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BILL ANALYSIS

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Senate Bill 690 (as introduced 1-18-24)
Sponsor: Senator Veronica Klinefelt
Committee: Veterans and Emergency Services

(Senate-passed version)

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INTRODUCTION

The bill would modify provisions of the Michigan Code of Military Justice related to punishments of military personnel and the court-martial system. The bill would establish victims' rights in military court, allow the accused to request a military defense council, alter requirements for confinement, and prescribe guidelines for disciplinary punishment for commanding officers. It would increase the required number of members on courts-martial, differentiate between the punishments that general, special, and summary courts-martial could impose, prescribe requirements for military judges, and prescribe requirements for forfeiture of pay in the case of a court-martial. The bill also would require a court-martial to punish a person subject to the Code for specified unwelcome activities in the military, such as sexual assault, impersonation of an officer, obstruction of justice, using a stolen credit card, drunk and disorderly conduct, among many more listed below.

Finally, the bill would repeal Section 21 of the Code, which allows a court-martial to sentence a person to confinement for up to one day for each dollar of a fine owed, instead of imposing the fine.

FISCAL IMPACT

The bill would have no fiscal impact on local courts. There would be an impact for State military courts due to many changing judicial procedures, specifically, procedures related to notice and victims' rights. These fiscal impacts are indeterminate but are not expected to require an appropriation.

MCL 32.1002 et al.

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CONTENT

The bill would amend the Michigan Code of Military Justice to do the following:

- Specify that the Code would apply to all members of the State military forces, except when in Federal service, and specify that the Code's military courts would have jurisdiction over an individual subject to the Code if that individual were on any time of duty status with the State military at the time of the offense or if the offense had any connection with State military forces.
- Rename the State Judge Advocate General to the State Staff Judge Advocate.
- Allow the Adjutant General to appoint the State Staff Judge Advocate.
- Prescribe the rights of a victim in a military court, which would generally include the rights conferred by State law in nonmilitary courts.
- Modify the punishments that a commanding officer could impose for a minor offense under the commander's command.
- Modify the punishments that an officer of the rank of major or above could impose on other military personnel under that officer's command, including the removal of an officer's ability to impose a punishment of correctional custody.
- Allow a person to demand trial by court-martial for an offense if the offense's punishment could amount to arrest in quarters or restriction, but not for a lesser punishment.
- Increase the number of members required of a general court-martial and special court-martial.
- Grant the Army and Air National Guard court-martial jurisdiction.
- Modify the punishments that general, special, and summary courts-martial could impose.
- Require a commanding officer to get the consent of the Adjutant General before convening a special or summary court-martial.
- Prescribe requirements for and the scope of military judges, including the handling of prereferral matters.
- Allow the accused to request a military defense council.
- Increase, from two years to five years, the statute of limitations for individuals to be court-martialed or punished.
- Increase the fines for contempt of court in military court.
- Prescribe requirements for conviction and sentencing in a general or special court-martial.
- Require a court-martial sentence to result in the forfeiture of pay or pay and allowance, unless otherwise specified.

Additionally, the bill would require a court-martial to punish an individual subject to the Code for any of the following:

- Illegal sexual activity or assault and engagement in unwelcome sexual behavior.
- Impersonation of an officer and the wrongful wearing of an insignia.
- Wrongful introduction of a controlled substance into a vehicle or other property.
- Use of a stolen credit card.
- Use of false pretenses to obtain services.
- Forceful or violent stealing.
- Distribution of protected information.
- Infliction of bodily harm on others or intimidation to falsify an oath.
- Obstruction of justice.
- Retaliation against an individual for reporting an offense.
- Drunk and disorderly conduct, extramarital conduct, or furnishing liquor to a minor.

Scope of Code and Subject Matter Jurisdiction

Currently, the Code applies to all members of the 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 the Code must 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.

Instead, under the bill, the Code would apply to all members of the State military forces at all times, except when in Federal service. Additionally, the bill would establish subject matter jurisdiction if the individual subject to the Code were on any type of duty status with the State military forces at the time of the offense, including travel to and from the duty site or station or, if the individual subject to the Code were not on any type of duty status with the State military forces at the time of the offense, a nexus existed between the offense and the State military forces.

