OR HER** command without
 20 the intervention of a court-martial **WITH 1 OF THE FOLLOWING:**

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

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

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

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

3 (iii) Restrictions to certain specified limits with or without
4 suspension from duty, for not more than 15 consecutive ~~active~~
5 ~~state~~ duty days.

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

8 ~~—— (4) Except as provided in subsection (2), a commanding~~
9 ~~officer, in addition to or instead of an admonition or reprimand,~~
10 ~~may impose 1 of the following disciplinary punishments for minor~~
11 ~~offenses upon personnel, other than an officer, under the~~
12 ~~commanding officer's command without the intervention of a court-~~
13 ~~martial:~~

14 ~~—— (a) Correctional custody for not more than 7 consecutive~~
15 ~~active state duty days.~~

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

17 ~~—— (c) Reduction to the next inferior pay grade, if the grade~~
18 ~~from which demoted is within the promotion authority of the officer~~
19 ~~imposing the reduction or an officer subordinate to the officer who~~
20 ~~imposes the reduction.~~

21 ~~—— (d) Extra duties, including fatigue or other duties for not~~
22 ~~more than 14 consecutive active state duty days, and not more than~~
23 ~~2 hours per day.~~

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

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

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

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

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

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

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

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

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

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

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

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

(iii) REDUCTION TO THE NEXT INFERIOR PAY GRADE, IF THE GRADE FROM WHICH THE PERSON IS DEMOTED IS WITHIN THE PROMOTION AUTHORITY OF THE OFFICER IMPOSING THE REDUCTION OR AN OFFICER SUBORDINATE TO THE OFFICER WHO IMPOSES THE REDUCTION.

(iv) EXTRA DUTIES, INCLUDING FATIGUE OR OTHER DUTIES FOR NOT

1 MORE THAN 15 CONSECUTIVE DUTY DAYS AND NOT MORE THAN 2 HOURS PER
2 DAY.

3 (v) RESTRICTIONS TO CERTAIN SPECIFIED LIMITS, WITH OR WITHOUT
4 SUSPENSION FROM DUTY, FOR NOT MORE THAN 15 CONSECUTIVE DUTY DAYS.

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

7 (i) CORRECTIONAL CUSTODY FOR NOT MORE THAN 15 CONSECUTIVE DUTY
8 DAYS.

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

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

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

18 (v) RESTRICTIONS TO CERTAIN SPECIFIED LIMITS, WITH OR WITHOUT
19 SUSPENSION FROM DUTY, FOR NOT MORE THAN 15 CONSECUTIVE DUTY DAYS.

20 (2) ~~—(5)—~~ Two or more disciplinary punishments of arrest in
21 quarters, correctional custody, extra duties, and restriction shall
22 not be combined to run consecutively in the maximum amount imposed
23 for each. If any of those punishments are combined to run
24 consecutively, ~~there shall be an apportionment. In addition,~~
25 ~~forfeiture of pay shall not be combined with detention of pay~~
26 ~~without an apportionment.~~ THE COMMANDING OFFICER SHALL APPORTION
27 THE PUNISHMENT.

1 (3) ~~-(6)-~~ If practicable, correctional custody shall not be
2 served in immediate association with persons awaiting trial or held
3 in confinement pursuant to trial by court-martial.

4 (4) ~~-(7)-~~ An officer in charge may impose upon an enlisted
5 member assigned to the unit of which the officer is in charge a
6 punishment authorized under subsection ~~-(4)(a) to (f)-~~ (1)(C) as
7 the adjutant general concerned may specifically prescribe by rule.

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

19 (6) ~~-(9)-~~ When mitigating arrest in quarters to restriction,
20 correctional custody to extra duties or restriction, or both, or
21 extra duties to restrictions, the mitigated punishment shall not be
22 for a greater period than the punishment mitigated. When mitigating
23 forfeiture of pay to detention of pay, the amount of the detention
24 shall not be greater than the amount of the forfeiture. ~~When~~
25 ~~mitigating reduction in grade to forfeiture or detention of pay,~~
26 ~~the amount of the forfeiture or detention shall not be greater than~~
27 ~~the amount that could have been imposed initially under this~~

