

SENATE BILL 1010

E4

0lr3658
CF HB 1139

By: **Senators Peters and Bailey**

Introduced and read first time: February 12, 2020

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Maryland Code of Military Justice**

3 FOR the purpose of establishing a Maryland Code of Military Justice; providing for
4 jurisdiction and applicability of this Act; providing for authority of certain judge
5 advocates; establishing the rights of certain victims; providing for the apprehension
6 and restraint of certain offenders; providing for certain non-judicial punishment;
7 establishing the jurisdiction for certain courts-martial; providing for the
8 appointment and composition of certain courts-martial; establishing certain
9 pre-trial procedures; providing for certain sentences; establishing certain post-trial
10 procedures; establishing certain procedures for review of certain courts-martial;
11 prohibiting the commission of certain acts; establishing certain penalties; providing
12 for certain courts of inquiry; authorizing certain persons to administer certain oaths;
13 requiring that certain sections of this Act be explained to certain persons at certain
14 times; authorizing a certain person to file a certain complaint about a certain wrong
15 under certain circumstances; providing for the redress of certain injuries to property;
16 authorizing the Governor to delegate certain authority; providing for the payment
17 and collection of certain fines; providing for the interpretation of this Act; providing
18 for immunity for certain persons for taking certain actions under this Act; providing
19 that the provisions of this Act are severable; providing that this Act supersedes
20 certain other laws; defining certain terms; providing that certain catchlines are not
21 law and may not be considered to have been enacted as part of this Act; and generally
22 relating to the Maryland Code of Military Justice.

23 BY repealing

24 Article – Public Safety

25 Section 13–801 through 13–814 and the subtitle “Subtitle 8. Courts – Martial”

26 Annotated Code of Maryland

27 (2018 Replacement Volume and 2019 Supplement)

28 BY adding to

29 Article – Public Safety

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 13A–101 through 13A–1112 to be under the new title “Title 13A. Maryland Code of Military Justice”
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 13–801 through 13–814 and the subtitle “Subtitle 8. Courts – Martial” of Article – Public Safety of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Public Safety

TITLE 13A. MARYLAND CODE OF MILITARY JUSTICE.

SUBTITLE 1. GENERAL PROVISIONS.

13A–101. DEFINITIONS.

(A) IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ACCUSER” MEANS:

(1) A PERSON WHO SIGNS AND SWEARS TO CHARGES;

(2) A PERSON WHO DIRECTS THAT CHARGES NOMINALLY BE SIGNED AND SWORN TO BY ANOTHER; OR

(3) ANY OTHER PERSON WHO HAS AN INTEREST OTHER THAN AN OFFICIAL INTEREST IN THE PROSECUTION OF THE ACCUSED.

(C) “CADET” OR “CANDIDATE” MEANS A PERSON 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.

(D) “CLASSIFIED INFORMATION” MEANS:

(1) INFORMATION OR MATERIAL THAT HAS BEEN DETERMINED BY AN OFFICIAL OF THE UNITED STATES OR A STATE PURSUANT TO LAW, AN EXECUTIVE ORDER, OR REGULATION TO REQUIRE PROTECTION AGAINST UNAUTHORIZED DISCLOSURE FOR REASONS OF NATIONAL OR STATE SECURITY; AND

1 (2) RESTRICTED DATA, AS DEFINED IN § 11(Y) OF THE ATOMIC
2 ENERGY ACT OF 1954, 42 U.S.C. § 2014(Y).

3 (E) “COMMANDER” MEANS COMMANDING OFFICER.

4 (F) “COMMANDING OFFICER” INCLUDES:

5 (1) COMMISSIONED OFFICERS OF THE STATE MILITARY FORCES; AND

6 (2) OFFICERS IN CHARGE ONLY WHEN ADMINISTERING
7 NON-JUDICIAL PUNISHMENT UNDER § 13A-301 OF THIS CODE.

8 (G) “CONVENING AUTHORITY” INCLUDES:

9 (1) THE PERSON WHO CONVENED THE COURT; AND

10 (2) (I) A COMMISSIONED OFFICER COMMANDING FOR THE TIME
11 BEING; OR

12 (II) A SUCCESSOR IN COMMAND TO THE CONVENING
13 AUTHORITY.

14 (H) “DAY” MEANS:

15 (1) CALENDAR DAY AND IS NOT SYNONYMOUS WITH THE TERM “UNIT
16 TRAINING ASSEMBLY.”

17 (2) AS IT RELATES TO ANY PUNISHMENT AUTHORIZED BY THIS
18 ARTICLE THAT IS MEASURED IN TERMS OF DAYS, WHEN SERVED IN A STATUS OTHER
19 THAN ANNUAL FIELD TRAINING, SUCCEEDING DUTY DAYS.

20 (I) (1) “DUTY STATUS OTHER THAN STATE ACTIVE DUTY” MEANS ANY
21 OTHER TYPE OF DUTY NOT IN FEDERAL SERVICE AND NOT FULL-TIME DUTY IN THE
22 ACTIVE SERVICE OF THE STATE UNDER AN ORDER ISSUED BY AUTHORITY OF LAW.

23 (2) “DUTY STATUS OTHER THAN STATE ACTIVE DUTY” INCLUDES
24 TRAVEL TO AND FROM SUCH DUTY.

25 (J) “ENLISTED MEMBER” MEANS A PERSON IN AN ENLISTED GRADE.

26 (K) “JUDGE ADVOCATE” MEANS A COMMISSIONED OFFICER OF THE
27 ORGANIZED STATE MILITARY FORCES WHO IS A MEMBER IN GOOD STANDING OF THE

1 **BAR OF THE HIGHEST COURT OF A STATE:**

2 **(1) (I) CERTIFIED OR DESIGNATED AS A JUDGE ADVOCATE IN THE**
3 **JUDGE ADVOCATE GENERAL’S CORPS OF THE ARMY, AIR FORCE, NAVY, OR THE**
4 **MARINE CORPS OR DESIGNATED AS A LAW SPECIALIST AS AN OFFICER OF THE**
5 **COAST GUARD, OR A RESERVE COMPONENT OF ONE OF THESE; OR**

6 **(II) CERTIFIED AS A NON-FEDERALLY RECOGNIZED JUDGE**
7 **ADVOCATE, UNDER REGULATIONS ADOPTED PURSUANT TO THIS PROVISION, BY THE**
8 **SENIOR JUDGE ADVOCATE OF THE COMMANDER OF THE FORCE IN THE STATE**
9 **MILITARY FORCES OF WHICH THE ACCUSED IS A MEMBER, AS COMPETENT TO**
10 **PERFORM SUCH MILITARY JUSTICE DUTIES REQUIRED BY THIS CODE; OR**

11 **(2) IF NO JUDGE ADVOCATE CERTIFIED UNDER ITEM (1) OF THIS**
12 **SUBSECTION IS AVAILABLE, CERTIFIED BY A SENIOR JUDGE ADVOCATE OF THE**
13 **COMMANDER OF ANOTHER FORCE IN THE STATE MILITARY FORCES, AS THE**
14 **CONVENING AUTHORITY DIRECTS.**

15 **(L) “MILITARY COURT” MEANS:**

16 **(1) A COURT-MARTIAL; OR**

17 **(2) A COURT OF INQUIRY.**

18 **(M) “MILITARY JUDGE” MEANS AN OFFICIAL OF A GENERAL OR SPECIAL**
19 **COURT-MARTIAL DETAILED IN ACCORDANCE WITH § 13A-505 OF THIS TITLE.**

20 **(N) “MILITARY OFFENSES” MEANS THE OFFENSES PRESCRIBED UNDER THE**
21 **PUNITIVE PROVISIONS OF THE CODE.**

22 **(O) “NATIONAL SECURITY” MEANS THE NATIONAL DEFENSE AND FOREIGN**
23 **RELATIONS OF THE UNITED STATES.**

24 **(P) “OFFICER” MEANS A COMMISSIONED OR WARRANT OFFICER.**

25 **(Q) “RECORD,” WHEN USED IN CONNECTION WITH THE PROCEEDINGS OF A**
26 **COURT-MARTIAL, MEANS:**

27 **(1) AN OFFICIAL WRITTEN TRANSCRIPT, WRITTEN SUMMARY, OR**
28 **OTHER WRITING RELATING TO THE PROCEEDINGS; OR**

29 **(2) AN OFFICIAL AUDIOTAPE, VIDEOTAPE, DIGITAL IMAGE OR FILE,**
30 **OR SIMILAR MATERIAL FROM WHICH SOUND, OR SOUND AND VISUAL IMAGES**

1 DEPICTING THE PROCEEDINGS, MAY BE REPRODUCED.

2 (R) "SENIOR FORCE COMMANDER" MEANS THE COMMANDER OF THE SAME
3 FORCE OF THE STATE MILITARY FORCES AS THE ACCUSED.

4 (S) "SENIOR FORCE JUDGE ADVOCATE" MEANS THE SENIOR JUDGE
5 ADVOCATE OF THE COMMANDER OF THE SAME FORCE OF THE STATE MILITARY
6 FORCES AS THE ACCUSED AND WHO IS THAT COMMANDER'S CHIEF LEGAL ADVISOR.

7 (T) (1) "STATE ACTIVE DUTY" MEANS FULL-TIME DUTY IN THE STATE
8 MILITARY FORCES UNDER AN ORDER OF THE GOVERNOR OR OTHERWISE ISSUED BY
9 AUTHORITY OF LAW, AND PAID BY STATE FUNDS.

10 (2) "STATE ACTIVE DUTY" INCLUDES TRAVEL TO AND FROM SUCH
11 DUTY.

12 (U) (1) "STATE MILITARY FORCES" MEANS THE NATIONAL GUARD OF
13 THE STATE, AS DEFINED IN TITLE 32 OF THE UNITED STATES CODE, WHEN NOT IN
14 A STATUS SUBJECTING THEM TO EXCLUSIVE JURISDICTION UNDER 10 U.S.C. 47.

15 (2) "STATE MILITARY FORCES" DOES NOT INCLUDE THE
16 UNORGANIZED MILITIA, MARYLAND DEFENSE FORCE, OR ANY OTHER STATE FORCE
17 THAT DOES NOT MEET THE DEFINITION UNDER PARAGRAPH (1) OF THIS
18 SUBSECTION.

19 (V) "SUPERIOR COMMISSIONED OFFICER" MEANS A COMMISSIONED
20 OFFICER SUPERIOR IN RANK OR COMMAND.

21 (W) "VICTIM OF AN OFFENSE UNDER THIS CODE" MEANS AN INDIVIDUAL
22 WHO HAS SUFFERED DIRECT PHYSICAL, EMOTIONAL, OR PECUNIARY HARM AS A
23 RESULT OF THE COMMISSION OF AN OFFENSE UNDER THIS CODE.

24 13A-102. PERSONS SUBJECT TO THIS TITLE; JURISDICTION.

25 (A) THIS TITLE APPLIES TO ALL MEMBERS OF THE STATE MILITARY FORCES
26 AT ALL TIMES.

27 (B) (1) SUBJECT MATTER JURISDICTION IS ESTABLISHED IF A NEXUS
28 EXISTS BETWEEN AN OFFENSE, EITHER MILITARY OR NON-MILITARY, AND THE
29 STATE MILITARY FORCE.

30 (2) COURTS-MARTIAL HAVE PRIMARY JURISDICTION OF MILITARY
31 OFFENSES.

1 **(3) (I) A PROPER CIVILIAN COURT HAS PRIMARY JURISDICTION OF**
2 **A NON-MILITARY OFFENSE WHEN AN ACT OR OMISSION VIOLATES BOTH THIS TITLE**
3 **AND LOCAL CRIMINAL LAW, FOREIGN OR DOMESTIC.**

4 **(II) IN A CASE DESCRIBED IN SUBPARAGRAPH (I) OF THIS**
5 **PARAGRAPH, A COURT-MARTIAL MAY BE INITIATED ONLY AFTER THE CIVILIAN**
6 **AUTHORITY DECLINED TO PROSECUTE OR DISMISSED THE CHARGE, PROVIDED**
7 **JEOPARDY HAS NOT ATTACHED.**

8 **(4) JURISDICTION OVER ATTEMPTED CRIMES, CONSPIRACY CRIMES,**
9 **SOLICITATION, AND ACCESSORY CRIMES MUST BE DETERMINED BY THE**
10 **UNDERLYING OFFENSE.**

11 **13A-103. JURISDICTION TO TRY CERTAIN PERSONNEL.**

12 **(A) (1) EACH PERSON DISCHARGED FROM THE STATE MILITARY FORCES**
13 **WHO IS LATER CHARGED WITH HAVING FRAUDULENTLY OBTAINED A DISCHARGE IS,**
14 **SUBJECT TO §13A-708 OF THIS TITLE, SUBJECT TO TRIAL BY COURT-MARTIAL ON**
15 **THAT CHARGE AND IS, AFTER APPREHENSION, SUBJECT TO THIS TITLE WHILE IN**
16 **CUSTODY UNDER THE DIRECTION OF THE STATE MILITARY FORCES FOR THAT**
17 **TRIAL.**

18 **(2) ON CONVICTION OF THAT CHARGE, THAT PERSON IS SUBJECT TO**
19 **TRIAL BY COURT-MARTIAL FOR ALL OFFENSES UNDER THIS TITLE COMMITTED**
20 **BEFORE THE FRAUDULENT DISCHARGE.**

21 **(B) NO PERSON WHO HAS DESERTED FROM THE STATE MILITARY FORCES**
22 **MAY BE RELIEVED FROM AMENABILITY TO THE JURISDICTION OF THIS TITLE BY**
23 **VIRTUE OF A SEPARATION FROM ANY LATER PERIOD OF SERVICE.**

24 **13A-104. TERRITORIAL APPLICABILITY OF THE TITLE.**

25 **(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS TITLE**
26 **HAS APPLICABILITY AT ALL TIMES AND IN ALL PLACES, PROVIDED THAT EITHER THE**
27 **PERSON SUBJECT TO THIS TITLE IS IN A DUTY STATUS OR, IF NOT IN A DUTY STATUS,**
28 **THAT THERE IS A NEXUS BETWEEN THE ACT OR OMISSION CONSTITUTING THE**
29 **OFFENSE AND THE EFFICIENT FUNCTIONING OF THE STATE MILITARY FORCES.**

30 **(2) THIS GRANT OF MILITARY JURISDICTION SHALL NEITHER**
31 **PRECLUDE NOR LIMIT CIVILIAN JURISDICTION OVER AN OFFENSE, WHICH IS**
32 **LIMITED ONLY BY THE PROHIBITION OF DOUBLE JEOPARDY.**

(B) (1) COURTS-MARTIAL AND COURTS OF INQUIRY MAY BE CONVENED AND HELD IN UNITS OF THE STATE MILITARY FORCES WHILE THOSE UNITS ARE SERVING OUTSIDE THE STATE WITH THE SAME JURISDICTION AND POWERS AS TO PERSONS SUBJECT TO THIS TITLE AS IF THE PROCEEDINGS WERE HELD INSIDE THE STATE.

(2) OFFENSES COMMITTED OUTSIDE THE STATE MAY BE TRIED AND PUNISHED EITHER INSIDE OR OUTSIDE THE STATE.

13A-105. JUDGE ADVOCATES.

(A) THE SENIOR FORCE JUDGE ADVOCATES IN EACH OF THE STATE'S MILITARY FORCES OR THAT JUDGE ADVOCATE'S DELEGATES SHALL MAKE FREQUENT INSPECTIONS IN THE FIELD IN SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE IN THAT FORCE.

(B) (1) CONVENING AUTHORITIES SHALL AT ALL TIMES COMMUNICATE DIRECTLY WITH THEIR JUDGE ADVOCATES IN MATTERS RELATING TO THE ADMINISTRATION OF MILITARY JUSTICE.

(2) THE JUDGE ADVOCATE OF A COMMAND IS ENTITLED TO COMMUNICATE DIRECTLY WITH THE JUDGE ADVOCATE OF A SUPERIOR OR SUBORDINATE COMMAND, OR WITH THE STATE JUDGE ADVOCATE.

(C) A PERSON WHO HAS ACTED AS MEMBER, MILITARY JUDGE, TRIAL COUNSEL, DEFENSE COUNSEL, OR INVESTIGATING OFFICER, OR WHO HAS BEEN A WITNESS IN A CASE MAY NOT LATER ACT AS A JUDGE ADVOCATE TO A REVIEWING AUTHORITY ON THE SAME CASE.

13A-106. RIGHTS OF THE VICTIM OF AN OFFENSE UNDER THIS TITLE.

(A) A VICTIM OF AN OFFENSE UNDER THIS TITLE HAS ALL RIGHTS CONFERRED BY STATE LAW IN NON-MILITARY COURTS, INCLUDING:

(1) THE RIGHT TO BE REASONABLY PROTECTED FROM THE ACCUSED;

(2) THE RIGHT TO REASONABLE, ACCURATE, AND TIMELY NOTICE PROVIDED BY MILITARY TRIAL COUNSEL OF:

(I) A PUBLIC HEARING CONCERNING THE CONTINUATION OF CONFINEMENT PRIOR TO TRIAL OF THE ACCUSED;

(II) A PRELIMINARY HEARING UNDER § 13A-603 OF THE TITLE

1 RELATING TO THE OFFENSE;

2 (III) A COURT-MARTIAL RELATING TO THE OFFENSE, INCLUDING
3 ALL RELATED MOTIONS, HEARINGS, PLEAS, SENTENCING HEARINGS, ALTERATIONS
4 OR SUSPENSION, AND ALL RELATED FILED DOCUMENTS, INCLUDING THOSE
5 RELATED TO § 13A-606 OF THE TITLE;

6 (IV) A PUBLIC PROCEEDING OF THE SERVICE CLEMENCY AND
7 PAROLE BOARD RELATING TO THE OFFENSE; AND

8 (V) THE RELEASE OR ESCAPE OF THE ACCUSED, UNLESS SUCH
9 NOTICE MAY ENDANGER THE SAFETY OF ANY PERSON;

10 (3) THE RIGHT NOT TO BE EXCLUDED FROM ANY PUBLIC HEARING OR
11 PROCEEDING DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, UNLESS THE
12 MILITARY JUDGE OR PRELIMINARY HEARING OFFICER, AS APPLICABLE, AFTER
13 RECEIVING CLEAR AND CONVINCING EVIDENCE, DETERMINES THAT TESTIMONY BY
14 THE VICTIM OF AN OFFENSE UNDER THIS TITLE WOULD BE MATERIALLY ALTERED
15 IF THE VICTIM HEARD OTHER TESTIMONY AT THAT HEARING OR PROCEEDING;

16 (4) THE RIGHT TO BE REASONABLY HEARD AT:

17 (I) A PUBLIC HEARING CONCERNING THE CONTINUATION OF
18 CONFINEMENT PRIOR TO TRIAL OF THE ACCUSED;

19 (II) A SENTENCING HEARING RELATING TO THE OFFENSE;

20 (III) A PROCEEDING INVOLVING CLEMENCY AND PAROLE
21 RELATED TO THE OFFENSE; AND

22 (IV) ANY PUBLIC MILITARY PROCEEDINGS, INCLUDING
23 APPEALS, IN CONNECTION WITH THE VICTIM'S LEGAL RIGHTS WHERE THOSE RIGHTS
24 ARE IMPLICATED;

25 (5) THE REASONABLE RIGHT TO CONFER BEFOREHAND WITH THE
26 COUNSEL REPRESENTING THE GOVERNMENT AT A PROCEEDING DESCRIBED IN
27 PARAGRAPH (2) OF THIS SUBSECTION AND AT A PROCEEDING UNDER § 13A-301, §
28 13A-405, § 13A-601.1, AND § 13A-902;

29 (6) THE RIGHT TO RECEIVE FULL RESTITUTION BEFORE A
30 FORFEITURE MAY BE RECEIVED BY THE MILITARY AS PROVIDED BY LAW;

31 (7) THE RIGHT TO PROCEEDINGS FREE FROM UNREASONABLE DELAY;

1 AND

2 (8) THE RIGHT TO BE TREATED WITH FAIRNESS AND WITH RESPECT
3 FOR THE DIGNITY AND PRIVACY OF THE VICTIM OF AN OFFENSE UNDER THIS TITLE.