State Staff Judge Advocate

The bill would change the title of the State Judge Advocate General to the State Staff Judge Advocate. "Judge advocate" would mean a commissioned officer of the State military forces who is a member in good standing of the Bar of Michigan, and is either of the following:

- Certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, or Marine Corps or designated as a law specialist as an officer of the Coast Guard, or a reserve component of the Army, Air Force, Navy, Marine Corps, or Coast Guard.
- Certified as a nonfederally recognized judge advocate, under regulations adopted under the Code, by the senior judge advocate of the commander of the force in the State military forces of which the accused is a member, as competent to perform such military justice duties required by the Code, or, if no such judge advocate is available, then that certification may be made by the senior judge advocate of the commander of another force in the State military forces as the convening authority directs.

The bill would allow the Adjutant General, instead of the Governor with the recommendation of the Adjutant General, to appoint an officer of the State military forces as the State Staff Judge Advocate.

Currently, the Adjutant General may appoint as many State judge advocate general's assistants or legal officers as the Adjutant General considers necessary. To be eligible for appointment, the person must be licensed to practice law in Michigan and otherwise meet the eligibility requirements of the Judge Advocate General's Corps. The bill would delete this provision.

Victim Rights

A victim of an offense under the Code would have the rights conferred by State law in nonmilitary courts, including all of the following:

- The right to be reasonably protected from the accused.
- The right to not be excluded from any public hearing or proceeding described below, unless the military judge or investigating officer under the Code, as applicable, after receiving clear and convincing evidence, determined that testimony by the victim of an offense

under the Code would be materially altered if the victim heard other testimony at that hearing or proceeding.

- The reasonable right to confer beforehand with the counsel representing the government at a proceeding described below.
- The right to receive full restitution before a forfeiture could be received by the military as provided by law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under the Code.

"Victim of an offense under this Code" would mean an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this Code, or any other individual defined as a victim under the William Van Regenmorter Crime Victim's Rights Act.

In addition to the rights above, a victim of an offense under the Code would have the right to reasonable, accurate, and timely notice provided by military trial counsel of all the following:

- A public hearing concerning the continuation of confinement before the trial of the accused.
- An investigation under the Code.
- A court-martial relating to the offense, including all related motions, hearings, pleas, sentencing hearings, alterations or suspensions, and all related filed documents.
- A public proceeding of the service clemency and parole board relating to the offense.
- The release or escape of the accused, unless notice could endanger the safety of any individual.

In addition to the rights above, a victim of an offense under the Code would have the right to be reasonably heard at all of the following:

- A public hearing concerning the continuation of confinement before the trial of the accused.
- A sentencing hearing relating to the offense.
- A proceeding involving clemency and parole related to the offense.
- Any public military proceedings, including appeals, in connection with the victim's legal rights where those rights were implicated.

If a victim of an offense under the Code were under 18 years of age but was not a member of the military, or was incompetent, incapacitated, or deceased, the military judge would have to designate a representative of the estate of the victim, a family member, or another suitable individual who could not be the accused to assume the victim's rights.

Under the bill, the provisions above could not be construed to do any of the following:

- Authorize a cause of action for damages.
- Create, enlarge, or imply a duty or obligation to a victim of an offense under the Code or other individual for breach of which the State or any of its officers or employees could be held liable for damages other than restitution.
- Impair the exercise of discretion under the Code.

If the victim of an offense under the Code believed that an investigating officer ruling under the Code or a court-martial ruling violated the rights of the victim afforded by a provision specified below, the victim could file an interlocutory appeal to the military appeals tribunal, and an automatic stay of the military proceedings would take effect on the filing of the notice

of appeal until final disposition of the appeal in order to require the investigating officer or the court-martial to comply with the provision.

The provision above would apply to the protections afforded by all the following:

- Section 32 of the Code.¹
- Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual behavior or predisposition.
- Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.
- Military Rule of Evidence 514, relating to the victim advocate-victim privilege.
- Military Rule of Evidence 615, relating to the exclusion of witnesses.

If the victim of an offense under the Code were subject to an order to submit to a deposition, whether or not the victim was available to testify at the court-martial trying the accused for the offense, the victim could appeal that order in the same manner described above to the military appeals tribunal to quash the order.