~~section by the officer who imposed the punishment mitigated.~~

(7) ~~—(10)—~~ A person punished under this section who considers the punishment received as unjust or disproportionate to the offense, through the proper channel, may appeal to the next superior authority. **THE APPEAL SHALL BE MADE NOT LATER THAN 45 DAYS AFTER THE PUNISHMENT IS ADJUDGED.** The appeal shall be promptly forwarded and decided, and the person punished shall not be required to undergo the punishment adjudged before a decision on the appeal is rendered. The officer who imposes the punishment, the officer's successor in command, or superior authority ~~shall have power~~ **IS AUTHORIZED** to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected. **THE AUTHORITY WHO IS TO ACT ON THE APPEAL SHALL REFER THE CASE TO A JUDGE ADVOCATE FOR CONSIDERATION AND ADVICE BEFORE ACTING UPON THE APPEAL.** ~~However, the authority who is to act on the appeal shall refer the case to the state judge advocate general or a member of the state judge advocate general's staff for indorsement before acting on the appeal. The superior authority may exercise the same powers with respect to punishment imposed as may be exercised under subsection (8) by the officer who imposed the punishment. Before acting on an appeal from a punishment of 1 of the following punishments, the authority who is to act on the appeal shall refer the case to the state judge advocate general for consideration and advice, and may so refer the case upon appeal from a punishment imposed under subsection (7):~~

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

~~—— (b) Correctional custody for more than 7 active state duty~~

1 days.

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

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

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

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

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

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

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

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

26 (11) ~~—(14)—~~ If a punishment of forfeiture of pay and allowance
 27 is imposed as provided in this section, the forfeiture may apply to

1 pay or allowances becoming due on or after the date of the
2 punishment but shall not apply to pay and allowances accrued before
3 the date.

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

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

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

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

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

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

27 (3) A warrant officer on duty with the state military forces

1 is eligible to serve on general and special courts-martial for the
2 trial of a person, other than a commissioned officer, who may
3 lawfully be brought before the court-martial for trial.

4 (4) An enlisted member of the state military forces who is not
5 a member of the same unit as the accused is eligible to serve on
6 general and special courts-martial for the trial of any enlisted
7 member who may lawfully be brought before the court-martial for
8 trial, but the enlisted member shall serve as a member of a court
9 only if, before the convening of the court, the accused personally
10 requested in writing that enlisted members serve on the court-
11 martial. After the request, the accused may not be tried by a
12 general or special courts-martial the membership of which does not
13 include enlisted members in a number comprising at least 1/3 of the
14 total membership of the court, unless eligible enlisted members
15 cannot be obtained on account of physical conditions or military
16 exigencies. If the members cannot be obtained, the court may be
17 convened and the trial held without them, but the convening
18 authority shall make a detailed written statement, to be appended
19 to the record, stating why enlisted members could not be obtained.
20 ~~In this subsection, "unit" means any regularly organized body of~~
21 ~~the state military forces not larger than a company, a squadron, or~~
22 ~~a body corresponding to a 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 a
27 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 a
4 witness for the prosecution or has acted as investigating officer
5 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 ~~of~~
9 ~~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 a~~
14 ~~case if the person is the accuser or a witness for the prosecution~~
15 ~~or has acted as investigating officer or a counsel in the same~~
16 ~~case.~~ **THE STATE JUDGE ADVOCATE GENERAL MAY APPOINT AN ASSISTANT**
17 **JUDGE ADVOCATE TO SERVE AS A MILITARY JUDGE WHO IS A COMMISSIONED**
18 **OFFICER, WHO IS LICENSED TO PRACTICE LAW IN THIS STATE, AND WHO IS**
19 **CERTIFIED FOR THAT DUTY BY THE STATE JUDGE ADVOCATE.**

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

24 (4) The military judge shall rule finally on all matters of
25 law, rule finally on all motions, and except as otherwise provided,
26 decide all other questions raised at the trial of the accused.

27 Sec. 27. (1) For each general and special court-martial, the

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

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

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

20 (2) If a general court-martial is reduced below 5 members, the
21 trial may not proceed unless the convening authority appoints new
22 members sufficient in number to provide not less than 5 members.
23 When the new members have been sworn, the trial may proceed after
24 the recorded testimony of each witness previously examined has been
25 read to the court-martial in the presence of the ~~law officer~~
26 **MILITARY JUDGE**, the accused, and counsel.

27 (3) If a special court-martial is reduced below 3 members, the

1 trial may not proceed unless the convening authority appoints new
2 members sufficient in number to provide not less than 3 members.
3 When the new members have been sworn, the trial shall proceed as if
4 no evidence had previously been introduced, unless a verbatim
5 record of the testimony of previously examined witnesses or a
6 stipulation of that testimony is read to the court-martial in the
7 presence of the accused and counsel.

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

15 **(2) THE ACCUSED HAS THE BURDEN, UNDER SUBSECTION (1), OF**
16 **PROVING THE DEFENSE OF LACK OF MENTAL RESPONSIBILITY BY CLEAR AND**
17 **CONVINCING EVIDENCE.**

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

24 **(A) GUILTY.**

25 **(B) NOT GUILTY.**

26 **(C) NOT GUILTY ONLY BY REASON OF LACK OF MENTAL**
27 **RESPONSIBILITY.**

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

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

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

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

20 Sec. 84. A person subject to this code who effects an
21 enlistment or appointment in or a separation from the state
22 military forces of a person who is known to that person to be
23 ineligible for the enlistment, appointment, or separation because
24 it is prohibited by law, rule, **REGULATION**, or order shall be
25 punished as a court-martial directs.

