



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 690 (as enacted)  
Sponsor: Senator Veronica Klinefelt  
Senate Committee: Veterans and Emergency Services  
House Committee: Military, Veterans and Homeland Security

**PUBLIC ACT 77 of 2024**

Date Completed: 10-28-24

**RATIONALE**

The bill aligned the Michigan Code of Military Justice (MCMJ) with the Federal Uniform Code of Military Justice (UCMJ). The MCMJ was last revised in 2005 and did not reflect many important changes that Federal law has undergone in the last 19 years, such as penalties for sexual assault and sexual harassment. It was suggested that aligning the MCMJ with the UCMJ will make a fairer and more efficient system of military justice in the Michigan National Guard.

**CONTENT**

**The bill amended the Michigan Code of Military Justice to do the following:**

- **Specify that the Code applies to all members of the State military forces, except when in Federal service, and specify that the Code's military courts have jurisdiction over an individual subject to the Code if that individual is on any duty status with the State military at the time of the offense or if the offense has 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 generally include the rights conferred by State law in nonmilitary courts.**
- **Modify the punishments that a commanding officer may impose for a minor offense under the commander's command.**
- **Modify the punishments that an officer of the rank of major or above may 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 may 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 may 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 requires 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.**

The bill took effect on July 8, 2024.

#### Scope of Code and Subject Matter Jurisdiction

Formerly, the Code applied 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 were required by the terms of the call, order, or other directive. Persons subject to the Code included 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 applies to all members of the State military forces at all times, except when in Federal service. Additionally, the bill establishes subject matter jurisdiction if the individual subject to the Code is 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 is not on any type of duty status with the State military forces at the time of the offense, a nexus exists between the offense and the State military forces.

#### State Staff Judge Advocate

The bill changes the title of the State Judge Advocate General to the State Staff Judge Advocate. "Judge advocate" means 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 allows 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.

Formerly, the Adjutant General could appoint as many State judge advocate general's assistants or legal officers as the Adjutant General considered necessary. To be eligible for appointment, the person was required to be licensed to practice law in Michigan and otherwise meet the eligibility requirements of the Judge Advocate General's Corps. The bill deleted this provision.

### Victim Rights

Under the bill, a victim of an offense under the Code has the rights conferred by State law in nonmilitary courts, including all 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, determines that testimony by the victim of an offense under the Code will 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 may 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" means an individual who has suffered direct physical, emotional, or pecuniary harm because 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 has 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 has the right to be reasonably heard at all 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 is under 18 years of age but is not a member of the military, or is incompetent, incapacitated, or deceased, the military judge must designate a representative of the estate of the victim, a family member, or another suitable individual who must not be the accused to assume the victim's rights.

Under the bill, the provisions above must 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 believes 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 may file an interlocutory appeal to the military appeals tribunal, and an automatic stay of the military proceedings takes 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 applies to the protections afforded by all the following:

- Section 32 of the Code.<sup>1</sup>
- 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 is subject to an order to submit to a deposition, whether or not the victim is available to testify at the court-martial trying the accused for the offense, the victim may appeal that order in the same manner described above to the military appeals tribunal to quash the order.

An appeal described above must be forwarded directly to the chairperson of the military appeals tribunal, by means that may be prescribed by the Governor, and, to the extent practicable, must 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 must make any request to interview the victim through the special victims' counsel or other counsel for the victim, if applicable. "Special victims' counsel" means 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.

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

If requested by an alleged victim who is subject to a request for interview above, any interview of the victim by counsel for the accused must 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

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 are feasible, an individual confined under the Code may be confined in any county jail in Michigan.

Formerly, "unit" meant a regularly organized body of the military that was not larger than a company or squadron. Under the bill, "unit" means a regularly organized body of the military.

#### Commanding Officer Imposition of Disciplinary Punishment

Formerly, under regulations promulgated under the Code, a commanding officer, in addition to or instead of an admonition or reprimand, could 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 up to seven duty days' pay.
- Reduction to the next inferior pay grade if the grade from which the person was demoted was within the promotion authority of the officer imposing the reduction or an officer subordinate to the officer who imposed the reduction.
- Extra duties, including fatigue or other duties for up to 15 consecutive days and not more than two hours per day.
- Restrictions to certain specified limits, with or without suspension from duty, for up to 15 consecutive duty days.

The bill defines "extra duty" as a duty in addition to those normally assigned to the individual undergoing the punishment, and includes fatigue duty and military duty of any kind. "Fatigue duty" means labor of a nonmilitary kind, including cleaning, digging, domestic duty, or other similar types of work.

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

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

The Code allowed 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 was 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 two pay grades.
- Extra duties, including fatigue or other duties, for up to 15 consecutive days.
- Restrictions to certain specified limits, with or without suspension from duty, for up to 15 consecutive days.

The bill deleted the allowed punishment of correctional custody of not more than 15 consecutive days. Additionally, the bill specifies that extra duties imposed may not constitute known safety or health hazards to the individual, cruel or unusual punishment, or punishments that are not sanctioned by the customs of the military or are of a kind that demeans the recipient's grade or position.