An appeal described above would have to be forwarded directly to the chairperson of the military appeals tribunal, by means that could be prescribed by the Governor, and, to the extent practicable, would have to have priority over all other proceedings before the military appeals tribunal.

On notice by counsel for the government to counsel for the accused of the name of an alleged victim of an offense under the Code whom counsel for the government intended to call as a witness at a proceeding under the Code, counsel for the accused would have to make any request to interview the victim through the special victims' counsel or other counsel for the victim, if applicable. "Special victims' counsel" would mean a judge advocate designated as a special victims' counsel under Federal law, and generally refers to legal counsel for the purpose of providing legal assistance to an individual who is the victim of an alleged sex-related offense.

If requested by an alleged victim who was subject to a request for interview above, any interview of the victim by counsel for the accused would have to take place only in the presence of the counsel for the government, a counsel for the victim, or, if applicable, a victim advocate.

Requirements for Confinement

Currently, the Code requires an individual confined under the Code to be confined in a place of confinement under the control of the State military forces or in a jail in the county in which the accused resides or in which the individual's unit is located.

Under the bill, if none of the locations described above were feasible, an individual confined under the Code could be confined in any county jail in Michigan.

Currently, "unit" means a regularly organized body of the military that is not larger than a company or squadron. Under the bill, "unit" would mean a regularly organized body of the military.

¹ Section 32 of Michigan Code of Military Justice generally governs the investigation of matters set forth in a charge or specification.

Commanding Officer Imposition of Disciplinary Punishment

Under regulations promulgated under the Code, a commanding officer, in addition to or instead of an admonition or reprimand, may impose disciplinary punishment for a minor offense on other military personnel under that commanding officer's command without the intervention of a court-martial with one or more of the following:

- Forfeiture of not more than seven duty days' pay.
- 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.
- Extra duties, including fatigue or other duties for not more than 15 consecutive days and not more than two hours per day.
- Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty days.

The bill would define "extra duty" as a duty in addition to those normally assigned to the individual undergoing the punishment, and includes, but is not limited to, fatigue duty and military duty of any kind. "Fatigue duty" would mean labor of a nonmilitary kind, including, but not limited to, cleaning, digging, domestic duty, or other similar types of work.

Instead, under the bill, the disciplinary punishment could consist of one or more of the following:

- Forfeiture of not more than seven duty days' pay.
- Reduction to the next inferior pay grade if the individual were in the pay grade of E4 or below.
- Extra duties, including fatigue or other duties for not more than 15 consecutive days and not more than two hours per day; however, no extra duties could be imposed that constituted known safety or health hazards to the individual, that constituted cruel or unusual punishment, that were not sanctioned by the customs of the military, or of a kind that demeaned the recipient's grade or position.
- Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty days.

The Code allows an officer of the rank of major or above to impose on other military personnel under that officer's command one or more of the following, without the intervention of a court-martial:

- Correctional custody of not more than 15 consecutive days.
- Forfeiture of not more than 15 duty days' pay.
- 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, except that an enlisted member in a pay grade above E4 may not be reduced more than 2 pay grades.
- Extra duties, including fatigue or other duties, for not more than 15 consecutive days.
- Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive days.

The bill would delete the allowed punishment of correctional custody of not more than 15 consecutive days. Additionally, the bill would specify that extra duties imposed could not constitute known safety or health hazards to the individual, cruel or unusual punishment, or punishments that were not sanctioned by the customs of the military or were of a kind that demeaned the recipient's grade or position.

In addition, the Code states that if practicable, correctional custody must not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial. The bill would delete this provision in accordance with the bill's deletion of correctional custody as an allowed punishment in the provisions above.

Mitigating or Setting Aside a Disciplinary Punishment

Under the Code, the officer who imposes a punishment authorized by the Code, or the officer's successor in command, may suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed, whether or not executed. In addition, the officer may remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer also may mitigate reduction in grade to forfeiture or detention of pay. The bill would delete this provision.

When mitigating arrest in quarters to restriction, correctional custody to extra duties or restriction, or both, or extra duties to restrictions, the mitigated punishment must not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention must not be greater than the amount of the forfeiture. The bill would delete this provision.