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

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

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

6 (c) Without being regularly separated from 1 of the forces of
7 the state military forces, enlists or accepts an appointment in the
8 same or another state military force without fully disclosing the
9 fact that he or she has not been regularly separated.

10 (2) Notwithstanding subsection (1), a member of the state
11 military forces shall not be, in time of peace or order, prohibited
12 from accepting bona fide employment in another state or ~~leave~~
13 **LEAVING** the boundaries of this state in pursuance of a vocation,
14 education, or profession — if before so doing — the member
15 fully informs the member's commanding officer of the absence from
16 the state and the reasons for the absence. However, the commanding
17 officer may waive this requirement.

18 (3) An officer of the state military forces who, having
19 tendered his or her resignation and before due notice of the
20 acceptance of the resignation, quits his or her post or proper
21 duties without leave and with intent to remain away permanently —
22 is guilty of desertion.

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

25 **SEC. 88. (1) A PERSON SUBJECT TO THIS ACT SHALL NOT USE**
26 **CONTEMPTUOUS WORDS AGAINST THE PRESIDENT, VICE PRESIDENT, CONGRESS,**
27 **SECRETARY OF DEFENSE, A SECRETARY OF A MILITARY DEPARTMENT, THE**

1 DIRECTOR OF THE MICHIGAN DEPARTMENT OF MILITARY AND VETERANS
2 AFFAIRS, OR THE GOVERNOR OR THE LEGISLATURE OF THIS STATE WHILE HE
3 OR SHE IS ON DUTY, OR AGAINST THE GOVERNOR OR THE LEGISLATURE OF
4 ANY OTHER STATE, TERRITORY, COMMONWEALTH, OR POSSESSION WHILE HE OR
5 SHE IS ON DUTY AND PRESENT IN THAT STATE, TERRITORY, COMMONWEALTH,
6 OR POSSESSION.

7 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF AN OFFENSE
8 PUNISHABLE AS A COURT-MARTIAL MAY DIRECT, SUBJECT TO ALL RECOGNIZED
9 COMMON LAW OR CONSTITUTIONAL IMMUNITIES WITHIN THIS STATE.

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

13 (a) Violates or fails to obey a lawful general order, ~~or~~
14 rule, **OR REGULATION**.

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

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

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

20 (a) Who, with the intent to usurp or override a lawful
21 military authority, refuses, in concert with another person, to
22 obey an order or otherwise do his or her duty or creates any
23 violence or disturbance is guilty of mutiny.

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

1 (c) Who fails to do the utmost to prevent and suppress an
2 offense of mutiny or sedition being committed in the person's
3 presence — or fails to take all reasonable means to inform a
4 superior officer or commanding officer of an offense of mutiny or
5 sedition which the person knows **OF** or has reason to believe is
6 taking place is guilty of a failure to suppress or report a mutiny
7 or sedition.

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

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

15 (a) Runs away.

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

19 (c) Through disobedience, neglect, or intentional misconduct
20 endangers the safety of a command, unit, place, or military
21 property.

22 (d) Casts away arms or ammunition.

23 (e) Is guilty of cowardly conduct.

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

25 (g) Causes false alarms in a command, unit, or place under the
26 control of the armed forces of the United States, the state
27 military forces, or the military forces of any other state or

1 territory.

2 (h) ~~Wilfully~~ **WILLFULLY** fails to do the person's utmost to
3 encounter, engage, capture, or destroy enemy troops, combatants,
4 vessels, aircraft, or any other thing which it is the person's duty
5 to encounter, engage, capture, or destroy.

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

10 **(J) WILLFULLY FAILS TO DO HIS OR HER UTMOST TO SUPPRESS CIVIL**
11 **DISTURBANCE WHILE ENGAGED IN AN EMERGENCY RESPONSE OPERATION.**

12 Sec. 103. (1) A person subject to this code shall secure all
13 public property taken in the ~~course of active state~~ **PERFORMANCE**
14 **OF HIS OR HER** duty and shall give notice and turn over to the
15 proper authority without delay all captured or abandoned property
16 in the person's possession, custody, or control.

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

20 (a) Fails to carry out the duties prescribed in subsection
21 (1).

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

26 (c) Engages in looting or pillaging.