4 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN THE CASE
5 OF A VICTIM OF AN OFFENSE UNDER THIS TITLE WHO IS UNDER 18 YEARS OF AGE
6 BUT NOT A MEMBER OF THE ARMED FORCES, INCOMPETENT, INCAPACITATED, OR
7 DECEASED, THE MILITARY JUDGE SHALL DESIGNATE A REPRESENTATIVE OF THE
8 ESTATE OF THE VICTIM, A FAMILY MEMBER, OR ANOTHER SUITABLE INDIVIDUAL TO
9 ASSUME THE VICTIM'S RIGHTS UNDER THIS SECTION.

10 (2) THE INDIVIDUAL DESIGNATED UNDER PARAGRAPH (1) OF THIS
11 SUBSECTION MAY NOT BE THE ACCUSED.

12 (C) NOTHING IN THIS SECTION MAY BE CONSTRUED:

13 (1) TO AUTHORIZE A CAUSE OF ACTION FOR DAMAGES;

14 (2) TO CREATE, TO ENLARGE, OR TO IMPLY A DUTY OR OBLIGATION
15 TO A VICTIM OF AN OFFENSE UNDER THIS TITLE OR OTHER PERSON FOR BREACH OF
16 WHICH THE STATE OR ANY OF ITS OFFICERS OR EMPLOYEES COULD BE HELD LIABLE
17 FOR DAMAGES OTHER THAN RESTITUTION; OR

18 (3) TO IMPAIR THE EXERCISE OF DISCRETION UNDER § 13A-601 OR §
19 13A-605 OF THIS TITLE.

20 (D) (1) IF THE VICTIM OF AN OFFENSE UNDER THIS TITLE BELIEVES THAT
21 A PRELIMINARY HEARING RULING UNDER § 13A-603 OF THIS TITLE OR A
22 COURT-MARTIAL RULING VIOLATES THE RIGHTS OF THE VICTIM AFFORDED BY A
23 PROVISION SPECIFIED IN PARAGRAPH (4) OF THIS SUBSECTION, THE VICTIM MAY
24 FILE AN INTERLOCUTORY APPEAL TO THE COURT OF MILITARY APPEALS, AND
25 THEREAFTER FILE A CERTIORARI PETITION WITH THE MARYLAND COURT OF
26 APPEALS, AND AN AUTOMATIC STAY OF THE MILITARY PROCEEDINGS SHALL TAKE
27 EFFECT ON THE FILING OF THE NOTICE OF APPEAL UNTIL FINAL DISPOSITION OF
28 THE APPEAL, IN ORDER TO REQUIRE THE PRELIMINARY HEARING OFFICER OR THE
29 COURT MARTIAL, INCLUDING IN CONNECTION WITH § 13A-716 OF THIS TITLE, TO
30 COMPLY WITH THE PROVISION.

31 (2) IF THE VICTIM OF AN OFFENSE UNDER THIS TITLE IS SUBJECT TO
32 AN ORDER TO SUBMIT TO A DEPOSITION, NOTWITHSTANDING THE AVAILABILITY OF
33 THE VICTIM TO TESTIFY AT THE COURT-MARTIAL TRYING THE ACCUSED FOR THE
34 OFFENSE, THE VICTIM MAY APPEAL SUCH AN ORDER IN THE SAME MANNER

DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION TO THE COURT OF MILITARY APPEALS TO QUASH THE ORDER.

(3) AN APPEAL DESCRIBED IN THIS SUBSECTION SHALL BE FORWARDED DIRECTLY TO THE COURT OF MILITARY APPEALS, BY SUCH MEANS AS MAY BE PRESCRIBED BY THE GOVERNOR, AND, TO THE EXTENT PRACTICABLE, SHALL HAVE PRIORITY OVER ALL OTHER PROCEEDINGS BEFORE THE COURT.

(4) PARAGRAPH (1) OF THIS SUBSECTION APPLIES TO THE PROTECTIONS AFFORDED BY:

(I) THIS SUBTITLE;

(II) § 13A-603 OF THIS TITLE;

(III) MILITARY RULE OF EVIDENCE 412, RELATING TO THE ADMISSION OF EVIDENCE REGARDING A VICTIM'S SEXUAL BACKGROUND;

(IV) MILITARY RULE OF EVIDENCE 513, RELATING TO THE PSYCHOTHERAPIST-PATIENT PRIVILEGE;

(V) MILITARY RULE OF EVIDENCE 514, RELATING TO THE VICTIM ADVOCATE-VICTIM PRIVILEGE; AND

(VI) MILITARY RULE OF EVIDENCE 615, RELATING TO THE EXCLUSION OF WITNESSES.

(E) (1) ON NOTICE BY COUNSEL FOR THE GOVERNMENT TO COUNSEL FOR THE ACCUSED OF THE NAME OF AN ALLEGED VICTIM OF AN OFFENSE UNDER THIS TITLE WHOM COUNSEL FOR THE GOVERNMENT INTENDS TO CALL AS A WITNESS AT A PROCEEDING UNDER THIS TITLE, COUNSEL FOR THE ACCUSED SHALL MAKE ANY REQUEST TO INTERVIEW THE VICTIM THROUGH THE SPECIAL VICTIM'S COUNSEL OR OTHER COUNSEL FOR THE VICTIM, IF APPLICABLE.

(2) IF REQUESTED BY AN ALLEGED VICTIM WHO IS SUBJECT TO A REQUEST FOR INTERVIEW UNDER PARAGRAPH (1) OF THIS SUBSECTION, ANY INTERVIEW OF THE VICTIM BY COUNSEL FOR THE ACCUSED SHALL TAKE PLACE ONLY IN THE PRESENCE OF THE COUNSEL FOR THE GOVERNMENT, A COUNSEL FOR THE VICTIM, OR, IF APPLICABLE, A VICTIM ADVOCATE.

SUBTITLE 2. APPREHENSION AND RESTRAINT.

13A-201. DEFINITIONS.

1 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) "APPREHEND" MEANS TO TAKE A PERSON INTO CUSTODY.

4 (C) "ARREST" MEANS THE RESTRAINT OF A PERSON BY AN ORDER, NOT
5 IMPOSED AS A PUNISHMENT FOR AN OFFENSE, DIRECTING THE PERSON TO REMAIN
6 WITHIN CERTAIN SPECIFIED LIMITS.

7 (D) "CONFINEMENT" MEANS THE PHYSICAL RESTRAINT OF A PERSON.

8 **13A-202. APPREHENSION**

9 (A) A PERSON AUTHORIZED BY THIS TITLE OR BY 10 U.S.C. 47, OR BY
10 REGULATIONS ISSUED UNDER EITHER, TO APPREHEND PERSONS SUBJECT TO THIS
11 TITLE, A MARSHAL OF A COURT-MARTIAL APPOINTED PURSUANT TO THE
12 PROVISIONS OF THIS TITLE, AND A PEACE OFFICER OR CIVIL OFFICER HAVING
13 AUTHORITY TO APPREHEND OFFENDERS UNDER THE LAWS OF THE UNITED STATES
14 OR OF A STATE, MAY DO SO ON PROBABLE CAUSE THAT AN OFFENSE HAS BEEN
15 COMMITTED AND THAT THE PERSON APPREHENDED COMMITTED IT.

16 (B) COMMISSIONED OFFICERS, WARRANT OFFICERS, AND
17 NONCOMMISSIONED OFFICERS HAVE AUTHORITY TO QUELL QUARRELS, FRAYS, AND
18 DISORDERS AMONG PERSONS SUBJECT TO THIS TITLE AND TO APPREHEND
19 PERSONS SUBJECT TO THIS TITLE WHO TAKE PART THEREIN.

20 (C) IF AN OFFENDER IS APPREHENDED OUTSIDE THE STATE, THE
21 OFFENDER'S RETURN TO THE AREA MUST BE IN ACCORDANCE WITH NORMAL
22 EXTRADITION PROCEDURES OR BY RECIPROCAL AGREEMENT.

23 (D) NO PERSON AUTHORIZED BY THIS SECTION TO APPREHEND PERSONS
24 SUBJECT TO THIS TITLE OR THE PLACE WHERE SUCH OFFENDER IS CONFINED,
25 RESTRAINED, HELD, OR OTHERWISE HOUSED MAY REQUIRE PAYMENT OF A FEE OR
26 CHARGE FOR SO RECEIVING, APPREHENDING, CONFINING, RESTRAINING, HOLDING,
27 OR OTHERWISE HOUSING A PERSON EXCEPT AS OTHERWISE PROVIDED BY LAW.

28 (E) A CIVIL OFFICER HAVING AUTHORITY TO APPREHEND OFFENDERS
29 UNDER THE LAWS OF THE UNITED STATES OR THE STATE, OR A MILITARY OFFICER
30 OR NONCOMMISSIONED OFFICER SUBJECT TO THIS TITLE WHO HAS BEEN
31 AUTHORIZED BY THE GOVERNOR BY REGULATION OR WITH THE AUTHORITY OF THE
32 ADJUTANT GENERAL MAY SUMMARILY APPREHEND A PERSON SUBJECT TO THIS
33 TITLE AND DELIVER THE PERSON INTO THE CUSTODY OF THE STATE MILITARY

1 FORCES.

2 13A-203. IMPOSITION OF RESTRAINT.

3 (A) (1) AN ENLISTED MEMBER MAY BE ORDERED INTO ARREST OR
4 CONFINEMENT BY A COMMISSIONED OFFICER BY AN ORDER, ORAL OR WRITTEN,
5 DELIVERED IN PERSON OR THROUGH OTHER PERSONS SUBJECT TO THIS TITLE.

6 (2) A COMMANDING OFFICER MAY AUTHORIZE WARRANT OFFICERS
7 OR NONCOMMISSIONED OFFICERS TO ORDER ENLISTED MEMBERS OF THE
8 COMMANDING OFFICER'S COMMAND OR SUBJECT TO THE COMMANDING OFFICER'S
9 AUTHORITY INTO ARREST OR CONFINEMENT.

10 (B) (1) A COMMISSIONED OFFICER, A WARRANT OFFICER, OR A CIVILIAN
11 SUBJECT TO THIS TITLE OR TO TRIAL THEREUNDER MAY BE ORDERED INTO ARREST
12 OR CONFINEMENT ONLY BY A COMMANDING OFFICER TO WHOSE AUTHORITY THE
13 PERSON IS SUBJECT, BY AN ORDER, ORAL OR WRITTEN, DELIVERED IN PERSON OR
14 BY ANOTHER COMMISSIONED OFFICER.

15 (2) THE AUTHORITY TO ORDER SUCH PERSONS INTO ARREST OR
16 CONFINEMENT MAY NOT BE DELEGATED.

17 (C) NO PERSON MAY BE ORDERED INTO ARREST OR CONFINEMENT EXCEPT
18 FOR PROBABLE CAUSE.

19 (D) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF PERSONS
20 AUTHORIZED TO APPREHEND OFFENDERS TO SECURE THE CUSTODY OF AN
21 ALLEGED OFFENDER UNTIL PROPER AUTHORITY MAY BE NOTIFIED.

22 13A-204. RESTRAINT OF PERSONS CHARGED WITH OFFENSES.

23 (A) A PERSON SUBJECT TO THIS TITLE CHARGED WITH AN OFFENSE UNDER
24 THIS TITLE MAY BE ORDERED INTO ARREST OR CONFINEMENT, AS CIRCUMSTANCES
25 MAY REQUIRE.

26 (B) WHEN A PERSON SUBJECT TO THIS TITLE IS PLACED IN ARREST OR
27 CONFINEMENT PRIOR TO TRIAL, IMMEDIATE STEPS SHALL BE TAKEN TO INFORM
28 THE PERSON OF THE SPECIFIC WRONG OF WHICH THE PERSON IS ACCUSED AND
29 DILIGENT STEPS SHALL BE TAKEN TO TRY THE PERSON OR TO DISMISS THE
30 CHARGES AND RELEASE THE PERSON.

31 13A-205. PLACE OF CONFINEMENT; REPORTS AND RECEIVING OF PRISONERS.

1 (A) IF A PERSON SUBJECT TO THIS TITLE IS CONFINED BEFORE, DURING, OR
2 AFTER TRIAL, CONFINEMENT SHALL BE IN A CIVILIAN OR MILITARY CONFINEMENT
3 FACILITY.

4 (B) NO PERSON AUTHORIZED TO RECEIVE PRISONERS PURSUANT TO
5 SUBSECTION (A) OF THIS SECTION MAY REFUSE TO RECEIVE OR KEEP A PRISONER
6 COMMITTED TO THE PERSON'S CHARGE BY A COMMISSIONED OFFICER OF THE
7 STATE MILITARY FORCES, WHEN THE COMMITTING OFFICER FURNISHES A
8 STATEMENT, SIGNED BY SUCH OFFICER, OF THE OFFENSE CHARGED AGAINST THE
9 PRISONER, UNLESS OTHERWISE AUTHORIZED BY LAW.

10 (C) EVERY PERSON AUTHORIZED TO RECEIVE PRISONERS PURSUANT TO
11 SUBSECTION (A) OF THIS SECTION TO WHOSE CHARGE A PRISONER IS COMMITTED
12 SHALL, WITHIN 24 HOURS AFTER THAT COMMITMENT OR AS SOON AS THE PERSON
13 IS RELIEVED FROM GUARD, REPORT TO THE COMMANDING OFFICER OF THE
14 PRISONER THE NAME OF THE PRISONER, THE OFFENSE CHARGED AGAINST THE
15 PRISONER, AND THE NAME OF THE PERSON WHO ORDERED OR AUTHORIZED THE
16 COMMITMENT.

17 (D) CIVILIAN CONFINEMENT FACILITIES MAY NOT CHARGE THE STATE
18 MILITARY FORCES FOR THE COST OF DETAINING THE PERSON SO LONG AS THE
19 CONFINEMENT IS LESS THAN 10 DAYS.

20 **13A-206. PUNISHMENT PROHIBITED BEFORE TRIAL.**

21 NO PERSON, WHILE BEING HELD FOR TRIAL OR AWAITING A VERDICT, MAY BE
22 SUBJECTED TO PUNISHMENT OR PENALTY OTHER THAN ARREST OR CONFINEMENT
23 ON THE CHARGES PENDING AGAINST THE PERSON, NOR SHALL THE ARREST OR
24 CONFINEMENT IMPOSED ON SUCH PERSON BE ANY MORE RIGOROUS THAN THE
25 CIRCUMSTANCES REQUIRED TO ENSURE THE PERSON'S PRESENCE, BUT THE
26 PERSON MAY BE SUBJECTED TO MINOR PUNISHMENT DURING THAT PERIOD FOR
27 INFRACTIONS OF DISCIPLINE.

28 **13A-207. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES.**

29 (A) A PERSON SUBJECT TO THIS TITLE ACCUSED OF AN OFFENSE AGAINST
30 CIVIL AUTHORITY MAY BE DELIVERED, ON REQUEST, TO THE CIVIL AUTHORITY FOR
31 TRIAL OR CONFINEMENT.

32 (B) WHEN DELIVERY UNDER THIS SECTION IS MADE TO A CIVIL AUTHORITY
33 OF A PERSON UNDERGOING SENTENCE OF A COURT-MARTIAL, THE DELIVERY, IF
34 FOLLOWED BY CONVICTION IN A CIVIL TRIBUNAL, INTERRUPTS THE EXECUTION OF
35 THE SENTENCE OF THE COURT-MARTIAL, AND THE OFFENDER AFTER HAVING

1 ANSWERED TO THE CIVIL AUTHORITIES FOR THE OFFENSE SHALL, ON THE REQUEST
2 OF COMPETENT MILITARY AUTHORITY, BE RETURNED TO THE PLACE OF ORIGINAL
3 CUSTODY FOR THE COMPLETION OF THE PERSON'S SENTENCE.

4 **SUBTITLE 3. NON-JUDICIAL PUNISHMENT.**

5 **13A-301. COMMANDING OFFICER'S NON-JUDICIAL PUNISHMENT.**

6 **(A) (1) UNDER SUCH REGULATIONS AS PRESCRIBED, A COMMANDING**
7 **OFFICER OR OFFICERS-IN-CHARGE MAY IMPOSE DISCIPLINARY PUNISHMENTS FOR**
8 **MINOR OFFENSES WITHOUT THE INTERVENTION OF A COURT-MARTIAL PURSUANT**
9 **TO THIS SECTION.**

10 **(2) THE GOVERNOR, THE ADJUTANT GENERAL, OR AN OFFICER OF A**
11 **GENERAL OR FLAG RANK IN COMMAND MAY DELEGATE THE POWERS UNDER THIS**
12 **SECTION TO A PRINCIPAL ASSISTANT WHO IS A MEMBER OF THE STATE MILITARY**
13 **FORCES.**

14 **(B) A COMMANDING OFFICER MAY IMPOSE ON ENLISTED MEMBERS OF THE**
15 **OFFICER'S COMMAND:**

16 **(1) AN ADMONITION;**

17 **(2) A REPRIMAND;**

18 **(3) THE WITHHOLDING OF PRIVILEGES FOR NOT MORE THAN 6**
19 **MONTHS, WHICH NEED NOT BE CONSECUTIVE;**

20 **(4) THE FORFEITURE OF PAY OF NOT MORE THAN 7 DAYS' PAY;**

21 **(5) A FINE OF NOT MORE THAN 7 DAYS' PAY;**

22 **(6) A REDUCTION TO THE NEXT INFERIOR PAY GRADE, IF THE**
23 **SOLDIER OR AIRMAN IS IN THE RANK OF E-4 OR BELOW;**

24 **(7) EXTRA DUTIES, INCLUDING FATIGUE OR OTHER DUTIES, FOR NOT**
25 **MORE THAN 14 DAYS, WHICH NEED NOT BE CONSECUTIVE; OR**

26 **(8) RESTRICTION TO CERTAIN SPECIFIED LIMITS, WITH OR WITHOUT**
27 **SUSPENSION FROM DUTY, FOR NOT MORE THAN 14 DAYS, WHICH NEED NOT BE**
28 **CONSECUTIVE.**

29 **(C) A COMMANDING OFFICER OF THE GRADE OF MAJOR OR ABOVE MAY**

1 IMPOSE ON ENLISTED MEMBERS OF THE OFFICER'S COMMAND:

2 (1) ANY PUNISHMENT AUTHORIZED IN SUBSECTIONS (B)(1), (2), OR
3 (3) OF THIS SECTION;

4 (2) THE FORFEITURE OF NOT MORE THAN ONE-HALF OF 1 MONTH'S
5 PAY PER MONTH FOR 2 MONTHS;

6 (3) A FINE OF NOT MORE THAN 1 MONTH'S PAY;

7 (4) A REDUCTION TO THE LOWEST OR ANY INTERMEDIATE PAY
8 GRADE, IF THE SOLDIER OR AIRMAN IS IN THE RANK OF E-6 OR BELOW, BUT AN
9 ENLISTED MEMBER IN A PAY GRADE ABOVE E-4 MAY NOT BE REDUCED MORE THAN
10 TWO PAY GRADES;

11 (5) EXTRA DUTIES, INCLUDING FATIGUE OR OTHER DUTIES, FOR NOT
12 MORE THAN 45 DAYS, WHICH NEED NOT BE CONSECUTIVE; OR

13 (6) RESTRICTION TO CERTAIN SPECIFIED LIMITS, WITH OR WITHOUT
14 SUSPENSION FROM DUTY, FOR NOT MORE THAN 60 DAYS, WHICH NEED NOT BE
15 CONSECUTIVE.