Instead, under the bill, the officer who imposed the punishment, or the successor in command, could, at any time, suspend, set aside, mitigate, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. The officer could also mitigate reduction in grade to forfeiture of pay, mitigate arrest in quarters to restriction, or mitigate extra duties to restriction. The mitigated punishment could not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture could not be greater than the amount that could have been imposed initially by the officer who imposed the punishment mitigated.

Under the Code, an individual punished as described above 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 must be made within 45 days after the punishment is adjudged.

The Code specifies that the officer who imposes the appealed punishment, the officer's successor in command, or superior authority 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 bill would delete this provision. Instead, the bill would allow the superior authority to exercise the same powers to mitigate a punishment as proposed above by the bill for an officer.

Demanding Trial by Court-Martial

Under the Code, before being informed of the disciplinary action to be taken as provided above, the person to be punished has the right to demand trial by court-martial for the offense. The bill would delete this provision.

Instead, under the bill, before disciplinary action was taken by the commanding officer or officer in charge, the commanding officer or officer in charge would have to determine whether arrest in quarters or restriction were to be considered as punishments. If the officer determined that the punishment options could include arrest in quarters or restriction, the accused would have to be notified of the right to demand trial by court-martial. If the officer

determined that the punishment options would not include arrest in quarters or restriction, the accused would have to be notified that there was no right to trial by court-martial in lieu of nonjudicial punishment.

Increase in Courts-Martial Members

The bill would increase, from five to eight, the number of members on a general court-martial. The bill would increase, from three to four, the number of members on a special court-martial. These numbers serve as the minimum number of general and special courts-martial members needed to proceed in their duties.

Army and Air National Guard Court-Martial Jurisdiction

Currently, court-martial jurisdiction over a person accused of an offense against the Code attaches during a duly authorized period of active state duty. An accused will normally be tried for an offense during a duly authorized period of active State duty. The bill would delete this provision.

Instead, the bill would specify that, subject to the Code, the Michigan Army National Guard and Michigan Air National Guard each have court-martial jurisdiction over its members.

General Court-Martial Jurisdiction

The Code specifies that a general court-martial has jurisdiction to try an individual subject to the Code for an offense made punishable by the Code. A general court-martial may prescribe the following punishments:

- A fine of not more than \$200 for a single offense.
- Forfeiture of pay and allowances up to \$200 for a single offense.
- A reprimand.
- Dismissal or honorable discharge.
- Reduction of a noncommissioned officer to an inferior grade.
- A combination of the punishments above.

Instead, under the bill, a general court-martial could prescribe the following punishments:

- Confinement of two years or less.
- A fine of \$2,500 or less for a single offense.
- Forfeiture of all pay and allowances
- A reprimand.
- Restitution.
- Dismissal, dishonorable discharge, or bad conduct discharge.
- Reduction of an enlisted member to an inferior grade.
- A combination of the punishments above.

Special Court-Martial Jurisdiction

Currently, a special court-martial has jurisdiction to try an individual subject to the Code, except an officer, for an offense for which the individual may be punished under the Code. A special court-martial has the same powers of punishment as a general court-martial except that the fine or forfeiture of pay and allowances imposed by a special court-martial may not exceed \$100 for a single offense. The bill would delete an officer's exception from special-court martial jurisdiction and the maximum allowed fine or forfeiture that a special court-martial could impose.

Instead, under the bill, a special court-martial could adjudge the same punishments as a general court-martial except that the special court-martial could not adjudge the following punishments:

- Dishonorable discharge.
- Dismissal.
- Confinement for more than one year.
- A fine of more than \$1,000.
- Forfeiture of pay exceeding 2/3 pay per month.
- Forfeiture of pay for more than one year.

A bad conduct discharge, a confinement for more than six months, or a forfeiture of pay for more than six months could not be adjudged if charges and specifications were referred to a special court-martial consisting of a military judge alone.

Summary Court-Martial Jurisdiction

A summary court-martial has jurisdiction to try an individual subject to the Code, except an officer, for an offense made punishable by the Code. Under the bill, a summary court-martial also would not have jurisdiction to try a cadet. "Cadet" would mean an individual who is enrolled in or attending a State military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the State military forces.