In addition, the Code stated that if practicable, correctional custody could not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial. The bill deleted 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

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

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

Instead, under the bill, the officer who imposes the punishment, or the successor in command, may, 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 may also mitigate reduction in grade to forfeiture of pay, mitigate arrest in quarters to restriction, or mitigate extra duties to restriction. The mitigated punishment may not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture may 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.

Formerly, the Code specified that the officer who imposed the appealed punishment, the officer's successor in command, or superior authority was 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 deleted this provision. Instead, the bill allows 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

Formerly, under the Code, before being informed of the disciplinary action to be taken as provided above, the person to be punished had the right to demand trial by court-martial for the offense. The bill deleted this provision.

Instead, under the bill, before disciplinary action is taken by the commanding officer or officer in charge, the commanding officer or officer in charge must determine whether arrest in quarters or restriction are to be considered as punishments. If the officer determines that the punishment options may include arrest in quarters or restriction, the accused must be notified of the right to demand trial by court-martial. If the officer determines that the punishment options will not include arrest in quarters or restriction, the accused must be notified that there is no right to trial by court-martial in lieu of nonjudicial punishment.

#### Increase in Courts-Martial Members

The bill increases, from five to eight, the number of members on a general court-martial. The bill increases, 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

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

Instead, the bill specifies 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

Formerly, the Code specified that a general court-martial had jurisdiction to try an individual subject to the Code for an offense made punishable by the Code. A general court-martial could 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 may 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

A special court-martial has jurisdiction to try an individual subject to the Code for an offense for which the individual may be punished under the Code. A special court-martial may adjudge the same punishments as a general court-martial, barring certain exceptions. Formerly, these exceptions were that the fine or forfeiture of pay and allowances imposed by a special court-martial could not exceed \$100 for a single offense. Formerly, special courts-martial also did not have jurisdiction over an officer. The bill deleted an officer's exception from special-court martial jurisdiction and the maximum allowed fine or forfeiture that a special court-martial may impose.

Instead, under the bill, a special court-martial may adjudge the same punishments as a general court-martial except that the special court-martial must 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 must not be adjudged if charges and specifications are 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 does not have jurisdiction to try a cadet. "Cadet" means 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.

Formerly, a summary court martial could 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 may adjudge the same punishments as a general court-martial, except that the summary court-martial may 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 may 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 may not convene a summary court-martial without the written consent of the Adjutant General.

#### Military Judges

Formerly, the person convening a general court-martial or special court-martial had to 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 must be detailed to each general court-martial or special court-martial by the State Staff Judge Advocate. The bill requires a military judge to be a commissioned officer who is licensed to practice law in Michigan and who is 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 must not prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge detailed above that relates to the military judge's performance of duty as a military judge. "Convening authority" includes 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 is not eligible to act as military judge in a case if that individual is the accuser, is a witness for the prosecution, or has acted as investigating officer or as a counsel in that same case.

#### Military Judge Scope of Proceedings

Under the bill, a military judge may 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 if the victim is a minor or incapacitated or incompetent individual.

The regulations promulgated under the provisions above must include procedures for the review of rulings that may be ordered and imitations on the relief that may be ordered.

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

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

Formerly, the Code required all procedures to be in conformity with it, with rules promulgated by the Adjutant General, and when not inconsistent, with the Manual for Courts-Martial United States, 1969. The rules of evidence generally recognized in Michigan as applied to criminal cases had to apply in cases before military courts. The bill deleted 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 must 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 do not conflict with State substantive law. The Adjutant General may 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 must be permitted to request a military defense counsel of choice who, if reasonably available, must be detailed to represent the accused and who, if not a member of the Bar of Michigan, may represent the accused on a motion to the court approved by the military judge.

"Defense counsel" means 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 increases the statute of limitations, from two years to five years, for an offense under the Code. In addition, the bill requires that periods in which the accused is absent without authority or is fleeing from justice must be excluded in computing the period of the statute of limitations prescribed above.

#### Fines for Contempt of Court

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

#### Limitations for Conviction and Sentencing

Previously, the Code prohibited a person from being convicted of an offense except by the concurrence of 2/3 of the members present at the time the vote was taken. Instead, under the bill, an individual must 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 is taken.

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

Formerly, the Code required 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 to be a determination against the accused. A tie vote on any other question was a determination in favor of the accused. The bill deleted these provisions.

#### Deletion of Writ Requirements

Formerly, the Code required a writ to be distributed when a convening authority imposed a sentence of confinement. The Code also required a writ to be distributed for a commitment to an appropriate location for a confined prisoner. The Code prescribed a template for both writs, which the convening authority could choose to either copy or to make similar to the template. The bill deletes these provisions.

The bill also deleted 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 was paid or until one day was 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 includes a dishonorable or bad conduct discharge or confinement reduces that member to pay grade E1 effective on the date of that approval.