16 (D) THE GOVERNOR, THE ADJUTANT GENERAL, AN OFFICER EXERCISING
17 GENERAL COURT-MARTIAL CONVENING AUTHORITY, OR AN OFFICER OF A GENERAL
18 OR FLAG RANK IN COMMAND MAY IMPOSE:

19 (1) ON OFFICERS OF THE OFFICER'S COMMAND:

20 (I) ANY PUNISHMENT AUTHORIZED IN SUBSECTIONS (C)(1), (2),
21 (3), OR (6) OF THIS SECTION; OR

22 (II) ARREST IN QUARTERS FOR NOT MORE THAN 30 DAYS,
23 WHICH NEED NOT BE CONSECUTIVE; OR

24 (2) ON ENLISTED MEMBERS OF THE OFFICER'S COMMAND:

25 (I) ANY PUNISHMENT AUTHORIZED IN SUBSECTION (C) OF THIS
26 SECTION; OR

27 (II) A REDUCTION TO THE LOWEST OR ANY INTERMEDIATE PAY
28 GRADE, IF THE SOLDIER OR AIRMAN IS IN THE RANK OF E-9 OR BELOW, BUT AN
29 ENLISTED MEMBER IN A PAY GRADE ABOVE E-4 MAY NOT BE REDUCED MORE THAN
30 TWO PAY GRADES.

(E) WHENEVER ANY PUNISHMENTS ARE COMBINED TO RUN CONSECUTIVELY, THE TOTAL LENGTH OF THE COMBINED PUNISHMENT MAY NOT EXCEED THE AUTHORIZED DURATION OF THE LONGEST PUNISHMENT IN THE COMBINATION, AND THERE MUST BE AN APPORTIONMENT OF PUNISHMENTS SO THAT NO SINGLE PUNISHMENT IN THE COMBINATION EXCEEDS ITS AUTHORIZED LENGTH UNDER THIS SECTION.

(F) (1) PRIOR TO THE OFFER OF NON-JUDICIAL PUNISHMENT, THE COMMANDING OFFICER SHALL DETERMINE WHETHER PUNISHMENT MORE SEVERE THAN 14 DAYS EXTRA DUTY OR 14 DAYS RESTRICTION AND ADMONITION SHALL BE CONSIDERED AS PUNISHMENTS.

(2) IF THE COMMANDING OFFICER DETERMINES THAT THE PUNISHMENT OPTIONS MAY INCLUDE ARREST IN QUARTERS OR RESTRICTION, THE ACCUSED SHALL BE NOTIFIED OF THE RIGHT TO DEMAND TRIAL BY COURT-MARTIAL.

(3) IF THE COMMANDING OFFICER DETERMINES THAT THE PUNISHMENT OPTIONS WILL NOT INCLUDE PUNISHMENT MORE SEVERE THAN 14 DAYS EXTRA DUTY OR 14 DAYS RESTRICTION AND ADMONITION, THE ACCUSED SHALL BE NOTIFIED THAT THERE IS NO RIGHT TO TRIAL BY COURT-MARTIAL IN LIEU OF NON-JUDICIAL PUNISHMENT.

(G) (1) 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.

(2) THE OFFICER MAY ALSO:

(I) MITIGATE REDUCTION IN GRADE TO FORFEITURE OF PAY;

(II) MITIGATE ARREST IN QUARTERS TO RESTRICTION; OR

(III) MITIGATE EXTRA DUTIES TO RESTRICTION.

(3) (I) THE MITIGATED PUNISHMENT MAY NOT BE FOR A GREATER PERIOD THAN THE PUNISHMENT MITIGATED.

(II) 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 UNDER THIS SECTION BY THE

1 OFFICER WHO IMPOSED THE PUNISHMENT MITIGATED.

2 (H) (1) A PERSON PUNISHED UNDER THIS SECTION WHO CONSIDERS THE
3 PUNISHMENT UNJUST OR DISPROPORTIONATE TO THE OFFENSE MAY, THROUGH
4 THE PROPER CHANNEL, APPEAL TO THE NEXT SUPERIOR AUTHORITY WITHIN 15
5 DAYS AFTER THE PUNISHMENT IS EITHER ANNOUNCED OR SENT TO THE ACCUSED,
6 AS THE COMMANDER MAY DETERMINE.

7 (2) THE APPEAL SHALL BE PROMPTLY FORWARDED AND DECIDED,
8 BUT THE PERSON PUNISHED MAY IN THE MEANTIME BE REQUIRED TO UNDERGO THE
9 PUNISHMENT ADJUDGED.

10 (3) IF THE SUPERIOR AUTHORITY ACTING ON THE APPEAL DOES NOT
11 RENDER A DECISION WITHIN 5 DAYS OF THE ELECTION TO APPEAL, THE
12 PUNISHMENT SHALL BE SUSPENDED UNTIL SUCH TIME AS THE APPEAL IS DECIDED.

13 (4) THE SUPERIOR AUTHORITY MAY EXERCISE THE SAME POWERS
14 WITH RESPECT TO THE PUNISHMENT IMPOSED AS MAY BE EXERCISED UNDER
15 SUBSECTION (G) OF THIS SECTION BY THE OFFICER WHO IMPOSED THE
16 PUNISHMENT.

17 (5) BEFORE ACTING ON AN APPEAL FROM A PUNISHMENT, THE
18 AUTHORITY THAT IS TO ACT ON THE APPEAL MAY REFER THE CASE TO A JUDGE
19 ADVOCATE FOR CONSIDERATION AND ADVICE.

20 (I) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
21 IMPOSITION AND ENFORCEMENT OF DISCIPLINARY PUNISHMENT UNDER THIS
22 SECTION FOR AN ACT OR OMISSION IS NOT A BAR TO TRIAL BY COURT-MARTIAL OR
23 A CIVILIAN COURT OF COMPETENT JURISDICTION FOR A SERIOUS CRIME OR
24 OFFENSE GROWING OUT OF THE SAME ACT OR OMISSION AND NOT PROPERLY
25 PUNISHABLE UNDER THIS TITLE.

26 (2) THE FACT THAT A DISCIPLINARY PUNISHMENT HAS BEEN
27 ENFORCED MAY BE SHOWN BY THE ACCUSED AT TRIAL AND, WHEN SO SHOWN, IT
28 SHALL BE CONSIDERED IN DETERMINING THE MEASURE OF PUNISHMENT TO BE
29 ADJUDGED IN THE EVENT OF A FINDING OF GUILTY.

30 (J) WHENEVER A PUNISHMENT OF FORFEITURE OF PAY IS IMPOSED UNDER
31 THIS SECTION, THE FORFEITURE MAY APPLY TO PAY ACCRUING BEFORE, ON, OR
32 AFTER THE DATE THAT PUNISHMENT IS IMPOSED.

33 (K) REGULATIONS MAY PRESCRIBE THE FORM OF RECORDS TO BE KEPT OF
34 PROCEEDINGS UNDER THIS SECTION AND MAY PRESCRIBE THAT CERTAIN

CATEGORIES OF THOSE PROCEEDINGS SHALL BE IN WRITING.

SUBTITLE 4. COURT-MARTIAL JURISDICTION.

13A-401. COURTS-MARTIAL CLASSIFIED.

(A) THE THREE KINDS OF COURTS-MARTIAL ARE:

(1) GENERAL COURTS-MARTIAL, AS DESCRIBED IN SUBSECTION (B) OF THIS SECTION;

(2) SPECIAL COURTS-MARTIAL, AS DESCRIBED IN SUBSECTION (C) OF THIS SECTION; AND

(3) SUMMARY COURTS-MARTIAL, AS DESCRIBED IN SUBSECTION (D) OF THIS SECTION.

(B) A GENERAL COURT-MARTIAL CONSISTS OF:

(1) A MILITARY JUDGE AND NOT LESS THAN EIGHT MEMBERS; OR

(2) A MILITARY JUDGE ALONE, IF BEFORE THE COURT IS ASSEMBLED THE ACCUSED, KNOWING THE IDENTITY OF THE MILITARY JUDGE AND AFTER CONSULTATION WITH DEFENSE COUNSEL, REQUESTS ORALLY ON THE RECORD OR IN WRITING A COURT COMPOSED ONLY OF A MILITARY JUDGE AND THE MILITARY JUDGE APPROVES THE REQUEST.

(C) A SPECIAL COURT-MARTIAL CONSISTS OF:

(1) A MILITARY JUDGE AND NOT LESS THAN FOUR MEMBERS; OR

(2) A MILITARY JUDGE ALONE:

(I) IF THE CASE IS SO REFERRED BY THE CONVENING AUTHORITY, SUBJECT TO § 13A-404 OF THIS SUBTITLE; OR

(II) IF THE CASE IS REFERRED UNDER ITEM (1) OF THIS SUBSECTION AND, BEFORE THE COURT IS ASSEMBLED, THE ACCUSED, KNOWING THE IDENTITY OF THE MILITARY JUDGE AND AFTER CONSULTATION WITH DEFENSE COUNSEL, REQUESTS, ORALLY ON THE RECORD OR IN WRITING, A COURT COMPOSED OF A MILITARY JUDGE ALONE AND THE MILITARY JUDGE APPROVES THE REQUEST.

(D) A SUMMARY COURT-MARTIAL CONSISTS OF ONE COMMISSIONED

1 OFFICER.

2 **13A-402. JURISDICTION OF COURTS-MARTIAL IN GENERAL.**

3 (A) EACH COMPONENT OF THE STATE MILITARY FORCES HAS
4 COURT-MARTIAL JURISDICTION OVER ALL MEMBERS OF THE PARTICULAR
5 COMPONENT WHO ARE SUBJECT TO THIS TITLE.

6 (B) THE MARYLAND ARMY AND MARYLAND AIR NATIONAL GUARD HAVE
7 COURT-MARTIAL JURISDICTION OVER ALL MEMBERS SUBJECT TO THIS TITLE.

8 **13A-403. JURISDICTION OF GENERAL COURTS-MARTIAL.**

9 SUBJECT TO § 13A-402 OF THIS SUBTITLE, GENERAL COURTS-MARTIAL HAVE
10 JURISDICTION TO TRY PERSONS SUBJECT TO THIS TITLE FOR ANY OFFENSE MADE
11 PUNISHABLE BY THIS TITLE, AND MAY, UNDER SUCH LIMITATIONS AS THE
12 GOVERNOR MAY PRESCRIBE, ADJUDGE ANY PUNISHMENT NOT FORBIDDEN BY THIS
13 TITLE.

14 **13A-404. JURISDICTION OF SPECIAL COURTS-MARTIAL.**

15 (A) SUBJECT TO § 13A-402 OF THIS SUBTITLE, SPECIAL COURTS-MARTIAL
16 HAVE JURISDICTION TO TRY PERSONS SUBJECT TO THIS TITLE FOR ANY OFFENSE
17 MADE PUNISHABLE BY THIS TITLE, AND MAY, UNDER SUCH LIMITATIONS AS THE
18 GOVERNOR MAY PRESCRIBE, ADJUDGE ANY PUNISHMENT NOT FORBIDDEN BY THIS
19 TITLE EXCEPT:

20 (1) DISHONORABLE DISCHARGE;

21 (2) DISMISSAL;

22 (3) CONFINEMENT FOR MORE THAN 1 YEAR;

23 (4) FORFEITURE OF PAY EXCEEDING TWO-THIRDS PAY PER MONTH;
24 OR

25 (5) FORFEITURE OF PAY FOR MORE THAN 1 YEAR.

26 (B) A BAD-CONDUCT DISCHARGE, A CONFINEMENT FOR MORE THAN 6
27 MONTHS, OR A FORFEITURE OF PAY FOR MORE THAN 6 MONTHS MAY NOT BE
28 ADJUDGED IF CHARGES AND SPECIFICATIONS ARE REFERRED TO A SPECIAL
29 COURTS-MARTIAL CONSISTING OF A MILITARY JUDGE ALONE UNDER § 13A-401 OF
30 THIS SUBTITLE.

1 **13A-405. JURISDICTION OF SUMMARY COURTS-MARTIAL.**

2 (A) SUBJECT TO § 13A-402 OF THIS TITLE, SUMMARY
3 COURTS-MARTIAL HAVE JURISDICTION TO TRY PERSONS SUBJECT TO THIS TITLE,
4 EXCEPT OFFICERS, CADETS, AND CANDIDATES FOR AN OFFENSE MADE PUNISHABLE
5 BY THIS TITLE UNDER SUCH LIMITATIONS AS THE GOVERNOR MAY PRESCRIBE.

6 (B) (1) NO PERSON WITH RESPECT TO WHOM SUMMARY
7 COURTS-MARTIAL HAVE JURISDICTION MAY BE BROUGHT TO TRIAL BEFORE A
8 SUMMARY COURT-MARTIAL IF THAT PERSON OBJECTS THERETO.

9 (2) IF OBJECTION TO TRIAL BY SUMMARY COURT-MARTIAL IS MADE
10 BY AN ACCUSED, TRIAL BY SPECIAL OR GENERAL COURT-MARTIAL MAY BE
11 ORDERED, AS MAY BE APPROPRIATE.

12 (3) SUMMARY COURTS-MARTIAL MAY, UNDER SUCH LIMITATIONS AS
13 THE GOVERNOR MAY PRESCRIBE, ADJUDGE ANY PUNISHMENT NOT FORBIDDEN BY
14 THIS TITLE EXCEPT:

15 (I) DISMISSAL;

16 (II) DISHONORABLE OR BAD-CONDUCT DISCHARGE;

17 (III) CONFINEMENT FOR MORE THAN 1 MONTH;

18 (IV) RESTRICTION TO SPECIFIED LIMITS FOR MORE THAN 2
19 MONTHS; OR

20 (V) FORFEITURE OF MORE THAN TWO-THIRDS OF 1 MONTH'S
21 PAY.

22 (C) (1) A SUMMARY COURT-MARTIAL IS A NON-CRIMINAL FORUM.

23 (2) A FINDING OF GUILTY AT A SUMMARY COURT-MARTIAL DOES NOT
24 CONSTITUTE A CRIMINAL CONVICTION.

25 **SUBTITLE 5. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.**

26 **13A-501. WHO MAY CONVENE GENERAL COURTS-MARTIAL.**

27 (A) A GENERAL COURT-MARTIAL MAY BE CONVENED BY:

1 (1) THE GOVERNOR; OR

2 (2) THE ADJUTANT GENERAL.

3 (B) IF ANY SUCH COMMANDING OFFICER IS AN ACCUSER, THE COURT SHALL
4 BE CONVENED BY SUPERIOR COMPETENT AUTHORITY AND MAY IN ANY CASE BE
5 CONVENED BY SUCH SUPERIOR AUTHORITY IF CONSIDERED DESIRABLE BY SUCH
6 AUTHORITY.

7 **13A-502. WHO MAY CONVENE SPECIAL COURTS-MARTIAL.**

8 (A) A SPECIAL COURT-MARTIAL MAY BE CONVENED BY:

9 (1) A PERSON WHO MAY CONVENE A GENERAL
10 COURT-MARTIAL;

11 (2) THE COMMANDING OFFICER OF A GARRISON, FORT, POST, CAMP,
12 STATION, OR AIR NATIONAL GUARD BASE;

13 (3) THE COMMANDING OFFICER OF A BRIGADE, REGIMENT,
14 DETACHED BATTALION, OR CORRESPONDING UNIT OF THE ARMY;

15 (4) THE COMMANDING OFFICER OF A WING, GROUP, SEPARATE
16 SQUADRON, OR CORRESPONDING UNIT OF THE AIR FORCE; OR

17 (5) THE COMMANDING OFFICER OR OFFICER IN CHARGE OF ANY
18 OTHER COMMAND WHEN EMPOWERED BY THE ADJUTANT GENERAL.

19 (B) IF ANY SUCH OFFICER IS AN ACCUSER, THE COURT SHALL BE CONVENED
20 BY SUPERIOR COMPETENT AUTHORITY AND MAY IN ANY CASE BE CONVENED BY
21 SUCH SUPERIOR AUTHORITY IF CONSIDERED DESIRABLE BY SUCH AUTHORITY.

22 **13A-503. WHO MAY CONVENE SUMMARY COURTS-MARTIAL.**

23 (A) A SUMMARY COURT-MARTIAL MAY BE CONVENED BY:

24 (1) A PERSON WHO MAY CONVENE A GENERAL OR SPECIAL
25 COURT-MARTIAL;

26 (2) THE COMMANDING OFFICER OF A DETACHED COMPANY OR OTHER
27 DETACHMENT, OR CORRESPONDING UNIT OF THE ARMY;

28 (3) THE COMMANDING OFFICER OF A DETACHED SQUADRON OR

1 OTHER DETACHMENT, OR CORRESPONDING UNIT OF THE AIR FORCE; OR

2 (4) THE COMMANDING OFFICER OR OFFICER IN CHARGE OF ANY
3 OTHER COMMAND WHEN EMPOWERED BY THE ADJUTANT GENERAL.

4 (B) (1) WHEN ONLY ONE COMMISSIONED OFFICER IS PRESENT WITH A
5 COMMAND OR DETACHMENT, THAT OFFICER SHALL BE THE SUMMARY
6 COURT-MARTIAL OF THAT COMMAND OR DETACHMENT AND SHALL HEAR AND
7 DETERMINE ALL SUMMARY COURT-MARTIAL CASES, OR A MILITARY JUDGE MAY ACT
8 AS SUMMARY COURT-MARTIAL.

9 (2) A SUMMARY COURT-MARTIAL MAY, HOWEVER, BE CONVENED IN
10 ANY CASE BY SUPERIOR COMPETENT AUTHORITY IF CONSIDERED DESIRABLE BY
11 SUCH AUTHORITY.

12 13A-504. WHO MAY SERVE ON COURTS-MARTIAL.

13 (A) A COMMISSIONED OFFICER OF THE STATE MILITARY FORCES IS
14 ELIGIBLE TO SERVE ON ALL COURTS-MARTIAL FOR THE TRIAL OF A PERSON
15 SUBJECT TO THIS TITLE.

16 (B) A WARRANT OFFICER OF THE STATE MILITARY FORCES IS ELIGIBLE TO
17 SERVE ON GENERAL AND SPECIAL COURTS-MARTIAL FOR THE TRIAL OF A PERSON
18 SUBJECT TO THIS TITLE, OTHER THAN A COMMISSIONED OFFICER.

19 (C) (1) AN ENLISTED MEMBER OF THE STATE MILITARY FORCES IS
20 ELIGIBLE TO SERVE ON GENERAL AND SPECIAL COURTS-MARTIAL FOR THE TRIAL
21 OF AN ENLISTED MEMBER SUBJECT TO THIS TITLE, BUT THAT MEMBER SHALL
22 SERVE AS A MEMBER OF A COURT ONLY IF, BEFORE THE CONCLUSION OF A SESSION
23 CALLED BY THE MILITARY JUDGE UNDER § 13A-704 OF THIS TITLE PRIOR TO TRIAL
24 OR, IN THE ABSENCE OF SUCH A SESSION, BEFORE THE COURT IS ASSEMBLED FOR
25 THE TRIAL OF THE ACCUSED, THE ACCUSED PERSONALLY HAS REQUESTED ORALLY
26 ON THE RECORD OR IN WRITING THAT ENLISTED MEMBERS SERVE ON IT.

27 (2) (I) AFTER SUCH A REQUEST, THE ACCUSED MAY NOT BE TRIED
28 BY A GENERAL OR SPECIAL COURT-MARTIAL, THE MEMBERSHIP OF WHICH DOES
29 NOT INCLUDE ENLISTED MEMBERS IN A NUMBER EQUAL TO AT LEAST ONE-THIRD
30 OF THE TOTAL MEMBERSHIP OF THE COURT, UNLESS ELIGIBLE ENLISTED MEMBERS
31 CANNOT BE OBTAINED ON ACCOUNT OF PHYSICAL CONDITIONS OR MILITARY
32 EXIGENCIES.

33 (II) IF SUCH MEMBERS CANNOT BE OBTAINED, THE COURT MAY
34 BE ASSEMBLED AND THE TRIAL HELD WITHOUT THE MEMBERS, BUT THE

1 CONVENING AUTHORITY SHALL MAKE A DETAILED WRITTEN STATEMENT, TO BE
2 APPENDED TO THE RECORD, STATING WHY THE MEMBERS COULD NOT BE OBTAINED.