Currently, a summary court-martial may sentence a person to the following:

- A maximum fine of \$25 for a single offense.
- Forfeiture of pay and allowances of up to \$25 for a single offense.
- Reduction of an enlisted member to an inferior grade.
- A combination of the above punishments.

Instead, under the bill, a summary court-martial could adjudge the same punishments as a general court-martial, except that the summary court-martial could not adjudge the following punishments:

- Dismissal.
- Dishonorable discharge or bad conduct discharge.
- Confinement for more than 25 days.
- A fine of more than \$500.
- Forfeiture of more than 2/3 of one month's pay.

Commanding Officer Convening a Special Court-Martial

The Code allows the commanding officer of a place where troops are on duty or of a detached command to convene a special court-martial. Under the bill, a commanding officer could not convene a special court-martial without the written consent of the Adjutant General.

Commanding Officer Convening a Summary Court-Martial

The Code allows the commanding officer of a place where troops are on duty or of a detached command to convene a summary court-martial. Under the bill, a commanding officer could not convene a summary court-martial without the written consent of the Adjutant General.

Military Judges

Currently, the person convening a general court-martial or special court-martial must request the State Judge Advocate General to appoint a military judge to a general court-martial or special court-martial.

Under the bill, a military judge would have to be detailed to each general court-martial or special court-martial by the State Staff Judge Advocate. The bill would require a military judge to be a commissioned officer who was licensed to practice law in Michigan and who was certified to be qualified, by reason of education, training, experience, and judicial temperament for duty as a military judge by the State Staff Judge Advocate.

The convening authority and any member of the staff of the convening authority could not prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge detailed above that related to the military judge's performance of duty as a military judge. "Convening authority" would include either the person who convened the court or a commissioned officer commanding for the time being or a successor in command to the convening authority.

An individual would not be eligible to act as military judge in a case if that individual were the accuser, were a witness for the prosecution, or had acted as investigating officer or as a counsel in that same case.

Military Judge Scope of Proceedings

Under the bill, a military judge could be appointed to conduct proceedings to review, or otherwise act on, the following matters before referral of charges and specifications to court-martial in accordance with regulations promulgated under the Code:

- Prereferral investigative subpoenas.
- Prereferral warrants or orders for electronic communications.
- Prereferral matters referred by an appellate court.
- Prereferral matters for the purpose of designating a representative of a victim's if the victim were a minor or incapacitated or incompetent individual, as proposed by the bill.

The regulations promulgated under the provisions above would have to include the following as considered appropriate by the Adjutant General:

- Procedures for the review of rulings that could be ordered.
- Limitations on the relief that could be ordered.

If a matter in a proceeding became a subject at issue with respect to charges that had been referred to a general court-martial or special court-martial, the matter would have to be transferred to the military judge detailed to the court-martial.

Requirements for Military Rules of Evidence and Rules for Court-Martial

Currently, the Code requires all procedure to be in conformity with it, with rules that may be promulgated by the Adjutant General, and where not inconsistent, with the manual for courts-martial United States, 1969. The rules of evidence generally recognized in Michigan as applied to criminal cases must apply in cases before military courts. The bill would delete these provisions.

Instead, under the bill, the Military Rules of Evidence and the Rules for Courts-Martial as promulgated in the most recent version of the Manual for Courts-Martial would have to apply, as recognized in military criminal cases in the courts of the military, to a court-martial convened under the Code to the extent practical and to the extent that the Military Rules of Evidence and the Rules for Courts-Martial as promulgated in the most recent version of the Manual did not conflict with State substantive law. The Adjutant General could promulgate supplemental regulations to govern matters not provided for in the Manual for Courts-Martial.

Accused Requesting a Military Defense Council

Under the bill, the accused in a proceeding under the Code could request a military defense counsel of choice who, if reasonably available, would have to be detailed to represent the accused and who, if not a member of the Bar of Michigan, could represent the accused on a motion to the court approved by the military judge.

"Defense counsel" would mean a commissioned officer of the State military forces who is a member in good standing of the Bar of Michigan and who is appointed to represent an accused in a proceeding under this Code, or a civilian attorney who is a member in good standing of the Bar of Michigan, retained at personal expense of the accused, if the accused elects nonmilitary representation.