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

#### Court-Martial Forfeiture of Payment and Allowance

Under the bill, a court-martial sentence is any sentence that includes 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 must result in the forfeiture of pay or of pay and allowances due to that member during any period of confinement or parole. A forfeiture takes effect on the date determined under the Code and may be deferred as provided in the Code.

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

If an accused has dependents, the convening authority may waive any or all the forfeitures of pay and allowances required above for a period of up to six months. Except if waived, any amount of pay or allowances that would be forfeited must 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 forfeits pay and allowances above is set aside or disapproved or, as finally approved, does not provide for a punishment referred to above, the member must 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 must be punished as a court-martial directs if all the following apply:

- The individual is an officer or a noncommissioned officer.
- The individual is 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 must be punished as a court-martial directed if that individual is a military recruiter and engages in a prohibited sexual activity with either of the following:

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

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

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

"Prohibited sexual activity" means 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" means 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" means, 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 impersonates 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 must be punished as a court-martial directs.

### Court-Martial Punishment for Wrongful Wearing of an Insignia

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

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

Under the bill, an individual subject to the Code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces 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 must be punished as a court-martial directs. This provision applies to any controlled substance or any non-controlled substance that is 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 is guilty of sexual assault and must be punished as a court-martial directs if the individual engages in sexual contact with another individual by any of the following means:

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

"Sexual contact" means 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, uses 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 is required for that use to obtain money, property, services, or anything else of value must be punished as a court-martial directs.

"Access device" means 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 uses false pretenses to obtain services must be punished as a court-martial directs.

#### Court-Martial Punishment for Forceful or Violent Stealing

Under the bill, an individual subject to the Code who takes 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, is guilty of robbery and must be punished as a court-martial directs.

#### Court-Martial Punishment for Distributing Protected Information

Under the bill, an individual subject to the Code must be punished as a court-martial directs if the individual does any of the following:

- Knowingly accesses a government computer with an unauthorized purpose, and by doing so obtains 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 communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted that information to any person not entitled to receive it.
- Intentionally accesses a government computer with an unauthorized purpose and obtains classified or other protected information from that government computer.
- Knowingly causes the transmission of a program, information, code, or command and, as a result of that conduct, intentionally causes damage without authorization to a government computer.

"Computer" means 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 attempts to do bodily harm to another individual, offers to do bodily harm to another individual, or does bodily harm to another individual, is guilty of assault and must be punished as a court-martial directs.

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

Under the bill, an individual subject to the Code who induces and procures another individual to take an oath, and to falsely testify, depose, or state upon that oath, must be punished as a court-martial directs if all the following conditions are satisfied:

- The oath is administered with respect to a matter for which that oath is required or authorized by law.
- The oath is administered by an individual having authority to do so.

- Upon the oath, the other individual willfully makes or subscribes to a statement.
- The statement is material.
- The statement is false.
- When the statement is made or subscribed to, the individual subject to the Code and the other individual do not believe that the statement is true.

#### Court-Martial Punishment for Obstructing Justice

Under the bill, an individual subject to the Code who engages 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, must be punished as a court-martial directs.

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

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

Under the bill, an individual subject to the Code must be punished as a court-martial directs 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 does either of the following:

- Wrongfully takes or threatens to take an adverse personnel action against another individual.
- Wrongfully withholds or threatens to withhold a favorable personnel action with respect to another individual.

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

"Inspector general" means 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" means 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 is drunk and disorderly and, under the circumstances, the conduct is 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, must be punished as a court-martial directs.

### Court-Martial Punishment for Extramarital Conduct

Under the bill, an individual subject to the Code who wrongfully engages in extramarital conduct with another individual subject to the Code and, at the time, is married to someone else or knew the other individual is married to someone else, must be punished as a court-martial directs.

"Extramarital conduct" means 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 sells or furnishes alcoholic liquor to a minor must be punished as a court-martial directs.

"Alcoholic liquor" means 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" means 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 must be punished as a court-martial directs if the individual does any of the following:

- Repetitively engages in behavior that involves unwelcome sexual advances.
- Requests sexual favors from or offers sexual favors to a subordinate.

In addition to the requirements above, an individual subject to the Code must be punished as a court-martial directs if the individual engages in other verbal or physical conduct of a sexual nature if any of the following apply:

- Submission to or rejection of the conduct is 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 is used as a basis for career or employment decisions affecting that individual.
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.



## Promulgation of Rules

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

MCL 32.1002 et al.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The MCMJ is an important tool for commanders to enforce good order and discipline in the Michigan National Guard. The MCMJ most often is used to prosecute military offenses without civilian-equivalent crimes or situations in which the jurisdiction of the offense is in question. It is important to update the MCMJ so that these offenses are deterred and punished in the Michigan National Guard.

Legislative Analyst: Alex Krabill

## **FISCAL IMPACT**

The bill will have no fiscal impact on local courts. There will 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 appropriation.

Fiscal Analysts: Bruce R. Baker  
Michael Siracuse

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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.