3 (D) WHEN IT CAN BE AVOIDED, A PERSON SUBJECT TO THIS TITLE MAY NOT
4 BE TRIED BY A COURT-MARTIAL, ANY MEMBER OF WHICH IS JUNIOR TO THE
5 ACCUSED IN RANK OR GRADE.

6 (E) (1) WHEN CONVENING A COURT-MARTIAL, THE CONVENING
7 AUTHORITY SHALL DETAIL AS MEMBERS OF THE AUTHORITY SUCH MEMBERS OF THE
8 STATE MILITARY FORCES AS, IN THE CONVENING AUTHORITY'S OPINION, ARE BEST
9 QUALIFIED FOR THE DUTY BY REASON OF AGE, EDUCATION, TRAINING, EXPERIENCE,
10 LENGTH OF SERVICE, AND JUDICIAL TEMPERAMENT.

11 (2) A MEMBER OF THE STATE MILITARY FORCES IS NOT ELIGIBLE TO
12 SERVE AS A MEMBER OF A GENERAL OR SPECIAL COURT-MARTIAL IF THE MEMBER
13 IS THE ACCUSER OR A WITNESS OR HAS ACTED AS INVESTIGATING OFFICER OR AS
14 COUNSEL IN THE SAME CASE.

15 (F) (1) BEFORE A COURT-MARTIAL IS ASSEMBLED FOR THE TRIAL OF A
16 CASE, THE CONVENING AUTHORITY MAY EXCUSE A MEMBER OF THE COURT FROM
17 PARTICIPATING IN THE CASE.

18 (2) THE CONVENING AUTHORITY MAY DELEGATE THE AUTHORITY
19 UNDER THIS SUBSECTION TO A JUDGE ADVOCATE OR TO ANOTHER PRINCIPAL
20 ASSISTANT.

21 (G) THE ACCUSED IN A COURT-MARTIAL WITH A MILITARY JUDGE AND
22 MEMBERS MAY, AFTER THE FINDINGS ARE ANNOUNCED AND BEFORE ANY MATTER
23 IS PRESENTED IN THE SENTENCING PHASE, REQUEST, ORALLY ON THE RECORD OR
24 IN WRITING, SENTENCING BY MEMBERS.

25 13A-505. MILITARY JUDGE OF A GENERAL OR SPECIAL COURT-MARTIAL.

26 (A) (1) A MILITARY JUDGE SHALL BE DETAILED TO EACH GENERAL AND
27 SPECIAL COURT-MARTIAL BY THE SENIOR MILITARY JUDGE IN THE STATE.

28 (2) THE MILITARY JUDGE SHALL PRESIDE OVER EACH OPEN SESSION
29 OF THE COURT-MARTIAL TO WHICH THE MILITARY JUDGE HAS BEEN DETAILED.

30 (B) A MILITARY JUDGE SHALL BE:

31 (1) AN ACTIVE OR RETIRED COMMISSIONED OFFICER OF AN
32 ORGANIZED STATE MILITARY FORCE;

(2) A MEMBER IN GOOD STANDING OF THE BAR OF THE COURT OF APPEALS OF MARYLAND; AND

(3) CERTIFIED AS QUALIFIED FOR DUTY AS A MILITARY JUDGE BY THE SENIOR FORCE JUDGE ADVOCATE THAT IS THE SAME FORCE AS THE ACCUSED.

(C) THE CONVENING AUTHORITY OR A STAFF MEMBER OF THE CONVENING AUTHORITY MAY NOT PREPARE OR REVIEW A REPORT CONCERNING THE EFFECTIVENESS, FITNESS, OR EFFICIENCY OF THE MILITARY JUDGE SO DETAILED, WHICH RELATES TO PERFORMANCE OF DUTY AS A MILITARY JUDGE.

(D) A PERSON IS NOT ELIGIBLE TO ACT AS MILITARY JUDGE IN A CASE IF THE PERSON IS THE ACCUSER OR A WITNESS, OR HAS ACTED AS INVESTIGATING OFFICER OR A COUNSEL IN THE SAME CASE.

(E) THE MILITARY JUDGE OF A COURT-MARTIAL MAY NOT:

(1) CONSULT WITH THE MEMBERS OF THE COURT EXCEPT IN THE PRESENCE OF THE ACCUSED, TRIAL COUNSEL, AND DEFENSE COUNSEL; OR

(2) VOTE WITH THE MEMBERS OF THE COURT.

13A-506. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL.

(A) (1) FOR EACH GENERAL AND SPECIAL COURT-MARTIAL, THE AUTHORITY CONVENING THE COURT SHALL DETAIL TRIAL COUNSEL, DEFENSE COUNSEL, AND SUCH ASSISTANTS AS ARE APPROPRIATE.

(2) (I) A PERSON WHO HAS ACTED AS INVESTIGATING OFFICER, MILITARY JUDGE, WITNESS, OR COURT MEMBER IN A CASE MAY NOT ACT LATER AS TRIAL COUNSEL, ASSISTANT TRIAL COUNSEL, OR, UNLESS EXPRESSLY REQUESTED BY THE ACCUSED, AS DEFENSE COUNSEL OR ASSISTANT OR ASSOCIATE DEFENSE COUNSEL IN THE SAME CASE.

(II) A PERSON WHO HAS ACTED FOR THE PROSECUTION MAY NOT ACT LATER IN THE SAME CASE FOR THE DEFENSE, NOR MAY A PERSON WHO HAS ACTED FOR THE DEFENSE ACT LATER IN THE SAME CASE FOR THE PROSECUTION.

(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, TRIAL COUNSEL OR DEFENSE COUNSEL DETAILED FOR A GENERAL OR SPECIAL COURT-MARTIAL MUST BE:

1 (1) A JUDGE ADVOCATE, AS DEFINED IN § 13A-101 OF THIS TITLE;
2 AND

3 (2) IN THE CASE OF TRIAL COUNSEL, A MEMBER IN GOOD STANDING
4 OF THE BAR OF THE HIGHEST COURT OF THE STATE WHERE THE COURT-MARTIAL
5 IS HELD.

6 (c) IN THE INSTANCE WHEN A DEFENSE COUNSEL IS NOT A MEMBER OF THE
7 BAR OF THE HIGHEST COURT OF THE STATE, THE DEFENSE COUNSEL SHALL BE
8 DEEMED ADMITTED PRO HAC VICE, SUBJECT TO FILING A CERTIFICATE WITH THE
9 MILITARY JUDGE SETTING FORTH THE QUALIFICATIONS THAT COUNSEL IS:

10 (1) (i) A COMMISSIONED OFFICER OF THE ARMED FORCES OF THE
11 UNITED STATES OR A COMPONENT THEREOF;

12 (ii) A MEMBER IN GOOD STANDING OF THE BAR OF THE HIGHEST
13 COURT OF A STATE; AND

14 (iii) CERTIFIED AS A JUDGE ADVOCATE IN THE JUDGE
15 ADVOCATE GENERAL'S CORPS OF THE ARMY, AIR FORCE, NAVY, OR MARINE
16 CORPS; OR

17 (2) A JUDGE ADVOCATE AS DEFINED IN § 13A-101 OF THIS TITLE.

18 **13A-507. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS.**

19 UNDER SUCH REGULATIONS AS MAY BE ADOPTED, THE CONVENING
20 AUTHORITY OF A GENERAL OR SPECIAL COURT-MARTIAL OR COURT OF INQUIRY
21 SHALL DETAIL OR EMPLOY QUALIFIED COURT REPORTERS, WHO SHALL RECORD
22 THE PROCEEDINGS OF AND TESTIMONY TAKEN BEFORE THAT COURT AND MAY
23 DETAIL OR EMPLOY INTERPRETERS WHO SHALL INTERPRET FOR THE COURT.

24 **13A-508. ABSENT, ALTERNATE, AND ADDITIONAL MEMBERS.**

25 (a) A MEMBER OF A GENERAL OR SPECIAL COURT-MARTIAL MAY NOT BE
26 ABSENT OR EXCUSED AFTER THE COURT HAS BEEN ASSEMBLED FOR THE TRIAL OF
27 THE ACCUSED UNLESS EXCUSED:

28 (1) AS A RESULT OF A CHALLENGE;

29 (2) BY THE MILITARY JUDGE FOR PHYSICAL DISABILITY OR OTHER
30 GOOD CAUSE; OR

(3) BY ORDER OF THE CONVENING AUTHORITY FOR GOOD CAUSE.

(B) (1) WHENEVER A GENERAL COURT-MARTIAL, OTHER THAN A GENERAL COURT-MARTIAL COMPOSED OF A MILITARY JUDGE ONLY, IS REDUCED BELOW SIX MEMBERS, THE TRIAL MAY NOT PROCEED UNLESS THE CONVENING AUTHORITY DETAILS NEW MEMBERS SUFFICIENT IN NUMBER TO PROVIDE NOT LESS THAN THE APPLICABLE MINIMUM NUMBER OF SIX MEMBERS.

(2) THE TRIAL MAY PROCEED WITH THE NEW MEMBERS PRESENT AFTER THE RECORDED EVIDENCE PREVIOUSLY INTRODUCED BEFORE THE MEMBERS OF THE COURT HAS BEEN READ TO THE COURT IN THE PRESENCE OF THE MILITARY JUDGE, THE ACCUSED, AND COUNSEL FOR BOTH SIDES.

(C) (1) WHENEVER A SPECIAL COURT-MARTIAL, OTHER THAN A SPECIAL COURT-MARTIAL COMPOSED OF A MILITARY JUDGE ONLY, IS REDUCED BELOW FOUR MEMBERS, THE TRIAL MAY NOT PROCEED UNLESS THE CONVENING AUTHORITY DETAILS NEW MEMBERS SUFFICIENT IN NUMBER TO PROVIDE NOT LESS THAN FOUR MEMBERS.

(2) THE TRIAL SHALL PROCEED WITH THE NEW MEMBERS PRESENT AS IF NO EVIDENCE HAD BEEN INTRODUCED PREVIOUSLY AT THE TRIAL, UNLESS A VERBATIM RECORD OF THE EVIDENCE PREVIOUSLY INTRODUCED BEFORE THE MEMBERS OF THE COURT OR A STIPULATION THEREOF IS READ TO THE COURT IN THE PRESENCE OF THE MILITARY JUDGE, THE ACCUSED, AND COUNSEL FOR BOTH SIDES.

(D) IF THE MILITARY JUDGE OF A COURT-MARTIAL COMPOSED OF A MILITARY JUDGE ONLY IS UNABLE TO PROCEED WITH THE TRIAL BECAUSE OF PHYSICAL DISABILITY, AS A RESULT OF A CHALLENGE, OR FOR OTHER GOOD CAUSE, THE TRIAL SHALL PROCEED, SUBJECT TO ANY APPLICABLE CONDITIONS OF § 13A-401 OF THIS TITLE, AFTER THE DETAIL OF A NEW MILITARY JUDGE AS IF NO EVIDENCE HAD PREVIOUSLY BEEN INTRODUCED, UNLESS A VERBATIM RECORD OF THE EVIDENCE PREVIOUSLY INTRODUCED OR A STIPULATION THEREOF IS READ IN COURT IN THE PRESENCE OF THE NEW MILITARY JUDGE, THE ACCUSED, AND COUNSEL FOR BOTH SIDES.

(E) IN ADDITION TO MEMBERS, THE MILITARY JUDGE SHALL IMPANEL ALTERNATE MEMBERS, IF THE CONVENING AUTHORITY AUTHORIZES ALTERNATE MEMBERS.

SUBTITLE 6. PRE-TRIAL PROCEDURE.

13A-601. CHARGES AND SPECIFICATIONS.

(A) CHARGES AND SPECIFICATIONS SHALL BE SIGNED BY A PERSON SUBJECT TO THIS TITLE UNDER OATH BEFORE A COMMISSIONED OFFICER AUTHORIZED BY § 13A-1102 OF THIS TITLE TO ADMINISTER OATHS AND SHALL STATE:

(1) THAT THE SIGNER HAS PERSONAL KNOWLEDGE OF, OR HAS INVESTIGATED, THE MATTERS SET FORTH THEREIN; AND

(2) THAT THEY ARE TRUE IN FACT TO THE BEST OF THE SIGNER'S KNOWLEDGE AND BELIEF.

(B) ON THE PREFERRING OF CHARGES, THE PROPER AUTHORITY SHALL TAKE IMMEDIATE STEPS TO DETERMINE WHAT DISPOSITION SHOULD BE MADE THEREOF IN THE INTEREST OF JUSTICE AND DISCIPLINE, AND THE PERSON ACCUSED SHALL BE INFORMED OF THE CHARGES AS SOON AS PRACTICABLE.

13A-602. CERTAIN PROCEEDINGS CONDUCTED BEFORE REFERRAL.

(A) PROCEEDINGS MAY BE CONDUCTED TO REVIEW, OR OTHERWISE ACT ON, THE FOLLOWING MATTERS BEFORE REFERRAL OF CHARGES AND SPECIFICATIONS TO COURT-MARTIAL IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY § 13A-701 OF THIS TITLE:

(1) PRE-REFERRAL INVESTIGATIVE SUBPOENAS;

(2) PRE-REFERRAL WARRANTS OR ORDERS FOR ELECTRONIC COMMUNICATIONS;

(3) PRE-REFERRAL MATTERS REFERRED BY AN APPELLATE COURT;

(4) PRE-REFERRAL MATTERS UNDER § 13A-603 (C) OR (D) OF THIS SUBTITLE; OR

(5) ARREST WARRANTS WHEN PROBABLE CAUSE EXISTS TO BELIEVE A MILITARY MEMBER COMMITTED A CRIME AS DESCRIBED UNDER THE PUNITIVE PROVISIONS.

(B) THE REGULATIONS PRESCRIBED UNDER SUBSECTION (A) OF THIS SECTION SHALL:

(1) INCLUDE PROCEDURES FOR THE REVIEW OF SUCH RULINGS THAT MAY BE ORDERED UNDER THIS SECTION AS THE ADJUTANT GENERAL CONSIDERS

1 APPROPRIATE; AND

2 (2) PROVIDE SUCH LIMITATIONS ON THE RELIEF THAT MAY BE
3 ORDERED UNDER THIS SECTION AS THE ADJUTANT GENERAL CONSIDERS
4 APPROPRIATE.

5 (C) IF A MATTER IN A PROCEEDING UNDER THIS SECTION BECOMES A
6 SUBJECT AT ISSUE WITH RESPECT TO CHARGES THAT HAVE BEEN REFERRED TO A
7 GENERAL OR SPECIAL COURT-MARTIAL, THE MATTER SHALL BE TRANSFERRED TO
8 THE MILITARY JUDGE DETAILED TO THE COURT-MARTIAL.

9 13A-603. COMPULSORY SELF-INCRIMINATION PROHIBITED.

10 (A) A PERSON SUBJECT TO THIS TITLE MAY NOT COMPEL ANOTHER PERSON
11 TO SELF-INCRIMINATE OR TO ANSWER A QUESTION THE ANSWER TO WHICH MAY
12 TEND TO INCRIMINATE THE PERSON.

13 (B) A PERSON SUBJECT TO THIS TITLE MAY NOT INTERROGATE OR REQUEST
14 A STATEMENT FROM AN ACCUSED OR A PERSON SUSPECTED OF AN OFFENSE
15 WITHOUT FIRST INFORMING THAT PERSON OF THE NATURE OF THE ACCUSATION
16 AND ADVISING THAT PERSON THAT THE PERSON DOES NOT HAVE TO MAKE A
17 STATEMENT REGARDING THE OFFENSE OF WHICH THE PERSON IS ACCUSED OR
18 SUSPECTED AND THAT ANY STATEMENT MADE BY THE PERSON MAY BE USED AS
19 EVIDENCE AGAINST THE PERSON IN A TRIAL BY COURT-MARTIAL.

20 (C) A PERSON SUBJECT TO THIS TITLE MAY NOT COMPEL ANOTHER PERSON
21 TO MAKE A STATEMENT OR PRODUCE EVIDENCE BEFORE A MILITARY COURT IF THE
22 STATEMENT OR EVIDENCE IS NOT MATERIAL TO THE ISSUE AND MAY TEND TO
23 DEGRADE THE PERSON.

24 (D) A STATEMENT OBTAINED FROM A PERSON IN VIOLATION OF THIS
25 ARTICLE OR THROUGH THE USE OF COERCION, UNLAWFUL INFLUENCE, OR
26 UNLAWFUL INDUCEMENT MAY NOT BE RECEIVED IN EVIDENCE AGAINST THE
27 PERSON IN A TRIAL BY COURT-MARTIAL.

28 13A-604. PRELIMINARY HEARING REQUIRED BEFORE REFERRAL TO GENERAL
29 COURT-MARTIAL.

30 (A) IN THIS SECTION, "VICTIM" MEANS A PERSON WHO:

31 (1) IS ALLEGED TO HAVE SUFFERED A DIRECT PHYSICAL,
32 EMOTIONAL, OR PECUNIARY HARM AS A RESULT OF THE MATTERS SET FORTH IN A
33 CHARGE OR SPECIFICATION BEING CONSIDERED; AND

1 **(2) IS NAMED IN ONE OF THE SPECIFICATIONS.**

2 **(B) (1) A CHARGE OR SPECIFICATION MAY NOT BE REFERRED TO A**
3 **GENERAL COURT-MARTIAL FOR TRIAL UNTIL A THOROUGH AND IMPARTIAL**
4 **INVESTIGATION OF ALL THE MATTERS SET FORTH THEREIN HAS BEEN MADE.**

5 **(2) THIS INVESTIGATION SHALL INCLUDE:**

6 **(I) INQUIRY AS TO THE TRUTH OF THE MATTER SET FORTH IN**
7 **THE CHARGES;**

8 **(II) CONSIDERATION OF THE FORM OF CHARGES; AND**

9 **(III) A RECOMMENDATION AS TO THE DISPOSITION WHICH**
10 **SHOULD BE MADE OF THE CASE IN THE INTEREST OF JUSTICE AND DISCIPLINE.**

11 **(C) (1) THE ACCUSED SHALL BE ADVISED OF THE CHARGES AGAINST THE**
12 **ACCUSED AND OF THE RIGHT TO BE REPRESENTED AT THE INVESTIGATION BY**
13 **COUNSEL.**

14 **(2) THE ACCUSED HAS THE RIGHT TO BE REPRESENTED AT THE**
15 **INVESTIGATION AS PROVIDED IN § 13A-703 OF THIS TITLE AND IN REGULATIONS**
16 **PRESCRIBED UNDER THAT SECTION.**

17 **(3) AT THE INVESTIGATION, FULL OPPORTUNITY SHALL BE GIVEN TO**
18 **THE ACCUSED TO CROSS-EXAMINE WITNESSES AGAINST THE ACCUSED, IF THEY ARE**
19 **AVAILABLE, AND TO PRESENT ANYTHING THE ACCUSED MAY DESIRE IN THE**
20 **ACCUSED'S OWN BEHALF, EITHER IN DEFENSE OR MITIGATION, AND THE**
21 **INVESTIGATING OFFICER SHALL EXAMINE AVAILABLE WITNESSES REQUESTED BY**
22 **THE ACCUSED.**

23 **(4) IF THE CHARGES ARE FORWARDED AFTER THE INVESTIGATION,**
24 **THEY SHALL BE ACCOMPANIED BY A STATEMENT OF THE SUBSTANCE OF THE**
25 **TESTIMONY TAKEN ON BOTH SIDES AND A COPY OF THE CHARGES SHALL BE GIVEN**
26 **TO THE ACCUSED.**

27 **(D) (1) IF AN INVESTIGATION OF THE SUBJECT MATTER OF AN OFFENSE**
28 **HAS BEEN CONDUCTED BEFORE THE ACCUSED IS CHARGED WITH THE OFFENSE, AND**
29 **IF THE ACCUSED WAS PRESENT AT THE INVESTIGATION AND AFFORDED THE**
30 **OPPORTUNITIES FOR REPRESENTATION, CROSS-EXAMINATION, AND**
31 **PRESENTATION PRESCRIBED IN SUBSECTION (C) OF THIS SECTION, NO FURTHER**
32 **INVESTIGATION OF THAT CHARGE IS NECESSARY UNDER THIS SECTION UNLESS IT IS**

1 DEMANDED BY THE ACCUSED AFTER THE ACCUSED IS INFORMED OF THE CHARGE.

2 (2) A DEMAND FOR FURTHER INVESTIGATION ENTITLES THE
3 ACCUSED TO RECALL WITNESSES FOR FURTHER CROSS-EXAMINATION AND TO
4 OFFER ANY NEW EVIDENCE IN THE ACCUSED'S OWN BEHALF.