Statute of Limitations for Court-Martial

The bill would increase the statute of limitations, from two years to five years, for an offense under the Code. In addition, the bill would require that periods in which the accused was absent without authority or was fleeing from justice to be excluded in computing the period of the statute of limitations prescribed above.

Fines for Contempt of Court

The bill would increase, from \$25 to \$500, the fine for contempt of court in a summary court-martial proceeding. The bill also would increase, from \$100 to \$2,500, the fine for contempt of court in any other military court.

Limitations for Conviction and Sentencing

The Code prohibits a person from being convicted of an offense except by the concurrence of 2/3 of the members present at the time the vote is taken. Instead, under the bill, an individual could not be convicted of an offense in a general court-martial or special court-martial except under any of the following circumstances:

- After a guilty plea.
- By a military judge in a court-martial with a military judge alone under the bill's proposed additions for victims' rights.
- In a court-martial with members under the Code, by the concurrence of 3/4 of the members present at the time the vote was taken.

In addition, the bill would increase, from 2/3 to 3/4, the number of present members that would have to concur for a sentence to be imposed.

Currently, the Code requires that a tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. The bill would delete these provisions.

Deletion of Writ Requirements

Currently, the Code requires a writ to be distributed when a convening authority imposes a sentence of confinement. The Code also requires a writ to be distributed for a commitment to an appropriate location for a confined prisoner. The Code prescribes a template for both writs, which the convening authority may choose to either copy or to make similar to the template. The bill would delete these provisions.

The bill also would delete a requirement that a fine imposed as a sentence of a court-martial be paid at the time of approval of the sentence by the convening authority and that failure to pay the fine result in the accused being committed until the fine is paid or until one day is served for each dollar of the fine imposed.

Court-Martial Reduction of Pay Grade

Under the bill, a court-martial sentence of an enlisted member in a pay grade above E1, as approved by the convening authority, that included a dishonorable or bad conduct discharge or confinement would reduce that member to pay grade E1 effective on the date of that approval.

If the sentence of a member who was reduced in pay grade as described above was set aside or disapproved, or, as finally approved, did not include any punishment as provided above, the rights and privileges that the individual was deprived of because of that reduction would have to be restored, including pay and allowances.

Court-Martial Forfeiture of Payment and Allowance

Under the bill, a court-martial sentence would be any sentence that included either confinement for more than six months or confinement for six months or less and a dishonorable discharge, a bad conduct discharge, or a dismissal. A court-martial sentence would have to result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. A forfeiture would take effect on the date determined under the Code and could be deferred as provided in the Code.

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

If an accused had dependents, the convening authority could waive any or all of the forfeitures of pay and allowances required above for a period of not more than six months. Any amount of pay or allowances that, except if waived, would be forfeited would have to be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

If the sentence of a member who forfeited pay and allowances above was set aside or disapproved or, as finally approved, did not provide for a punishment referred to above, the member would have to be paid the pay and allowances that the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

Court-Martial Punishment for Illegal Sexual Activity

Under the bill, an individual subject to the Code would have to be punished as a court-martial directed if all the following applied:

- The individual was an officer or a noncommissioned officer.
- The individual was in a training leadership position with respect to a specially protected junior member of the military.
- The individual engaged in prohibited sexual activity with a specially protected junior member of the military.

An individual subject to the Code would have to be punished as a court-martial directed if that individual were a military recruiter and engaged in a prohibited sexual activity with either of the following:

- An applicant that individual was recruiting to enlist in military service.
- A specially protected junior member of the military who was enlisted under a delayed entry program.

Consent would not be a defense for any conduct at issue in a prosecution.

"Military recruiter" would mean an individual who has the primary duty to recruit individuals for military service.

"Prohibited sexual activity" would mean the penetration, however slight, of the penis into the vulva or anus or mouth, contact between the mouth and the penis, vulva, scrotum, or anus, or the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass, or degrade any individual or to arouse or gratify the sexual desire of any individual. The term also would mean touching by any part of the body or an object, or causing another individual to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any individual, with an intent to abuse, humiliate, harass, or degrade any individual or to arouse or gratify the sexual desire of any individual.

"Specially protected junior member of the military" would mean any of the following:

- A member of the military who is assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program.
- A member of the military who is a cadet, an officer candidate, or a student in any other officer qualification program.
- A member of the military in any program that is identified as a training program for initial career qualification.