27 Sec. 105. **(1)** A person subject to this code who, while in the

1 hands of ~~the enemy~~ **A CAPTOR** in time of declared state emergency,
2 ~~commits 1 of the following acts shall be punished as a court-~~
3 ~~martial directs~~ **OR CIVIL DISTURBANCE EMERGENCY SHALL NOT DO ANY OF**
4 **THE FOLLOWING:**

5 (a) ~~For the purpose of securing~~ **TO SECURE** favorable
6 treatment by the person's captors, ~~acts~~ **ACT** without proper
7 authority in a manner contrary to law, custom, ~~or~~ rule, **OR**
8 **REGULATION** to the detriment of others. ~~of whatever nationality~~
9 ~~held by the enemy as civilian or military prisoners.~~

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

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

14 Sec. 107. A person subject to this code who, with the intent
15 to deceive, signs a false record, return, rule, order, or other
16 official document, knowing the document to be false, or makes any
17 other false ~~document knowing the document to be false, or other~~
18 ~~false~~ official statement knowing the statement to be false shall
19 be punished as a court-martial directs.

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

26 (A) **SELL OR OTHERWISE DISPOSE OF MILITARY PROPERTY OF THE**
27 **UNITED STATES OR THIS STATE.**

1 (B) WILLFULLY OR NEGLIGENTLY DAMAGE, DESTROY, OR LOSE MILITARY
2 PROPERTY OF THE UNITED STATES OR THIS STATE.

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

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

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

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

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

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

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

25 SEC. 121. (1) A PERSON SUBJECT TO THIS CODE WHO UNLAWFULLY
26 TAKES, OBTAINS, OR WITHHOLDS FROM THE UNITED STATES, THIS STATE, OR
27 ANY OTHER STATE, ANY PROPERTY, MONEY, OR ARTICLE OF ANY KIND WITH

1 THE INTENT TO PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY, MONEY,
2 OR ARTICLE OF ANY KIND, IS GUILTY OF LARCENY.

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

5 Sec. 132. (1) A person subject to this code shall ~~be punished~~
6 ~~as a court martial directs if the person commits 1~~ not commit any
7 of the following acts:

8 (a) Knowing the claim to be false or fraudulent, ~~makes~~ **MAKE**
9 a claim against the United States, this state, or an officer of the
10 United States or this state.

11 (b) Knowing the claim to be false or fraudulent, ~~presents~~
12 **PRESENT** to a person in the civil or military service of the United
13 States or this state for approval or payment a claim against the
14 United States, this state, or an officer of the United States or
15 this state.

16 (c) ~~Who, for~~ **FOR** the purpose of obtaining the approval,
17 allowance, or payment of a claim against the United States, this
18 state, or any officer of the United States or this state, ~~does~~ **DO**
19 **ANY** 1 of the following:

20 (i) ~~Makes~~ **MAKE** or ~~uses~~ **USE** a writing or other paper knowing
21 the writing or paper contains a false or fraudulent statement.

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

24 (iii) ~~Forges~~ **FORGE** or ~~counterfeits~~ **COUNTERFEIT** a signature
25 upon a writing or other paper or ~~uses~~ **USE** a signature knowing the
26 signature to be forged or counterfeited.

27 (d) ~~Who, having~~ **HAVING** charge, possession, custody, or

1 control of money or other property of the United States or this
2 state, furnished or intended for the armed forces of the United
3 States or this state, knowingly ~~delivers~~ **DELIVER** to a person
4 having authority to receive the money or property, an amount less
5 than that for which the person receives a certificate or receipt.

6 (e) ~~Who, being~~ **BEING** authorized to make or deliver a paper
7 certifying the receipt of property of the United States or this
8 state, furnished or intended for the armed forces of the United
9 States or this state, ~~makes~~ **MAKE** or ~~delivers~~ **DELIVER** to a
10 person the writing without having full knowledge of the truth of
11 the statements contained in the paper and with intent to defraud
12 the United States or this state.

13 (F) **MAKE A FALSE OR FRAUDULENT USE OF A CREDIT CARD,**
14 **TELEPHONE, TELEPHONE CALLING CARD, OR OTHER ACCESS DEVICE ISSUED BY**
15 **THE UNITED STATES OR THIS STATE.**

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

18 Sec. 134. (1) ~~Though not specifically mentioned in this code,~~
19 ~~a disorder and neglect to the prejudice of good order and~~
20 ~~discipline in the military forces of this state, other than an~~
21 ~~offense reserved for punishment to the civil courts under this~~
22 ~~code, shall be taken cognizance of by a general, special, or~~
23 ~~summary court martial, pursuant to the nature and degree of the~~
24 ~~offense, and punished in the discretion of the court.~~ **A PERSON**
25 **SUBJECT TO THIS CODE SHALL NOT THROUGH DISORDER OR NEGLECT TO THE**
26 **PREJUDICE OF GOOD ORDER AND DISCIPLINE OR THROUGH CONDUCT BRING**
27 **DISCREDIT UPON THE ARMED FORCES OF THE UNITED STATES OR OF THIS**

1 STATE.

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