5 (E) IF EVIDENCE ADDUCED IN AN INVESTIGATION UNDER THIS SECTION
6 INDICATES THAT THE ACCUSED COMMITTED AN UNCHARGED OFFENSE, THE
7 INVESTIGATING OFFICER MAY INVESTIGATE THE SUBJECT MATTER OF THAT
8 OFFENSE WITHOUT THE ACCUSED HAVING FIRST BEEN CHARGED WITH THE
9 OFFENSE IF THE ACCUSED IS:

10 (1) PRESENT AT THE INVESTIGATION;

11 (2) INFORMED OF THE NATURE OF EACH UNCHARGED OFFENSE
12 INVESTIGATED; AND

13 (3) AFFORDED THE OPPORTUNITIES FOR REPRESENTATION,
14 CROSS-EXAMINATION, AND PRESENTATION PRESCRIBED IN SUBSECTION (B) OF
15 THIS SECTION.

16 (F) THE REQUIREMENTS OF THIS SECTION ARE BINDING ON ALL PERSONS
17 ADMINISTERING THIS TITLE, BUT FAILURE TO FOLLOW THE REQUIREMENTS DOES
18 NOT CONSTITUTE JURISDICTIONAL ERROR.

19 (G) UNDER REGULATIONS PRESCRIBED BY § 13A-701 OF THIS TITLE, A
20 PRELIMINARY HEARING NEED NOT BE HELD IF THE ACCUSED SUBMITS A WRITTEN
21 WAIVER TO THE CONVENING AUTHORITY AND THE CONVENING AUTHORITY
22 DETERMINES THAT A HEARING IS NOT REQUIRED.

23 (H) (1) A PRELIMINARY HEARING UNDER THIS SECTION SHALL BE
24 CONDUCTED BY AN IMPARTIAL HEARING OFFICER, WHO:

25 (I) WHENEVER PRACTICABLE, SHALL BE A JUDGE ADVOCATE
26 WHO IS CERTIFIED UNDER § 13A-506 OF THIS TITLE; OR

27 (II) WHEN IT IS NOT PRACTICABLE TO APPOINT A JUDGE
28 ADVOCATE BECAUSE OF EXCEPTIONAL CIRCUMSTANCES, IS NOT A JUDGE ADVOCATE
29 SO CERTIFIED.

30 (2) IN THE CASE OF THE APPOINTMENT OF A HEARING OFFICER
31 UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, A JUDGE ADVOCATE WHO IS
32 CERTIFIED UNDER § 13A-506 OF THIS TITLE SHALL BE AVAILABLE TO PROVIDE

1 LEGAL ADVICE TO THE HEARING OFFICER.

2 (3) WHENEVER PRACTICABLE, THE HEARING OFFICER SHALL BE
3 EQUAL IN GRADE OR SENIOR IN GRADE TO MILITARY COUNSEL WHO ARE DETAILED
4 TO REPRESENT THE ACCUSED OR THE GOVERNMENT AT THE PRELIMINARY
5 HEARING.

6 (I) AFTER A PRELIMINARY HEARING UNDER THIS SECTION, THE HEARING
7 OFFICER SHALL SUBMIT TO THE CONVENING AUTHORITY A WRITTEN REPORT,
8 ACCOMPANIED BY A RECORDING OF THE PRELIMINARY HEARING UNDER
9 SUBSECTION (K) OF THIS SECTION, THAT INCLUDES THE FOLLOWING:

10 (1) FOR EACH SPECIFICATION, A STATEMENT OF THE REASONING AND
11 CONCLUSIONS OF THE HEARING OFFICER WITH RESPECT TO DETERMINATIONS
12 UNDER SUBSECTION (B)(2) OF THIS SECTION, INCLUDING A SUMMARY OF RELEVANT
13 WITNESS TESTIMONY AND DOCUMENTARY EVIDENCE PRESENTED AT THE HEARING
14 AND ANY OBSERVATIONS OF THE HEARING OFFICER CONCERNING THE TESTIMONY
15 OF WITNESSES AND THE AVAILABILITY AND ADMISSIBILITY OF EVIDENCE AT TRIAL;

16 (2) RECOMMENDATIONS FOR ANY NECESSARY MODIFICATIONS TO
17 THE FORM OF THE CHARGES OR SPECIFICATIONS;

18 (3) AN ANALYSIS OF ANY ADDITIONAL INFORMATION SUBMITTED
19 AFTER THE HEARING BY THE PARTIES OR BY A VICTIM OF AN OFFENSE, THAT, UNDER
20 RULES PRESCRIBED UNDER § 13A-701 OF THIS TITLE, IS RELEVANT TO DISPOSITION
21 UNDER §§ 13A-601 AND 13A-604 OF THIS SUBTITLE; AND

22 (4) A STATEMENT OF ACTION TAKEN ON EVIDENCE ADDUCED WITH
23 RESPECT TO UNCHARGED OFFENSES, AS DESCRIBED IN SUBSECTION (L) OF THIS
24 SECTION.

25 (J) (1) (I) THE ACCUSED SHALL BE ADVISED OF THE CHARGES
26 AGAINST THE ACCUSED AND OF THE ACCUSED'S RIGHT TO BE REPRESENTED BY
27 COUNSEL AT THE PRELIMINARY HEARING UNDER THIS SECTION.

28 (II) THE ACCUSED HAS THE RIGHT TO BE REPRESENTED AT THE
29 PRELIMINARY HEARING AS PROVIDED IN §13A-703 OF THIS SUBTITLE AND IN
30 REGULATIONS PRESCRIBED UNDER THAT SECTION.

31 (2) THE ACCUSED MAY CROSS-EXAMINE WITNESSES WHO TESTIFY AT
32 THE PRELIMINARY HEARING AND PRESENT ADDITIONAL EVIDENCE THAT IS
33 RELEVANT TO THE ISSUES FOR DETERMINATION UNDER SUBSECTION (B)(2) OF THIS
34 SECTION.

(3) (I) A VICTIM MAY NOT BE REQUIRED TO TESTIFY AT THE PRELIMINARY HEARING.

(II) 1. A VICTIM WHO DECLINES TO TESTIFY SHALL BE DEEMED TO BE NOT AVAILABLE FOR PURPOSES OF THE PRELIMINARY HEARING.

2. A DECLINATION UNDER THIS PARAGRAPH MAY NOT SERVE AS THE SOLE BASIS FOR ORDERING A DEPOSITION UNDER § 13A-714 OF THIS TITLE.

(4) THE PRESENTATION OF EVIDENCE AND EXAMINATION, INCLUDING CROSS-EXAMINATION, OF WITNESSES AT A PRELIMINARY HEARING SHALL BE LIMITED TO THE MATTERS RELEVANT TO DETERMINATIONS UNDER SUBSECTION (B)(2) OF THIS SECTION.

(K) (1) A PRELIMINARY HEARING UNDER SUBSECTION (B) OF THIS SECTION SHALL BE RECORDED BY A SUITABLE RECORDING DEVICE.

(2) THE VICTIM MAY REQUEST THE RECORDING AND SHALL HAVE ACCESS TO THE RECORDING UNDER SUCH RULES AS ARE PRESCRIBED IN § 13A-701 OF THIS TITLE.

(L) IF EVIDENCE ADDUCED IN A PRELIMINARY HEARING UNDER SUBSECTION (B) OF THIS SECTION INDICATES THAT THE ACCUSED COMMITTED AN UNCHARGED OFFENSE, THE HEARING OFFICER MAY CONSIDER THE SUBJECT MATTER OF THAT OFFENSE WITHOUT THE ACCUSED HAVING FIRST BEEN CHARGED WITH THE OFFENSE IF THE ACCUSED IS:

(1) PRESENT AT THE PRELIMINARY HEARING;

(2) INFORMED OF THE NATURE OF EACH UNCHARGED OFFENSE CONSIDERED; AND

(3) AFFORDED THE OPPORTUNITIES FOR REPRESENTATION, CROSS-EXAMINATION, AND PRESENTATION CONSISTENT WITH SUBSECTION (I) OF THIS SECTION.

(M) (1) THE REQUIREMENTS OF THIS SECTION ARE BINDING ON ALL PERSONS ADMINISTERING THIS TITLE, BUT FAILURE TO FOLLOW THE REQUIREMENTS DOES NOT CONSTITUTE JURISDICTIONAL ERROR.

(2) A DEFECT IN A REPORT UNDER SUBSECTION (I) OF THIS SECTION

1 IS NOT A BASIS FOR RELIEF IF THE REPORT IS IN SUBSTANTIAL COMPLIANCE WITH
2 THAT SUBSECTION.

3 **13A-605. ADVICE OF JUDGE ADVOCATE AND REFERENCE FOR TRIAL.**

4 (A) (1) BEFORE DIRECTING THE TRIAL OF ANY CHARGE BY GENERAL
5 COURT-MARTIAL, THE CONVENING AUTHORITY SHALL REFER THE CHARGE TO A
6 JUDGE ADVOCATE FOR CONSIDERATION AND ADVICE.

7 (2) THE CONVENING AUTHORITY MAY NOT REFER A SPECIFICATION
8 UNDER A CHARGE TO A GENERAL COURT-MARTIAL FOR TRIAL UNLESS THE
9 CONVENING AUTHORITY HAS BEEN ADVISED IN WRITING BY A JUDGE ADVOCATE
10 THAT:

11 (I) THE SPECIFICATION ALLEGES AN OFFENSE UNDER THIS
12 TITLE;

13 (II) THE SPECIFICATION IS WARRANTED BY THE EVIDENCE
14 INDICATED IN THE REPORT OF INVESTIGATION UNDER § 13A-603 OF THIS SUBTITLE
15 IF THERE IS SUCH A REPORT; AND

16 (III) A COURT-MARTIAL WOULD HAVE JURISDICTION OVER THE
17 ACCUSED AND THE OFFENSE.

18 (B) (1) THE ADVICE OF THE JUDGE ADVOCATE UNDER SUBSECTION (A)
19 OF THIS SECTION WITH RESPECT TO A SPECIFICATION UNDER A CHARGE SHALL
20 INCLUDE A WRITTEN AND SIGNED STATEMENT BY THE JUDGE ADVOCATE:

21 (I) EXPRESSING CONCLUSIONS WITH RESPECT TO EACH
22 MATTER SET FORTH IN SUBSECTION (A) OF THIS SECTION; AND

23 (II) RECOMMENDING ACTION THAT THE CONVENING
24 AUTHORITY TAKE REGARDING THE SPECIFICATION.

25 (2) IF THE SPECIFICATION IS REFERRED FOR TRIAL, THE
26 RECOMMENDATION OF THE JUDGE ADVOCATE SHALL ACCOMPANY THE
27 SPECIFICATION.

28 (C) IF THE CHARGES OR SPECIFICATIONS ARE NOT CORRECT FORMALLY OR
29 DO NOT CONFORM TO THE SUBSTANCE OF THE EVIDENCE CONTAINED IN THE
30 REPORT OF THE INVESTIGATING OFFICER, FORMAL CORRECTIONS, AND SUCH
31 CHANGES IN THE CHARGES AND SPECIFICATIONS AS ARE NEEDED TO MAKE THEM
32 CONFORM TO THE EVIDENCE, MAY BE MADE.

1 **13A-606. SERVICE OF CHARGES.**

2 (A) TRIAL COUNSEL DETAILED FOR A COURT-MARTIAL UNDER § 13A-506
3 OF THIS TITLE SHALL CAUSE TO BE SERVED ON THE ACCUSED A COPY OF THE
4 CHARGES AND SPECIFICATIONS REFERRED FOR TRIAL.

5 (B) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A
6 TRIAL OR OTHER PROCEEDING OF A GENERAL COURT-MARTIAL OR A SPECIAL
7 COURT-MARTIAL, INCLUDING A SESSION UNDER § 13A-704 OF THIS TITLE MAY NOT
8 BE HELD OVER THE OBJECTION OF THE ACCUSED:

9 (I) WITH RESPECT TO A GENERAL COURT-MARTIAL, FROM THE
10 TIME OF SERVICE THROUGH THE FIFTH DAY AFTER THE DATE OF SERVICE; OR

11 (II) WITH RESPECT TO A SPECIAL COURT-MARTIAL, FROM THE
12 TIME OF SERVICE THROUGH THE THIRD DAY AFTER THE DATE OF SERVICE.

13 (2) (I) AN OBJECTION UNDER PARAGRAPH (1) OF THIS
14 SUBSECTION MAY BE RAISED ONLY AT THE FIRST SESSION OF THE TRIAL OR OTHER
15 PROCEEDING AND ONLY IF THE FIRST SESSION OCCURS BEFORE THE END OF THE
16 APPLICABLE PERIOD UNDER PARAGRAPH (1)(I) OR (II) OF THIS SUBSECTION.

17 (II) IF THE FIRST SESSION OCCURS BEFORE THE END OF THE
18 APPLICABLE PERIOD, THE MILITARY JUDGE SHALL, AT THAT SESSION, INQUIRE AS
19 TO WHETHER THE DEFENSE OBJECTS UNDER THIS SUBSECTION.

20 **SUBTITLE 7. TRIAL PROCEDURE.**

21 **13A-701. MILITARY RULES OF EVIDENCE AND THE RULES FOR**
22 **COURTS-MARTIAL.**

23 (A) THE MILITARY RULES OF EVIDENCE AND THE RULES FOR
24 COURTS-MARTIAL, AS PROMULGATED IN THE MOST RECENT VERSION OF THE
25 MANUAL FOR COURTS-MARTIAL, SHALL AS RECOGNIZED IN MILITARY CRIMINAL
26 CASES IN THE COURTS OF THE ARMED FORCES APPLY TO THE EXTENT PRACTICAL
27 TO COURTS-MARTIALS CONVENED BY THE MARYLAND NATIONAL GUARD TO THE
28 EXTENT THEY DO NOT CONFLICT WITH STATE SUBSTANTIVE LAW.

29 (B) THE GOVERNOR MAY ADOPT SUPPLEMENTAL REGULATIONS TO
30 GOVERN MATTERS NOT PROVIDED FOR IN THE MANUAL FOR COURTS-MARTIAL.

31 **13A-702. UNLAWFULLY INFLUENCING ACTION OF COURT.**

1 (A) (1) NO AUTHORITY CONVENING A GENERAL, SPECIAL, OR SUMMARY
2 COURT-MARTIAL, NOR ANY OTHER COMMANDING OFFICER, OR OFFICER SERVING
3 ON THE STAFF THEREOF, MAY CENSURE, REPRIMAND, OR ADMONISH THE COURT OR
4 ANY MEMBER, THE MILITARY JUDGE, OR COUNSEL THEREOF, WITH RESPECT TO THE
5 FINDINGS OR SENTENCE ADJUDGED BY THE COURT OR WITH RESPECT TO ANY
6 OTHER EXERCISE OF ITS OR THEIR FUNCTIONS IN THE CONDUCT OF THE
7 PROCEEDINGS.

8 (2) A PERSON SUBJECT TO THIS TITLE MAY NOT ATTEMPT TO COERCE
9 OR, BY ANY UNAUTHORIZED MEANS, INFLUENCE THE ACTION OF A COURT-MARTIAL
10 OR COURT OF INQUIRY OR ANY MEMBER THEREOF, IN REACHING THE FINDINGS OR
11 SENTENCE IN ANY CASE, OR THE ACTION OF ANY CONVENING, APPROVING, OR
12 REVIEWING AUTHORITY WITH RESPECT TO THEIR JUDICIAL ACTS.

13 (3) PARAGRAPHS (1) AND (2) OF THIS SUBSECTION DO NOT APPLY
14 WITH RESPECT TO:

15 (I) GENERAL INSTRUCTIONAL OR INFORMATIONAL COURSES IN
16 MILITARY JUSTICE IF SUCH COURSES ARE DESIGNED SOLELY FOR THE PURPOSE OF
17 INSTRUCTING MEMBERS OF A COMMAND IN THE SUBSTANTIVE AND PROCEDURAL
18 ASPECTS OF COURTS-MARTIAL; OR

19 (II) TO STATEMENTS AND INSTRUCTIONS GIVEN IN OPEN COURT
20 BY THE MILITARY JUDGE, SUMMARY COURT-MARTIAL OFFICER, OR COUNSEL.

21 (B) IN THE PREPARATION OF AN EFFECTIVENESS, FITNESS, OR EFFICIENCY
22 REPORT, OR ANY OTHER REPORT OR DOCUMENT USED IN WHOLE OR IN PART FOR
23 THE PURPOSE OF DETERMINING WHETHER A MEMBER OF THE STATE MILITARY
24 FORCES IS QUALIFIED TO BE ADVANCED IN GRADE, OR IN DETERMINING THE
25 ASSIGNMENT OR TRANSFER OF A MEMBER OF THE STATE MILITARY FORCES, OR IN
26 DETERMINING WHETHER A MEMBER OF THE STATE MILITARY FORCES SHOULD BE
27 RETAINED ON ACTIVE STATUS, NO PERSON SUBJECT TO THIS TITLE MAY, IN
28 PREPARING ANY SUCH REPORT:

29 (1) CONSIDER OR EVALUATE THE PERFORMANCE OF DUTY OF ANY
30 SUCH MEMBER AS A MEMBER OF A COURT-MARTIAL OR WITNESS THEREIN; OR

31 (2) GIVE A LESS FAVORABLE RATING OR EVALUATION OF ANY
32 COUNSEL OF THE ACCUSED BECAUSE OF ZEALOUS REPRESENTATION BEFORE A
33 COURT-MARTIAL.

34 13A-703. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL.

1 **(A) THE TRIAL COUNSEL OF A GENERAL OR SPECIAL COURT-MARTIAL**
2 **SHALL:**

3 **(1) BE A MEMBER IN GOOD STANDING OF THE STATE BAR;**

4 **(2) PROSECUTE IN THE NAME OF THE STATE; AND**

5 **(3) UNDER THE DIRECTION OF THE COURT, PREPARE THE RECORD OF**
6 **THE PROCEEDINGS.**

7 **(B) (1) THE ACCUSED HAS THE RIGHT TO BE REPRESENTED IN DEFENSE**
8 **BEFORE A GENERAL OR SPECIAL COURT-MARTIAL OR AT AN INVESTIGATION UNDER**
9 **§ 13A-603 OF THIS TITLE AS PROVIDED IN THIS SUBSECTION.**

10 **(2) THE ACCUSED MAY BE REPRESENTED BY CIVILIAN COUNSEL AT**
11 **THE PROVISION AND EXPENSE OF THE ACCUSED.**

12 **(3) THE ACCUSED MAY BE REPRESENTED BY MILITARY COUNSEL:**

13 **(I) DETAILED UNDER § 13A-506 OF THIS TITLE; OR**

14 **(II) OF THE ACCUSED'S OWN SELECTION IF THAT COUNSEL IS**
15 **REASONABLY AVAILABLE AS DETERMINED UNDER PARAGRAPH (7) OF THIS**
16 **SUBSECTION.**

17 **(4) IF THE ACCUSED IS REPRESENTED BY CIVILIAN COUNSEL,**
18 **MILITARY COUNSEL DETAILED OR SELECTED UNDER PARAGRAPH (3) OF THIS**
19 **SUBSECTION SHALL ACT AS ASSOCIATE COUNSEL UNLESS EXCUSED AT THE**
20 **REQUEST OF THE ACCUSED.**

21 **(5) EXCEPT AS PROVIDED UNDER PARAGRAPH (6) OF THIS**
22 **SUBSECTION, IF THE ACCUSED IS REPRESENTED BY MILITARY COUNSEL OF THE**
23 **ACCUSED'S OWN SELECTION UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION, ANY**
24 **MILITARY COUNSEL DETAILED UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION**
25 **SHALL BE EXCUSED.**

26 **(6) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**
27 **ACCUSED IS NOT ENTITLED TO BE REPRESENTED BY MORE THAN ONE MILITARY**
28 **COUNSEL.**

29 **(II) THE PERSON AUTHORIZED UNDER REGULATIONS ADOPTED**
30 **UNDER § 13A-506 OF THIS TITLE TO DETAIL COUNSEL, IN THAT PERSON'S SOLE**

1 DISCRETION:

2 1. MAY DETAIL ADDITIONAL MILITARY COUNSEL AS
3 ASSISTANT DEFENSE COUNSEL; AND

4 2. IF THE ACCUSED IS REPRESENTED BY MILITARY
5 COUNSEL OF THE ACCUSED'S OWN SELECTION UNDER PARAGRAPH (3)(II) OF THIS
6 SUBSECTION, MAY APPROVE A REQUEST FROM THE ACCUSED THAT MILITARY
7 COUNSEL DETAILED UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION ACT AS
8 ASSOCIATE DEFENSE COUNSEL.