"Training leadership position" would mean, with respect to a specially protected junior member of the military, a drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers' training corps unit, a training program for entry into the military, or a training program for initial career qualification.

Court-Martial Punishment for Impersonation of an Officer

Under the bill, an individual subject to the Code who wrongfully and willfully impersonated an officer, a noncommissioned officer, a petty officer, an agent of superior authority of any component of the military, or an official of a government would have to be punished as a court-martial directed.

Court-Martial Punishment for Wrongful Wearing of an Insignia

An individual subject to the Code who was not authorized to wear an insignia, decoration,

badge, ribbon, device, or lapel button and who wrongfully wore that insignia, decoration, badge, ribbon, device, or lapel button on the individual's uniform or civilian clothing would have to be punished as a court-martial directed.

Court-Martial Punishment for Wrongful Introduction of a Substance into Property

Under the bill, an individual subject to the Code who wrongfully used, possessed, manufactured, distributed, imported into the customs territory of the United States, exported from the United States, or introduced into an installation, vessel, vehicle, or aircraft used by or under the control of the Armed Forces of the United States or of any State military forces a substance described below would have to be punished as a court-martial directed. This provision would apply to any controlled substance or any non-controlled substance that was listed on a schedule of controlled substances prescribed by the President of the United States for the purposes of the Federal Uniform Code of Military Justice.

Court-Martial Punishment for Sexual Assault in the Military

An individual subject to the Code would be guilty of sexual assault and would have to be punished as a court-martial directed if the individual engaged in sexual contact with another individual by any of the following means:

- By forcible compulsion.
- By engaging in sexual conduct with an individual who was incapable of consent because the individual was physically helpless, mentally defective, or mentally incapacitated.
- By abuse of authority.

"Sexual contact" would mean touching by any part of the body or an object, or causing another individual to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any individual, with an intent to abuse, humiliate, harass, or degrade any individual or to arouse or gratify the sexual desire of any individual.

Court-Martial Punishment for Using a Stolen Access Device

Under the bill, an individual subject to the Code who, knowingly and with intent to defraud, used a stolen credit card, debit card, or other access device, a revoked, canceled, or otherwise invalid credit card, debit card, or other access device, or a credit card, debit card, or other access device without the authorization of a person whose authorization was required for that use to obtain money, property, services, or anything else of value would have to be punished as a court-martial directed.

"Access device" would mean any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, except for a transfer originated solely by paper instrument.

Court-Martial Punishment for Using False Pretenses to Obtain Services

Under the bill, an individual subject to the Code who, with intent to defraud, knowingly used false pretenses to obtain services would have to be punished as a court-martial directed.

Court-Martial Punishment for Forceful or Violent Stealing

Under the bill, an individual subject to the Code who took anything of value from an individual or in the presence of another, against that individual's will, by means of force or violence or fear of immediate or future injury to the individual or property, or to the individual or property of a relative or member of the individual's family or of anyone in the individual's company at the time of the robbery, would be guilty of robbery and would have to be punished as a court-martial directed.

Court-Martial Punishment for Distributing Protected Information

Under the bill, an individual subject to the Code would have to be punished as a court-martial directed if the individual did any of the following:

- Knowingly accessed a government computer with an unauthorized purpose, and by doing so obtained classified information, with reason to believe that information could be used to the injury of the United States or to the advantage of any foreign nation, and intentionally communicated, delivered, transmitted, or caused to be communicated, delivered, or transmitted that information to any person not entitled to receive it.
- Intentionally accessed a government computer with an unauthorized purpose and obtained classified or other protected information from that government computer.
- Knowingly caused the transmission of a program, information, code, or command and, as a result of that conduct, intentionally caused damage without authorization to a government computer.

"Computer" would mean an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable handheld calculator, or other similar device.

Court-Martial Punishment for Inflicting Bodily Harm on Others

Under the bill, an individual subject to the Code who unlawfully and with force or violence attempted to do bodily harm to another individual, offered to do bodily harm to another individual, or did bodily harm to another individual, would be guilty of assault and would have to be punished as a court-martial directed.