9 (7) THE SENIOR FORCE JUDGE ADVOCATE OF THE SAME FORCE OF
10 WHICH THE ACCUSED IS A MEMBER SHALL DETERMINE WHETHER THE MILITARY
11 COUNSEL SELECTED BY AN ACCUSED IS REASONABLY AVAILABLE.

12 (C) IN ANY COURT-MARTIAL PROCEEDING RESULTING IN A CONVICTION,
13 THE DEFENSE COUNSEL:

14 (1) MAY FORWARD FOR ATTACHMENT TO THE RECORD OF
15 PROCEEDINGS A BRIEF OF SUCH MATTERS AS COUNSEL DETERMINES SHOULD BE
16 CONSIDERED ON BEHALF OF THE ACCUSED ON REVIEW, INCLUDING ANY OBJECTION
17 TO THE CONTENTS OF THE RECORD THAT COUNSEL CONSIDERS APPROPRIATE;

18 (2) MAY ASSIST THE ACCUSED IN THE SUBMISSION OF ANY MATTER
19 UNDER § 13A-902 OF THIS TITLE; AND

20 (3) MAY TAKE OTHER ACTION AUTHORIZED BY THIS TITLE.

21 13A-704. SESSIONS.

22 (A) AT ANY TIME AFTER THE SERVICE OF CHARGES THAT HAVE BEEN
23 REFERRED FOR TRIAL TO A COURT-MARTIAL COMPOSED OF A MILITARY JUDGE AND
24 MEMBERS, THE MILITARY JUDGE MAY, SUBJECT § 13A-606 OF THIS TITLE, CALL THE
25 COURT INTO SESSION WITHOUT THE PRESENCE OF THE MEMBERS FOR THE
26 PURPOSE OF:

27 (1) HEARING AND DETERMINING MOTIONS RAISING DEFENSES OR
28 OBJECTIONS THAT ARE CAPABLE OF DETERMINATION WITHOUT TRIAL OF THE
29 ISSUES RAISED BY A PLEA OF NOT GUILTY;

30 (2) HEARING AND RULING ON ANY MATTER THAT MAY BE RULED ON
31 BY THE MILITARY JUDGE UNDER THIS TITLE, WHETHER OR NOT THE MATTER IS
32 APPROPRIATE FOR LATER CONSIDERATION OR DECISION BY THE MEMBERS OF THE

1 COURT;

2 (3) HOLDING THE ARRAIGNMENT AND RECEIVING THE PLEAS OF THE
3 ACCUSED;

4 (4) CONDUCTING A SENTENCING PROCEEDING AND SENTENCING THE
5 ACCUSED UNDER § 13A-718 OF THIS SUBTITLE; AND

6 (5) PERFORMING ANY OTHER PROCEDURAL FUNCTION THAT DOES
7 NOT REQUIRE THE PRESENCE OF THE MEMBERS OF THE COURT UNDER THIS TITLE.

8 (B) PROCEEDINGS CONDUCTED UNDER SUBSECTION (A) OF THIS SECTION:

9 (1) SHALL BE CONDUCTED IN THE PRESENCE OF THE ACCUSED, THE
10 DEFENSE COUNSEL, AND THE TRIAL COUNSEL AND SHALL BE MADE A PART OF THE
11 RECORD; AND

12 (2) MAY BE CONDUCTED NOTWITHSTANDING THE NUMBER OF COURT
13 MEMBERS AND WITHOUT REGARD TO § 13A-508 OF THIS TITLE.

14 (C) (1) WHEN THE MEMBERS OF A COURT-MARTIAL DELIBERATE OR
15 VOTE, ONLY THE MEMBERS MAY BE PRESENT.

16 (2) ALL OTHER PROCEEDINGS, INCLUDING ANY OTHER
17 CONSULTATION OF THE MEMBERS OF THE COURT WITH COUNSEL OR THE MILITARY
18 JUDGE, SHALL BE MADE A PART OF THE RECORD AND SHALL BE IN THE PRESENCE
19 OF THE ACCUSED, THE DEFENSE COUNSEL, THE TRIAL COUNSEL, AND THE MILITARY
20 JUDGE.

21 13A-705. CONTINUANCES.

22 THE MILITARY JUDGE OF A COURT-MARTIAL OR A SUMMARY
23 COURT-MARTIAL MAY, FOR REASONABLE CAUSE, GRANT A CONTINUANCE TO ANY
24 PARTY FOR SUCH TIME, AND AS OFTEN, AS MAY APPEAR TO BE JUST.

25 13A-706. CHALLENGES

26 (A) (1) (I) THE MILITARY JUDGE AND MEMBERS OF A GENERAL OR
27 SPECIAL COURT-MARTIAL MAY BE CHALLENGED BY THE ACCUSED OR THE TRIAL
28 COUNSEL FOR CAUSE STATED TO THE COURT.

29 (II) THE MILITARY JUDGE SHALL DETERMINE THE RELEVANCY
30 AND VALIDITY OF CHALLENGES FOR CAUSE AND MAY NOT RECEIVE A CHALLENGE

1 TO MORE THAN ONE PERSON AT A TIME.

2 (III) CHALLENGES BY THE TRIAL COUNSEL SHALL ORDINARILY
3 BE PRESENTED AND DECIDED BEFORE THOSE BY THE ACCUSED ARE OFFERED.

4 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF
5 EXERCISE OF A CHALLENGE FOR CAUSE REDUCES THE COURT BELOW THE NUMBER
6 OF MEMBERS REQUIRED BY § 13A-401 OF THIS TITLE, ALL PARTIES SHALL,
7 NOTWITHSTANDING § 13A-508 OF THIS TITLE, EITHER EXERCISE OR WAIVE ANY
8 CHALLENGE FOR CAUSE THEN APPARENT AGAINST THE REMAINING MEMBERS OF
9 THE COURT BEFORE ADDITIONAL MEMBERS ARE DETAILED TO THE COURT.

10 (II) PEREMPTORY CHALLENGES MAY NOT BE EXERCISED AT
11 THAT TIME.

12 (B) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,
13 EACH ACCUSED AND THE TRIAL COUNSEL ARE ENTITLED INITIALLY TO ONE
14 PEREMPTORY CHALLENGE OF MEMBERS OF THE COURT.

15 (II) THE MILITARY JUDGE MAY NOT BE CHALLENGED EXCEPT
16 FOR CAUSE.

17 (2) IF EXERCISE OF A PEREMPTORY CHALLENGE REDUCES THE
18 COURT BELOW THE NUMBER OF MEMBERS REQUIRED BY § 13A-401 OF THIS TITLE,
19 THE PARTIES SHALL, NOTWITHSTANDING § 13A-508 OF THIS TITLE, EITHER
20 EXERCISE OR WAIVE ANY REMAINING PEREMPTORY CHALLENGE, NOT PREVIOUSLY
21 WAIVED, AGAINST THE REMAINING MEMBERS OF THE COURT BEFORE ADDITIONAL
22 MEMBERS ARE DETAILED TO THE COURT.

23 (3) WHENEVER ADDITIONAL MEMBERS ARE DETAILED TO THE
24 COURT, AND AFTER ANY CHALLENGES FOR CAUSE AGAINST SUCH ADDITIONAL
25 MEMBERS ARE PRESENTED AND DECIDED, EACH ACCUSED AND THE TRIAL COUNSEL
26 ARE ENTITLED TO ONE PEREMPTORY CHALLENGE AGAINST MEMBERS NOT
27 PREVIOUSLY SUBJECT TO PEREMPTORY CHALLENGE.

28 13A-707. OATHS OR AFFIRMATIONS.

29 (A) (1) BEFORE PERFORMING THEIR RESPECTIVE DUTIES, MILITARY
30 JUDGES, GENERAL AND SPECIAL COURTS-MARTIAL MEMBERS, TRIAL COUNSEL,
31 DEFENSE COUNSEL, REPORTERS, AND INTERPRETERS SHALL TAKE AN OATH OR
32 AFFIRMATION IN THE PRESENCE OF THE ACCUSED TO PERFORM THEIR DUTIES
33 FAITHFULLY.

1 **(2) THE FORM OF THE OATH OR AFFIRMATION, THE TIME AND PLACE**
2 **OF THE TAKING THEREOF, THE MANNER OF RECORDING THE SAME, AND WHETHER**
3 **THE OATH OR AFFIRMATION SHALL BE TAKEN FOR ALL CASES IN WHICH THESE**
4 **DUTIES ARE TO BE PERFORMED OR FOR A PARTICULAR CASE, SHALL BE AS**
5 **PRESCRIBED IN REGULATION OR AS PROVIDED BY LAW.**

6 **(3) THE REGULATIONS MAY PROVIDE THAT AN OATH OR**
7 **AFFIRMATION TO PERFORM FAITHFULLY THE DUTIES AS A MILITARY JUDGE, TRIAL**
8 **COUNSEL, OR DEFENSE COUNSEL MAY BE TAKEN AT ANY TIME BY ANY JUDGE**
9 **ADVOCATE OR OTHER PERSON CERTIFIED OR DESIGNATED TO BE QUALIFIED OR**
10 **COMPETENT FOR THE DUTY, AND IF SUCH AN OATH OR AFFIRMATION IS TAKEN, IT**
11 **NEED NOT AGAIN BE TAKEN AT THE TIME THE JUDGE ADVOCATE OR OTHER PERSON**
12 **IS DETAILED TO THAT DUTY.**

13 **(B) EACH WITNESS BEFORE A COURT-MARTIAL SHALL BE EXAMINED**
14 **UNDER OATH OR AFFIRMATION.**

15 **13A-708. STATUTE OF LIMITATIONS.**

16 **(A) A PERSON CHARGED WITH ABSENCE WITHOUT LEAVE OR MISSING**
17 **MOVEMENT IN TIME OF WAR, MURDER, RAPE OR SEXUAL ASSAULT, OR RAPE OR**
18 **SEXUAL ASSAULT OF A CHILD MAY BE PUNISHED AT ANY TIME WITHOUT LIMITATION.**

19 **(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON**
20 **CHARGED WITH AN OFFENSE IS NOT LIABLE TO BE TRIED BY COURT-MARTIAL OR**
21 **PUNISHED UNDER § 13A-301 OF THIS TITLE IF THE OFFENSE WAS COMMITTED**
22 **MORE THAN 5 YEARS BEFORE:**

23 **(1) THE RECEIPT OF SWORN CHARGES AND SPECIFICATIONS BY AN**
24 **OFFICER EXERCISING COURT-MARTIAL JURISDICTION OVER THE COMMAND; OR**

25 **(2) THE IMPOSITION OF PUNISHMENT UNDER § 13A-301 OF THIS**
26 **TITLE.**

27 **(C) PERIODS IN WHICH THE ACCUSED IS ABSENT WITHOUT AUTHORITY OR**
28 **FLEEING FROM JUSTICE SHALL BE EXCLUDED IN COMPUTING THE PERIOD OF**
29 **LIMITATION PRESCRIBED IN THIS SECTION.**

30 **(D) PERIODS IN WHICH THE ACCUSED WAS ABSENT FROM TERRITORY IN**
31 **WHICH THE STATE HAS THE AUTHORITY TO APPREHEND THE ACCUSED, OR IN THE**
32 **CUSTODY OF CIVIL AUTHORITIES, OR IN THE HANDS OF THE ENEMY, SHALL BE**
33 **EXCLUDED IN COMPUTING THE PERIOD OF LIMITATION PRESCRIBED IN THIS**
34 **SECTION.**

(E) (1) IF CHARGES OR SPECIFICATIONS ARE DISMISSED AS DEFECTIVE OR INSUFFICIENT FOR ANY CAUSE AND THE PERIOD PRESCRIBED BY THE APPLICABLE STATUTE OF LIMITATIONS HAS EXPIRED OR WILL EXPIRE WITHIN 180 DAYS AFTER THE DATE OF DISMISSAL OF THE CHARGES AND SPECIFICATIONS, TRIAL AND PUNISHMENT UNDER NEW CHARGES AND SPECIFICATIONS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS IF THE CONDITIONS SPECIFIED IN PARAGRAPH (2) OF THIS SUBSECTION ARE MET.

(2) THE CONDITIONS REFERRED TO IN PARAGRAPH (1) OF THIS SUBSECTION ARE THAT THE NEW CHARGES AND SPECIFICATIONS MUST:

(I) BE RECEIVED BY AN OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION OVER THE COMMAND WITHIN 180 DAYS AFTER THE DISMISSAL OF THE CHARGES OR SPECIFICATIONS; AND

(II) ALLEGE THE SAME ACTS OR OMISSIONS THAT WERE ALLEGED OR INCLUDED IN THE DISMISSED CHARGES OR SPECIFICATIONS.

13A-709. FORMER JEOPARDY.

(A) A PERSON MAY NOT, WITHOUT THE CONSENT OF THE PERSON, BE TRIED A SECOND TIME FOR THE SAME OFFENSE.

(B) A PROCEEDING IN WHICH AN ACCUSED HAS BEEN FOUND GUILTY BY A COURT-MARTIAL ON ANY CHARGE OR SPECIFICATION IS NOT A TRIAL IN THE SENSE OF THIS SECTION UNTIL THE FINDING OF GUILTY HAS BECOME FINAL AFTER REVIEW OF THE CASE HAS BEEN FULLY COMPLETED.

(C) (1) A COURT-MARTIAL WITH A MILITARY JUDGE ALONE IS A TRIAL IN THE SENSE OF THIS SECTION IF, WITHOUT FAULT OF THE ACCUSED, AFTER INTRODUCTION OF EVIDENCE AND BEFORE ANNOUNCEMENT OF FINDINGS UNDER § 13A-718 OF THIS SUBTITLE, THE CASE IS DISMISSED OR TERMINATED BY THE CONVENING AUTHORITY OR ON MOTION OF THE PROSECUTION FOR FAILURE OF AVAILABLE EVIDENCE OR WITNESSES.

(2) A COURT-MARTIAL WITH A MILITARY JUDGE AND MEMBERS IS A TRIAL IN THE SENSE OF THIS ARTICLE IF, WITHOUT FAULT OF THE ACCUSED, AFTER THE MEMBERS, HAVING TAKEN AN OATH AS MEMBERS UNDER § 13A-707 OF THIS SUBTITLE AND AFTER COMPLETION OF CHALLENGES UNDER § 13A-706 OF THIS SUBTITLE, ARE IMPANELED, AND BEFORE ANNOUNCEMENT OF FINDINGS UNDER § 13A-718 OF THIS SUBTITLE, THE CASE IS DISMISSED OR TERMINATED BY THE CONVENING AUTHORITY OR ON MOTION OF THE PROSECUTION FOR FAILURE OF

1 AVAILABLE EVIDENCE OR WITNESSES.

2 **13A-710. PLEAS OF THE ACCUSED.**

3 (A) IF AN ACCUSED AFTER ARRAIGNMENT MAKES AN IRREGULAR
4 PLEADING, OR AFTER A PLEA OF GUILTY SETS UP A MATTER INCONSISTENT WITH
5 THE PLEA, OR IF IT APPEARS THAT THE ACCUSED HAS ENTERED THE PLEA OF
6 GUILTY IMPROVIDENTLY OR THROUGH LACK OF UNDERSTANDING OF ITS MEANING
7 AND EFFECT, OR IF THE ACCUSED FAILS OR REFUSES TO PLEAD, A PLEA OF NOT
8 GUILTY SHALL BE ENTERED IN THE RECORD, AND THE COURT SHALL PROCEED AS
9 THOUGH THE ACCUSED HAD PLEADED NOT GUILTY.

10 (B) (1) WITH RESPECT TO ANY CHARGE OR SPECIFICATION TO WHICH A
11 PLEA OF GUILTY HAS BEEN MADE BY THE ACCUSED AND ACCEPTED BY THE
12 MILITARY JUDGE OR BY A COURT-MARTIAL WITHOUT A MILITARY JUDGE, A FINDING
13 OF GUILTY OF THE CHARGE OR SPECIFICATION MAY BE ENTERED IMMEDIATELY
14 WITHOUT VOTE.

15 (2) THIS FINDING SHALL CONSTITUTE THE FINDING OF THE COURT
16 UNLESS THE PLEA OF GUILTY IS WITHDRAWN PRIOR TO ANNOUNCEMENT OF THE
17 SENTENCE, IN WHICH EVENT THE PROCEEDINGS SHALL CONTINUE AS THOUGH THE
18 ACCUSED HAD PLEADED NOT GUILTY.

19 (C) A VARIANCE FROM THE REQUIREMENTS OF THIS SECTION IS HARMLESS
20 ERROR IF THE VARIANCE DOES NOT MATERIALLY PREJUDICE THE SUBSTANTIAL
21 RIGHTS OF THE ACCUSED.

22 **13A-711. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.**

23 (A) THE TRIAL COUNSEL, THE DEFENSE COUNSEL, AND THE
24 COURT-MARTIAL SHALL HAVE EQUAL OPPORTUNITY TO OBTAIN WITNESSES AND
25 OTHER EVIDENCE AS PRESCRIBED BY REGULATIONS AND PROVIDED BY LAW.

26 (B) (1) ANY SUBPOENA OR OTHER PROCESS ISSUED UNDER THIS ARTICLE
27 WILL PERTAIN ONLY TO MILITARY PERSONNEL OR MILITARY PROPERTY.

28 (2) EXCEPT AS OTHERWISE AUTHORIZED BY THE COURT FOR GOOD
29 CAUSE, EVERY SUBPOENA OR OTHER PROCESS ISSUED UNDER THIS SECTION SHALL
30 BE ON A FORM SIMILAR TO THAT WHICH COURTS OF THE STATE HAVING CRIMINAL
31 JURISDICTION MAY ISSUE OR PROPERLY ACCEPT.

32 (3) THE FORM OF A SUBPOENA SHALL CONTAIN:

1 (I) THE CAPTION OF THE ACTION;

2 (II) THE NAME AND ADDRESS OF THE PERSON TO WHOM IT IS
3 DIRECTED;

4 (III) THE NAME OF THE PERSON AT WHOSE REQUEST IT IS
5 ISSUED;

6 (IV) THE DATE, TIME, AND PLACE WHERE ATTENDANCE IS
7 REQUIRED;

8 (V) A DESCRIPTION OF ANY DOCUMENTS, RECORDINGS,
9 PHOTOGRAPHS, OR OTHER TANGIBLE THINGS TO BE PRODUCED;

10 (VI) THE DATE OF ISSUANCE AND AN EXPIRATION DATE, WHICH
11 SHALL BE 60 DAYS AFTER THE DATE OF ISSUANCE; AND

12 (VII) A STATEMENT THAT THE SUBPOENA MAY BE SERVED WITHIN
13 60 DAYS AFTER ITS ISSUANCE AND MAY NOT BE SERVED THEREAFTER.

14 (4) EVERY SUBPOENA OR OTHER PROCESS ISSUED UNDER THIS
15 SECTION SHALL RUN TO ANY PART OF THE UNITED STATES AND TO THE
16 COMMONWEALTHS AND POSSESSIONS OF THE UNITED STATES.

17 (C) A SUBPOENA OR OTHER PROCESS MAY BE ISSUED TO COMPEL A
18 WITNESS TO APPEAR AND TESTIFY:

19 (1) BEFORE A COURT-MARTIAL, MILITARY COMMISSION, OR COURT
20 OF INQUIRY;

21 (2) AT A DEPOSITION UNDER § 13A-714 OF THIS SUBTITLE; OR

22 (3) AS OTHERWISE AUTHORIZED UNDER THIS TITLE.

23 (D) (1) A SUBPOENA OR OTHER PROCESS MAY BE ISSUED TO COMPEL THE
24 PRODUCTION OF EVIDENCE:

25 (I) FOR A COURT-MARTIAL, OR COURT OF INQUIRY;

26 (II) FOR A DEPOSITION UNDER § 13A-714 OF THIS SUBTITLE;

27 (III) FOR AN INVESTIGATION OF AN OFFENSE UNDER THIS TITLE;

28 OR

(IV) AS OTHERWISE AUTHORIZED UNDER THIS TITLE.

(2) AN INVESTIGATIVE SUBPOENA UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION MAY BE ISSUED BEFORE REFERRAL OF CHARGES TO A COURT-MARTIAL ONLY IF A GENERAL COURT-MARTIAL CONVENING AUTHORITY HAS AUTHORIZED COUNSEL FOR THE GOVERNMENT TO ISSUE SUCH A SUBPOENA OR A MILITARY JUDGE ISSUES SUCH A SUBPOENA PURSUANT TO § 13A-602 OF THIS TITLE.

(3) WITH RESPECT TO AN INVESTIGATION OF AN OFFENSE UNDER THIS TITLE, A MILITARY JUDGE DETAILED IN ACCORDANCE WITH § 13A-505 OR § 13A-602 OF THIS TITLE MAY ISSUE WARRANTS OR COURT ORDERS FOR THE CONTENTS OF, AND RECORDS CONCERNING, WIRE OR ELECTRONIC COMMUNICATIONS IN THE SAME MANNER AS SUCH WARRANTS AND ORDERS MAY BE ISSUED BY A DISTRICT COURT OF THE UNITED STATES UNDER CHAPTER 121, TITLE 18 OF THE UNITED STATES CODE, SUBJECT TO SUCH LIMITATIONS AS THE ADJUTANT GENERAL MAY PRESCRIBE BY REGULATION.

(E) IF A PERSON REQUESTS RELIEF FROM A SUBPOENA OR OTHER PROCESS UNDER THIS SECTION ON GROUNDS THAT COMPLIANCE IS UNREASONABLE OR OPPRESSIVE OR IS PROHIBITED BY LAW, A MILITARY JUDGE DETAILED IN ACCORDANCE WITH § 13A-505 OR § 13A-602 OF THIS TITLE SHALL REVIEW THE REQUEST AND SHALL:

(1) ORDER THAT THE SUBPOENA OR OTHER PROCESS BE MODIFIED OR WITHDRAWN, AS APPROPRIATE; OR

(2) ORDER THE PERSON TO COMPLY WITH THE SUBPOENA OR OTHER PROCESS.

13A-712. REFUSAL TO APPEAR OR TESTIFY.

A PERSON NOT SUBJECT TO THIS TITLE MAY BE PUNISHED BY A STATE COURT OF COMPETENT JURISDICTION IF THE PERSON:

(1) HAS BEEN DULY SUBPOENAED TO APPEAR AS A WITNESS OR TO PRODUCE BOOKS AND RECORDS BEFORE A COURT-MARTIAL OR COURT OF INQUIRY, OR BEFORE ANY MILITARY OR CIVIL OFFICER DESIGNATED TO TAKE A DEPOSITION TO BE READ IN EVIDENCE BEFORE SUCH A COURT;

(2) HAS BEEN DULY PAID OR TENDERED THE FEES AND MILEAGE OF A WITNESS AT THE RATES ALLOWED TO WITNESSES ATTENDING A CRIMINAL COURT OF

1 THE STATE; AND

2 (3) WILLFULLY NEGLECTS OR REFUSES TO APPEAR, OR REFUSES TO
3 QUALIFY AS A WITNESS OR TO TESTIFY OR TO PRODUCE ANY EVIDENCE WHICH THAT
4 PERSON MAY HAVE BEEN LEGALLY SUBPOENAED TO PRODUCE.

5 13A-713. CONTEMPT.

6 (A) A MILITARY JUDGE OR SUMMARY COURT-MARTIAL OFFICER MAY
7 PUNISH FOR CONTEMPT A PERSON WHO USES ANY MENACING WORD, SIGN, OR
8 GESTURE IN THE JUDGE'S OR OFFICER'S PRESENCE, OR WHO DISTURBS THE
9 PROCEEDINGS BY RIOT OR DISORDER.

10 (B) A PERSON SUBJECT TO THIS TITLE MAY BE PUNISHED FOR CONTEMPT
11 BY CONFINEMENT NOT TO EXCEED 30 DAYS OR A FINE OF \$ 100, OR BOTH.

12 (C) A PERSON NOT SUBJECT TO THIS TITLE MAY BE PUNISHED BY A STATE
13 COURT OF COMPETENT JURISDICTION AT THE REQUEST OF THE MILITARY JUDGE.

14 13A-714. DEPOSITIONS.

15 (A) AT ANY TIME AFTER CHARGES HAVE BEEN SIGNED AS PROVIDED IN §
16 13A-601 OF THIS TITLE, ANY PARTY MAY TAKE ORAL OR WRITTEN DEPOSITIONS
17 UNLESS THE MILITARY JUDGE OR SUMMARY COURT-MARTIAL OFFICER HEARING
18 THE CASE OR, IF THE CASE IS NOT BEING HEARD, AN AUTHORITY COMPETENT TO
19 CONVENE A COURT-MARTIAL FOR THE TRIAL OF THOSE CHARGES FORBIDS IT FOR
20 GOOD CAUSE.

21 (B) THE PARTY AT WHOSE INSISTENCE A DEPOSITION IS TO BE TAKEN
22 SHALL GIVE TO EVERY OTHER PARTY REASONABLE WRITTEN NOTICE OF THE TIME
23 AND PLACE FOR TAKING THE DEPOSITION.

24 (C) DEPOSITIONS MAY BE TAKEN BEFORE AND AUTHENTICATED BY ANY
25 MILITARY OR CIVIL OFFICER AUTHORIZED BY THE LAWS OF THE STATE OR BY THE
26 LAWS OF THE PLACE WHERE THE DEPOSITION IS TAKEN TO ADMINISTER OATHS.

27 (D) A DULY AUTHENTICATED DEPOSITION TAKEN ON REASONABLE NOTICE
28 TO THE OTHER PARTIES, SO FAR AS OTHERWISE ADMISSIBLE UNDER THE RULES OF
29 EVIDENCE, MAY BE READ IN EVIDENCE OR, IN THE CASE OF AUDIOTAPE, VIDEOTAPE,
30 DIGITAL IMAGE OR FILE, OR SIMILAR MATERIAL, MAY BE PLAYED IN EVIDENCE
31 BEFORE ANY MILITARY COURT, IF IT APPEARS:

32 (1) THAT THE WITNESS RESIDES OR IS BEYOND THE STATE IN WHICH

1 THE COURT IS ORDERED TO SIT, OR BEYOND 100 MILES FROM THE PLACE OF TRIAL
2 OR HEARING;

3 (2) THAT THE WITNESS BY REASON OF DEATH, AGE, SICKNESS,
4 BODILY INFIRMITY, IMPRISONMENT, MILITARY NECESSITY, NON AMENABILITY TO
5 PROCESS, OR OTHER REASONABLE CAUSE, IS UNABLE OR REFUSES TO APPEAR AND
6 TESTIFY IN PERSON AT THE PLACE OF TRIAL OR HEARING; OR

7 (3) THAT THE PRESENT WHEREABOUTS OF THE WITNESS ARE
8 UNKNOWN.

9 (E) (1) REPRESENTATION OF THE PARTIES WITH RESPECT TO A
10 DEPOSITION SHALL BE BY COUNSEL DETAILED IN THE SAME MANNER AS TRIAL
11 COUNSEL AND DEFENSE COUNSEL ARE DETAILED UNDER § 13A-506 OF THIS TITLE.

12 (2) THE ACCUSED SHALL HAVE THE RIGHT TO BE REPRESENTED BY
13 CIVILIAN OR MILITARY COUNSEL IN THE SAME MANNER AS SUCH COUNSEL ARE
14 PROVIDED FOR IN § 13A-703 OF THIS SUBTITLE.

15 (F) A DEPOSITION ORDER UNDER SUBSECTION (A) OF THIS SECTION DOES
16 NOT CONTROL THE ADMISSIBILITY OF THE DEPOSITION IN A COURT-MARTIAL OR
17 OTHER PROCEEDING UNDER THIS TITLE.

18 13A-715. ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY.

19 (A) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IN
20 ANY CASE NOT EXTENDING TO THE DISMISSAL OF A COMMISSIONED OFFICER, THE
21 SWORN TESTIMONY, CONTAINED IN THE DULY AUTHENTICATED RECORD OF
22 PROCEEDINGS OF A COURT OF INQUIRY, OF A PERSON WHOSE ORAL TESTIMONY
23 CANNOT BE OBTAINED, MAY, IF OTHERWISE ADMISSIBLE UNDER THE RULES OF
24 EVIDENCE, BE READ IN EVIDENCE BY ANY PARTY BEFORE A COURT-MARTIAL IF THE
25 ACCUSED WAS A PARTY BEFORE THE COURT OF INQUIRY AND IF THE SAME ISSUE
26 WAS INVOLVED OR IF THE ACCUSED CONSENTS TO THE INTRODUCTION OF SUCH
27 EVIDENCE.

28 (2) TESTIMONY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION
29 MAY BE READ IN EVIDENCE:

30 (I) BY THE DEFENSE IN CASES EXTENDING TO THE DISMISSAL
31 OF A COMMISSIONED OFFICER; AND

32 (II) BEFORE A COURT OF INQUIRY.

(B) SWORN TESTIMONY THAT IS RECORDED BY AUDIOTAPE, VIDEOTAPE, OR SIMILAR METHOD AND IS CONTAINED IN THE DULY AUTHENTICATED RECORD OF PROCEEDINGS OF A COURT OF INQUIRY IS ADMISSIBLE BEFORE A COURT-MARTIAL, MILITARY COMMISSION, COURT OF INQUIRY, OR MILITARY BOARD, TO THE SAME EXTENT AS SWORN TESTIMONY MAY BE READ IN EVIDENCE.

13A-715.1. DEFENSE OF LACK OF MENTAL RESPONSIBILITY.

(A) (1) IT IS AN AFFIRMATIVE DEFENSE IN A TRIAL BY COURT-MARTIAL THAT, AT THE TIME OF THE COMMISSION OF THE ACTS CONSTITUTING THE OFFENSE, THE ACCUSED, AS A RESULT OF A SEVERE MENTAL DISEASE OR DEFECT, WAS UNABLE TO APPRECIATE THE NATURE AND QUALITY OR THE WRONGFULNESS OF THE ACTS.

(2) MENTAL DISEASE OR DEFECT DOES NOT OTHERWISE CONSTITUTE A DEFENSE.

(B) PROCEDURES FOR THE DEFENSE OF LACK OF MENTAL RESPONSIBILITY WILL BE GOVERNED BY THE RULES OF USE OF COURTS-MARTIAL TO THE EXTENT THEY DO NOT CONFLICT WITH STATE SUBSTANTIVE LAW.

13A-716. VOTING AND RULINGS.

(A) (1) VOTING BY MEMBERS OF A GENERAL OR SPECIAL COURT-MARTIAL ON THE FINDINGS AND ON THE SENTENCE SHALL BE BY SECRET WRITTEN BALLOT.

(2) THE JUNIOR MEMBER OF THE COURT SHALL COUNT THE VOTES.

(3) THE COUNT SHALL BE CHECKED BY THE PRESIDENT, WHO SHALL FORTHWITH ANNOUNCE THE RESULT OF THE BALLOT TO THE MEMBERS OF THE COURT.

(B) (1) THE MILITARY JUDGE SHALL RULE ON ALL QUESTIONS OF LAW AND ALL INTERLOCUTORY QUESTIONS ARISING DURING THE PROCEEDINGS.

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, ANY SUCH RULING MADE BY THE MILITARY JUDGE ON ANY QUESTION OF LAW OR ANY INTERLOCUTORY QUESTION OTHER THAN THE FACTUAL ISSUE OF MENTAL RESPONSIBILITY OF THE ACCUSED IS FINAL AND CONSTITUTES THE RULING OF THE COURT.

(II) THE MILITARY JUDGE MAY CHANGE THE RULING AT ANY

1 TIME DURING THE TRIAL.

2 (3) UNLESS THE RULING IS FINAL, IF ANY MEMBER OBJECTS
3 THERETO, THE COURT SHALL BE CLEARED AND CLOSED AND THE QUESTION
4 DECIDED BY A VOICE VOTE AS PROVIDED IN § 13A-717 OF THIS TITLE, BEGINNING
5 WITH THE JUNIOR IN RANK.

6 (C) BEFORE A VOTE IS TAKEN ON THE FINDINGS, THE MILITARY JUDGE
7 SHALL, IN THE PRESENCE OF THE ACCUSED AND COUNSEL, INSTRUCT THE MEMBERS
8 OF THE COURT AS TO THE ELEMENTS OF THE OFFENSE AND CHARGE THAT:

9 (1) THE ACCUSED MUST BE PRESUMED TO BE INNOCENT UNTIL GUILT
10 IS ESTABLISHED BY LEGAL AND COMPETENT EVIDENCE BEYOND A REASONABLE
11 DOUBT;

12 (2) IN THE CASE BEING CONSIDERED, IF THERE IS A REASONABLE
13 DOUBT AS TO THE GUILT OF THE ACCUSED, THE DOUBT MUST BE RESOLVED IN
14 FAVOR OF THE ACCUSED AND THE ACCUSED MUST BE ACQUITTED;

15 (3) IF THERE IS A REASONABLE DOUBT AS TO THE DEGREE OF GUILT,
16 THE FINDING MUST BE IN A LOWER DEGREE AS TO WHICH THERE IS NO REASONABLE
17 DOUBT; AND

18 (4) THE BURDEN OF PROOF TO ESTABLISH THE GUILT OF THE
19 ACCUSED BEYOND REASONABLE DOUBT IS ON THE STATE.

20 (D) (1) SUBSECTIONS (A), (B), AND (C) OF THIS SECTION DO NOT APPLY
21 TO A COURT-MARTIAL COMPOSED OF A MILITARY JUDGE ONLY.

22 (2) THE MILITARY JUDGE OF A COURT-MARTIAL COMPOSED OF A
23 MILITARY JUDGE ONLY SHALL DETERMINE ALL QUESTIONS OF LAW AND FACT
24 ARISING DURING THE PROCEEDINGS AND, IF THE ACCUSED IS CONVICTED, ADJUDGE
25 AN APPROPRIATE SENTENCE.

26 (3) THE MILITARY JUDGE OF A COURT-MARTIAL COMPOSED OF A
27 MILITARY JUDGE ONLY SHALL MAKE A GENERAL FINDING AND SHALL IN ADDITION,
28 ON REQUEST, FIND THE FACTS SPECIALLY.

29 (4) IF AN OPINION OR MEMORANDUM OF DECISION IS FILED, IT WILL
30 BE SUFFICIENT IF THE FINDINGS OF FACT APPEAR THEREIN.

31 13A-717. NUMBER OF VOTES REQUIRED.

1 (A) A PERSON MAY NOT BE CONVICTED OF AN OFFENSE IN A GENERAL OR
2 SPECIAL COURT-MARTIAL, OTHER THAN

3 (1) AFTER A PLEA OF GUILTY UNDER § 13A-710 OF THIS TITLE;

4 (2) BY A MILITARY JUDGE IN A COURT-MARTIAL WITH A MILITARY
5 JUDGE ALONE UNDER § 13A-401 OF THIS TITLE; OR

6 (3) IN A COURT-MARTIAL WITH MEMBERS UNDER § 13A-401 OF THIS
7 TITLE, BY THE CONCURRENCE OF AT LEAST THREE-FOURTHS OF THE MEMBERS
8 PRESENT WHEN THE VOTE IS TAKEN.

9 (B) (1) EXCEPT AS PROVIDED IN SUBSECTION (A) OF THIS SECTION,
10 SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ALL MATTERS TO BE DECIDED
11 BY MEMBERS OF A GENERAL OR SPECIAL COURT-MARTIAL SHALL BE DETERMINED
12 BY A MAJORITY VOTE.

13 (2) A RECONSIDERATION OF A FINDING OF GUILTY OR
14 RECONSIDERATION OF A SENTENCE, WITH A VIEW TOWARD DECREASING THE
15 SENTENCE, MAY BE MADE BY ANY LESSER VOTE THAT INDICATES THE
16 RECONSIDERATION IS NOT OPPOSED BY THE NUMBER OF VOTES REQUIRED FOR
17 THAT FINDING OR SENTENCE.

18 13A-718. COURT TO ANNOUNCE ACTION.

19 (A) A COURT-MARTIAL SHALL ANNOUNCE ITS FINDINGS AND SENTENCE TO
20 THE PARTIES AS SOON AS DETERMINED.

21 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF
22 THE ACCUSED IS CONVICTED OF AN OFFENSE IN A TRIAL BY GENERAL OR SPECIAL
23 COURT-MARTIAL, THE MILITARY JUDGE SHALL SENTENCE THE ACCUSED.

24 (2) IF THE ACCUSED IS CONVICTED OF AN OFFENSE BY GENERAL OR
25 SPECIAL COURT-MARTIAL CONSISTING OF A MILITARY JUDGE AND MEMBERS AND
26 THE ACCUSED ELECTS SENTENCING BY MEMBERS UNDER § 13A-504 OF THIS TITLE,
27 THE MEMBERS SHALL SENTENCE THE ACCUSED.

28 (3) THE SENTENCE DETERMINED UNDER THIS SUBSECTION
29 CONSTITUTES THE SENTENCE OF THE ACCUSED.

30 (C) IF THE ACCUSED IS CONVICTED OF AN OFFENSE IN A TRIAL BY SUMMARY
31 COURT-MARTIAL, THE COURT-MARTIAL SHALL SENTENCE THE ACCUSED.

13A-718.1. PLEA AGREEMENTS.

(A) (1) AT ANY TIME BEFORE THE ANNOUNCEMENT OF FINDINGS UNDER § 13A-718 OF THIS SUBTITLE, THE CONVENING AUTHORITY AND THE ACCUSED MAY ENTER INTO A PLEA AGREEMENT WITH RESPECT TO SUCH MATTERS AS:

(I) THE MANNER IN WHICH THE CONVENING AUTHORITY WILL DISPOSE OF ONE OR MORE CHARGES AND SPECIFICATIONS; AND

(II) LIMITATIONS ON THE SENTENCE THAT MAY BE ADJUDGED FOR ONE OR MORE CHARGES AND SPECIFICATIONS.

(2) THE MILITARY JUDGE OF A GENERAL OR SPECIAL COURT-MARTIAL MAY NOT PARTICIPATE IN DISCUSSIONS BETWEEN THE PARTIES CONCERNING PROSPECTIVE TERMS AND CONDITIONS OF A PLEA AGREEMENT.