Court-Martial Punishment for Intimidating another Individual to Falsify an Oath

Under the bill, an individual subject to the Code who induced and procured another individual to take an oath, and to falsely testify, depose, or state upon that oath, would have to be punished as a court-martial directed if all the following conditions were satisfied:

- The oath was administered with respect to a matter for which that oath was required or authorized by law.
- The oath was administered by an individual having authority to do so.
- Upon the oath, the other individual willfully made or subscribed to a statement.
- The statement was material.
- The statement was false.
- When the statement was made or subscribed to, the individual subject to the Code and the other individual did not believe that the statement was true.

Court-Martial Punishment for Obstructing Justice

Under the bill, an individual subject to the Code who engaged in conduct in the case of an individual against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending, with intent to influence, impede, or otherwise obstruct the due administration of justice, would have to be punished as a court-martial directed.

Under the bill, an individual subject to the Code who, having reason to believe that an adverse administrative proceeding was pending against another individual subject to the Code, wrongfully acted with the intent to influence, impede, or obstruct the conduct of the proceeding, or otherwise to obstruct the due administration of justice, would have to be punished as a court-martial directed.

Court-Martial Punishment for Retaliating Against an Individual for Reporting an Offense

Under the bill, an individual subject to the Code would have to be punished as a court-martial directed if, with the intent to retaliate against another individual for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage another individual from reporting a criminal offense or making or planning to make a protected communication, the individual subject to the Code did either of the following:

- Wrongfully took or threatened to take an adverse personnel action against another individual.
- Wrongfully withheld or threatened to withhold a favorable personnel action with respect to another individual.

"Covered individual or organization" would mean a recipient of a communication specified in Federal Law.

"Inspector general" would mean any of the following:

- The Inspector General of the Department of Defense.
- The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.
- Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

"Protected communication" would mean either of the following:

- A lawful communication to a member of Congress or an inspector general.
- A communication to a covered individual or organization in which a member of the military complains of or discloses information that the member reasonably believes constitutes evidence of either a violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Court-Martial Punishment for Drunk and Disorderly Conduct

Under the bill, an individual subject to the Code who was drunk and disorderly and, under the circumstances, the conduct was to the prejudice of good order and discipline in the Armed Forces of the United States or of the State military forces, or of a nature to bring discredit upon the Armed Forces of the United States or the State military forces, would have to be punished as a court-martial directed.

Court-Martial Punishment for Extramarital Conduct

Under the bill, an individual subject to the Code who wrongfully engaged in extramarital conduct with another individual subject to the Code and, at the time, was married to someone else or knew the other individual was married to someone else, would have to be punished as a court-martial directed.

"Extramarital conduct" would mean any of the following acts engaged in by individuals of the same or opposite sex:

- Genital to genital sexual intercourse.
- Oral to genital sexual intercourse.
- Anal to genital sexual intercourse.
- Oral to anal sexual intercourse.

Court-Martial Punishment for Selling or Furnishing Liquor to a Minor

Under the bill, an individual subject to the Code who sold or furnished alcoholic liquor to a minor would have to be punished as a court-martial directed.

"Alcoholic liquor" would mean any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1.5% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the Liquor Control Commission according to alcoholic content as belonging to one of the varieties defined in the Liquor Control Code. "Minor" would mean an individual less than 21 years of age.

Court-Martial Punishment for Repetitive Engagement in Unwelcome Sexual Behavior

Under the bill, an individual subject to the Code would have to be punished as a court-martial directed if the individual did any of the following:

- Repetitively engaged in behavior that involves unwelcome sexual advances.
- Requested sexual favors from or offered sexual favors to a subordinate.

In addition to the requirements above, an individual subject to the Code would have to be punished as a court-martial directed if the individual engaged in other verbal or physical conduct of a sexual nature if any of the following applied:

- Submission to or rejection of the conduct was made either explicitly or implicitly a term or condition of an individual's job, pay, or career.
- Submission to or rejection of the conduct by an individual was used as a basis for career or employment decisions affecting that individual.
- The conduct had the purpose or effect of unreasonably interfering with an individual's work performance or created an intimidating, hostile, or offensive working environment.

Promulgation of Rules

The bill would remove the State Staff Judge Advocate from having the authority to promulgate rules for the Code's implementation under the Administrative Procedures Act.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.