(B) THE MILITARY JUDGE OF A GENERAL OR SPECIAL COURT-MARTIAL SHALL REJECT A PLEA AGREEMENT THAT:

(1) CONTAINS A PROVISION THAT HAS NOT BEEN ACCEPTED BY BOTH PARTIES;

(2) CONTAINS A PROVISION THAT IS NOT UNDERSTOOD BY THE ACCUSED;

(3) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, CONTAINS A PROVISION FOR A SENTENCE THAT IS LESS THAN THE MANDATORY MINIMUM SENTENCE APPLICABLE TO AN OFFENSE REFERRED TO IN § 13A-802 OF THIS TITLE;

(4) IS PROHIBITED BY LAW; OR

(5) IS CONTRARY TO, OR IS INCONSISTENT WITH, A REGULATION PRESCRIBED BY THE PRESIDENT WITH RESPECT TO TERMS, CONDITIONS, OR OTHER ASPECTS OF PLEA AGREEMENTS.

(C) WITH RESPECT TO AN OFFENSE REFERRED TO IN § 13A-802 OF THIS TITLE:

(1) THE MILITARY JUDGE MAY ACCEPT A PLEA AGREEMENT THAT PROVIDES FOR A SENTENCE OF BAD CONDUCT DISCHARGE; AND

(2) ON RECOMMENDATION OF THE TRIAL COUNSEL, IN EXCHANGE

1 FOR SUBSTANTIAL ASSISTANCE BY THE ACCUSED IN THE INVESTIGATION OR
2 PROSECUTION OF ANOTHER PERSON WHO HAS COMMITTED AN OFFENSE, THE
3 MILITARY JUDGE MAY ACCEPT A PLEA AGREEMENT THAT PROVIDES FOR A
4 SENTENCE THAT IS LESS THAN THE MANDATORY MINIMUM SENTENCE FOR THE
5 OFFENSE CHARGED.

6 (D) ON ACCEPTANCE BY THE MILITARY JUDGE OF A GENERAL OR SPECIAL
7 COURT-MARTIAL, A PLEA AGREEMENT SHALL BIND THE PARTIES AND THE COURT-
8 MARTIAL.

9 **13A-719. RECORD OF TRIAL.**

10 (A) (1) EACH GENERAL AND SPECIAL COURT-MARTIAL SHALL KEEP A
11 SEPARATE RECORD OF THE PROCEEDINGS IN EACH CASE BROUGHT BEFORE IT, AND
12 THE RECORD SHALL BE AUTHENTICATED BY THE SIGNATURE OF THE MILITARY
13 JUDGE.

14 (2) IF THE RECORD CANNOT BE AUTHENTICATED BY THE MILITARY
15 JUDGE BY REASON OF THE JUDGE'S DEATH, DISABILITY, OR ABSENCE, IT SHALL BE
16 AUTHENTICATED BY THE SIGNATURE OF THE TRIAL COUNSEL OR BY THAT OF A
17 MEMBER, IF THE TRIAL COUNSEL IS UNABLE TO AUTHENTICATE IT BY REASON OF
18 TRIAL COUNSEL'S DEATH, DISABILITY, OR ABSENCE.

19 (3) IN A COURT-MARTIAL CONSISTING OF ONLY A MILITARY JUDGE,
20 THE RECORD SHALL BE AUTHENTICATED BY THE COURT REPORTER UNDER THE
21 SAME CONDITIONS THAT WOULD IMPOSE SUCH A DUTY ON A MEMBER UNDER THIS
22 SUBSECTION.

23 (B) (1) A COMPLETE VERBATIM RECORD OF THE PROCEEDINGS AND
24 TESTIMONY SHALL BE PREPARED IN EACH GENERAL AND SPECIAL COURT-MARTIAL
25 CASE RESULTING IN A CONVICTION.

26 (2) IN ALL OTHER COURT-MARTIAL CASES, THE RECORD SHALL
27 CONTAIN SUCH MATTERS AS MAY BE PRESCRIBED BY REGULATIONS.

28 (C) EACH SUMMARY COURT-MARTIAL SHALL KEEP A SEPARATE RECORD OF
29 THE PROCEEDINGS IN EACH CASE, AND THE RECORD SHALL BE AUTHENTICATED IN
30 THE MANNER AS MAY BE PRESCRIBED BY REGULATIONS.

31 (D) A COPY OF THE RECORD OF THE PROCEEDINGS OF EACH GENERAL AND
32 SPECIAL COURT-MARTIAL SHALL BE GIVEN TO THE ACCUSED AS SOON AS IT IS
33 AUTHENTICATED.

SUBTITLE 8. SENTENCES.

13A-801. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED.

(A) PUNISHMENT BY FLOGGING, OR BY BRANDING, MARKING, OR TATTOOING ON THE BODY, OR ANY OTHER CRUEL OR UNUSUAL PUNISHMENT MAY NOT BE ADJUDGED BY A COURT-MARTIAL OR INFLICTED ON ANY PERSON SUBJECT TO THIS TITLE.

(B) THE USE OF IRONS, SINGLE OR DOUBLE, EXCEPT FOR THE PURPOSE OF SAFE CUSTODY, IS PROHIBITED.

13A-802. MAXIMUM LIMITS.

(A) (1) THE PUNISHMENT WHICH A COURT-MARTIAL MAY DIRECT FOR AN OFFENSE MAY NOT EXCEED SUCH LIMITS AS PRESCRIBED BY THIS TITLE, BUT IN NO INSTANCE MAY A SENTENCE EXCEED MORE THAN 10 YEARS FOR A MILITARY OFFENSE, NOR MAY A SENTENCE OF DEATH BE ADJUDGED.

(2) (I) A CONVICTION BY GENERAL COURT-MARTIAL OF ANY MILITARY OFFENSE FOR WHICH AN ACCUSED MAY RECEIVE A SENTENCE OF CONFINEMENT FOR MORE THAN 1 YEAR IS A FELONY OFFENSE.

(II) EXCEPT FOR CONVICTIONS BY A SUMMARY COURT-MARTIAL, ALL OTHER MILITARY OFFENSES ARE MISDEMEANORS.

(3) A CONVICTION BY A SUMMARY COURT-MARTIAL IS NOT A CRIMINAL CONVICTION.

(B) THE LIMITS OF PUNISHMENT FOR VIOLATIONS OF THE PUNITIVE PROVISIONS PRESCRIBED HEREIN SHALL BE LESSER OF THE SENTENCES PRESCRIBED BY THE MANUAL FOR COURTS-MARTIAL OF THE UNITED STATES IN EFFECT ON JANUARY 1, 2020, BUT IN NO INSTANCE SHALL ANY PUNISHMENT EXCEED THAT AUTHORIZED BY THIS TITLE.

(C) (1) IN SENTENCING AN ACCUSED UNDER § 13A-718 OF THIS TITLE, A COURT-MARTIAL SHALL IMPOSE PUNISHMENT THAT IS SUFFICIENT, BUT NOT GREATER THAN NECESSARY, TO PROMOTE JUSTICE AND TO MAINTAIN GOOD ORDER AND DISCIPLINE IN THE ARMED FORCES, TAKING INTO CONSIDERATION:

(I) THE NATURE AND CIRCUMSTANCES OF THE OFFENSE AND THE HISTORY AND CHARACTERISTICS OF THE ACCUSED;

(II) THE IMPACT OF THE OFFENSE ON:

1. THE FINANCIAL, SOCIAL, PSYCHOLOGICAL, OR MEDICAL WELL-BEING OF ANY VICTIM OF THE OFFENSE; AND

2. THE MISSION, DISCIPLINE, OR EFFICIENCY OF THE COMMAND OF THE ACCUSED AND ANY VICTIM OF THE OFFENSE;

(III) THE NEED FOR THE SENTENCE:

1. TO REFLECT THE SERIOUSNESS OF THE OFFENSE;

2. TO PROMOTE RESPECT FOR THE LAW;

3. TO PROVIDE JUST PUNISHMENT FOR THE OFFENSE;

4. TO PROMOTE ADEQUATE DETERRENCE OF MISCONDUCT;

5. TO PROTECT OTHERS FROM FURTHER CRIMES BY THE ACCUSED;

6. TO REHABILITATE THE ACCUSED; AND

7. TO PROVIDE, IN APPROPRIATE CASES, THE OPPORTUNITY FOR RETRAINING AND RETURN TO DUTY TO MEET THE NEEDS OF THE SERVICE; AND

(IV) THE SENTENCES AVAILABLE UNDER THIS TITLE.

(2) (I) IN ANNOUNCING THE SENTENCE IN A GENERAL OR SPECIAL COURT-MARTIAL IN WHICH THE ACCUSED IS SENTENCED BY A MILITARY JUDGE ALONE UNDER § 13A-718 OF THIS TITLE, THE MILITARY JUDGE SHALL, WITH RESPECT TO EACH OFFENSE OF WHICH THE ACCUSED IS FOUND GUILTY, SPECIFY THE TERM OF CONFINEMENT, IF ANY, AND THE AMOUNT OF THE FINE, IF ANY.

(II) IF THE ACCUSED IS SENTENCED TO CONFINEMENT FOR MORE THAN ONE OFFENSE, THE MILITARY JUDGE SHALL SPECIFY WHETHER THE TERMS OF CONFINEMENT ARE TO RUN CONSECUTIVELY OR CONCURRENTLY.

(3) IN A GENERAL OR SPECIAL COURT-MARTIAL IN WHICH THE ACCUSED HAS ELECTED SENTENCING BY MEMBERS, THE COURT-MARTIAL SHALL ANNOUNCE A SINGLE SENTENCE FOR ALL OF THE OFFENSES OF WHICH THE

1 ACCUSED WAS FOUND GUILTY.

2 (D) (1) WITH THE APPROVAL OF THE SENIOR JUDGE ADVOCATE
3 CONCERNED, AND CONSISTENT WITH STANDARDS AND PROCEDURES SET FORTH IN
4 REGULATIONS PRESCRIBED BY THE ADJUTANT GENERAL, THE GOVERNMENT MAY
5 APPEAL A SENTENCE TO THE COURT OF MILITARY APPEALS, ON THE GROUNDS
6 THAT:

7 (I) THE SENTENCE VIOLATES THE LAW; OR

8 (II) THE SENTENCE IS PLAINLY UNREASONABLE, AS
9 DETERMINED IN ACCORDANCE WITH STANDARDS AND PROCEDURES PRESCRIBED
10 BY THE MANUAL FOR COURTS-MARTIAL OR REGULATIONS AUTHORIZED UNDER §
11 13A-701 OF THIS TITLE.

12 (2) AN APPEAL UNDER THIS SUBSECTION MUST BE FILED WITHIN 60
13 DAYS AFTER THE DATE ON WHICH THE JUDGMENT OF A
14 COURT-MARTIAL IS ENTERED INTO THE RECORD UNDER § 13A-902 OF THIS TITLE.

15 13A-803. EFFECTIVE DATE OF SENTENCES.

16 (A) (1) WHENEVER A SENTENCE OF A COURT-MARTIAL AS LAWFULLY
17 ADJUDGED AND APPROVED INCLUDES A FORFEITURE OF PAY OR ALLOWANCES IN
18 ADDITION TO CONFINEMENT NOT SUSPENDED, THE FORFEITURE MAY APPLY TO PAY
19 OR ALLOWANCES BECOMING DUE ON OR AFTER THE DATE THE SENTENCE IS
20 APPROVED BY THE CONVENING AUTHORITY.

21 (2) A FORFEITURE MAY NOT EXTEND TO ANY PAY OR ALLOWANCES
22 ACCRUED BEFORE THE DATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION.

23 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ANY PERIOD
24 OF CONFINEMENT INCLUDED IN A SENTENCE OF A COURT-MARTIAL BEGINS TO RUN
25 FROM THE DATE THE SENTENCE IS ADJUDGED BY THE COURT-MARTIAL.

26 (2) PERIODS DURING WHICH THE SENTENCE TO CONFINEMENT IS
27 SUSPENDED OR DEFERRED SHALL BE EXCLUDED IN COMPUTING THE SERVICE OF
28 THE TERM OF CONFINEMENT.

29 (C) ALL OTHER SENTENCES OF COURTS-MARTIAL ARE EFFECTIVE ON THE
30 DATE ORDERED EXECUTED.

31 13A-804. DEFERMENT OF SENTENCES.

1 (A) (1) ON APPLICATION BY AN ACCUSED WHO IS UNDER SENTENCE TO
2 CONFINEMENT THAT HAS NOT BEEN ORDERED EXECUTED, THE CONVENING
3 AUTHORITY OR, IF THE ACCUSED IS NO LONGER UNDER THAT PERSON'S
4 JURISDICTION, THE PERSON EXERCISING GENERAL COURT-MARTIAL JURISDICTION
5 OVER THE COMMAND TO WHICH THE ACCUSED IS CURRENTLY ASSIGNED, MAY IN
6 THAT PERSON'S SOLE DISCRETION DEFER SERVICE OF THE SENTENCE TO
7 CONFINEMENT.

8 (2) THE DEFERMENT SHALL TERMINATE WHEN THE SENTENCE IS
9 ORDERED EXECUTED.

10 (3) THE DEFERMENT MAY BE RESCINDED AT ANY TIME BY THE
11 PERSON WHO GRANTED IT OR, IF THE ACCUSED IS NO LONGER UNDER THAT
12 PERSON'S JURISDICTION, BY THE PERSON EXERCISING GENERAL COURT-MARTIAL
13 JURISDICTION OVER THE COMMAND TO WHICH THE ACCUSED IS CURRENTLY
14 ASSIGNED.

15 (B) (1) IN A CASE IN WHICH A COURT-MARTIAL SENTENCES AN ACCUSED
16 REFERRED TO IN PARAGRAPH (2) OF THIS SUBSECTION TO CONFINEMENT, THE
17 CONVENING AUTHORITY MAY DEFER THE SERVICE OF THE SENTENCE TO
18 CONFINEMENT, WITHOUT THE CONSENT OF THE ACCUSED, UNTIL AFTER THE
19 ACCUSED HAS BEEN PERMANENTLY RELEASED TO THE STATE MILITARY FORCES BY
20 A STATE, THE UNITED STATES, OR A FOREIGN COUNTRY REFERRED TO IN THAT
21 PARAGRAPH.

22 (2) PARAGRAPH (1) OF THIS SUBSECTION APPLIES TO A PERSON
23 SUBJECT TO THIS TITLE WHO:

24 (I) WHILE IN THE CUSTODY OF A STATE, THE UNITED STATES,
25 OR A FOREIGN COUNTRY, IS TEMPORARILY RETURNED BY THAT STATE, THE UNITED
26 STATES, OR A FOREIGN COUNTRY TO THE STATE MILITARY FORCES FOR TRIAL BY
27 COURT-MARTIAL; AND

28 (II) AFTER THE COURT-MARTIAL, IS RETURNED TO THAT STATE,
29 THE UNITED STATES, OR A FOREIGN COUNTRY UNDER THE AUTHORITY OF A
30 MUTUAL AGREEMENT OR TREATY, AS THE CASE MAY BE.

31 (C) IN A CASE IN WHICH A COURT-MARTIAL SENTENCES AN ACCUSED TO
32 CONFINEMENT AND THE SENTENCE TO CONFINEMENT HAS BEEN ORDERED
33 EXECUTED, BUT IN WHICH REVIEW OF THE CASE UNDER § 13A-908 OF THIS TITLE IS
34 PENDING, THE ADJUTANT GENERAL MAY DEFER FURTHER SERVICE OF THE
35 SENTENCE TO CONFINEMENT WHILE THAT REVIEW IS PENDING.

1 **13A-805. EXECUTION OF CONFINEMENT.**

2 (A) (1) A SENTENCE OF CONFINEMENT ADJUDGED BY A COURT-MARTIAL,
3 WHETHER OR NOT THE SENTENCE INCLUDES DISCHARGE OR DISMISSAL, AND
4 WHETHER OR NOT THE DISCHARGE OR DISMISSAL HAS BEEN EXECUTED, MAY BE
5 CARRIED INTO EXECUTION BY CONFINEMENT IN ANY PLACE AUTHORIZED BY THIS
6 TITLE.

7 (2) PERSONS SO CONFINED ARE SUBJECT TO THE SAME DISCIPLINE
8 AND TREATMENT AS PERSONS REGULARLY CONFINED OR COMMITTED TO THAT
9 PLACE OF CONFINEMENT.

10 (B) THE OMISSION OF HARD LABOR AS A SENTENCE AUTHORIZED UNDER
11 THIS TITLE DOES NOT DEPRIVE THE STATE CONFINEMENT FACILITY FROM
12 EMPLOYING IT IF HARD LABOR IS OTHERWISE WITHIN THE AUTHORITY OF THAT
13 FACILITY TO DO SO.

14 (C) NO PLACE OF CONFINEMENT MAY REQUIRE PAYMENT OF ANY FEE OR
15 CHARGE FOR SO RECEIVING OR CONFINING A PERSON EXCEPT AS OTHERWISE
16 PROVIDED BY LAW.

17 **13A-806. SENTENCES: REDUCTION IN ENLISTED GRADE ON APPROVAL.**

18 (A) A COURT-MARTIAL SENTENCE OF AN ENLISTED MEMBER IN A PAY
19 GRADE ABOVE E-1, AS APPROVED BY THE CONVENING AUTHORITY, THAT INCLUDES
20 A DISHONORABLE OR BAD-CONDUCT DISCHARGE OR CONFINEMENT REDUCES THAT
21 MEMBER TO PAY GRADE E-1, EFFECTIVE ON THE DATE OF THAT APPROVAL.

22 (B) IF THE SENTENCE OF A MEMBER WHO IS REDUCED IN PAY GRADE UNDER
23 SUBSECTION (A) OF THIS SECTION IS SET ASIDE OR DISAPPROVED, OR, AS FINALLY
24 APPROVED, DOES NOT INCLUDE ANY PUNISHMENT NAMED IN SUBSECTION (A) OF
25 THIS SECTION, THE RIGHTS AND PRIVILEGES OF WHICH THE PERSON WAS DEPRIVED
26 BECAUSE OF THAT REDUCTION SHALL BE RESTORED, INCLUDING PAY AND
27 ALLOWANCES.

28 **13A-807. SENTENCES: FORFEITURE OF PAY AND ALLOWANCES DURING**
29 **CONFINEMENT.**

30 (A) (1) A COURT-MARTIAL SENTENCE DESCRIBED IN PARAGRAPH (4) OF
31 THIS SUBSECTION SHALL RESULT IN THE FORFEITURE OF PAY, OR OF PAY AND
32 ALLOWANCES, DUE THAT MEMBER DURING ANY PERIOD OF CONFINEMENT OR
33 PAROLE.

1 (2) THE FORFEITURE PURSUANT TO THIS ARTICLE SHALL TAKE
2 EFFECT ON THE DATE DETERMINED UNDER § 13A-803 OF THIS SUBTITLE AND MAY
3 BE DEFERRED AS PROVIDED BY THAT SECTION.

4 (3) THE PAY AND ALLOWANCES FORFEITED, IN THE CASE OF A
5 GENERAL COURT-MARTIAL, SHALL BE ALL PAY AND ALLOWANCES DUE THAT
6 MEMBER DURING SUCH PERIOD AND, IN THE CASE OF A SPECIAL COURT-MARTIAL,
7 SHALL BE TWO-THIRDS OF ALL PAY DUE THAT MEMBER DURING SUCH PERIOD.

8 (4) A SENTENCE COVERED BY THIS SUBTITLE IS ANY SENTENCE THAT
9 INCLUDES:

10 (I) CONFINEMENT FOR MORE THAN 6 MONTHS; OR

11 (II) CONFINEMENT FOR 6 MONTHS OR LESS AND A
12 DISHONORABLE OR BAD-CONDUCT DISCHARGE OR DISMISSAL.

13 (B) (1) IN A CASE INVOLVING AN ACCUSED WHO HAS DEPENDENTS, THE
14 CONVENING AUTHORITY OR OTHER PERSON ACTING UNDER § 13A-902 OF THIS
15 TITLE MAY WAIVE ANY OR ALL OF THE FORFEITURES OF PAY AND ALLOWANCES
16 REQUIRED BY SUBSECTION (A) OF THIS SECTION FOR A PERIOD NOT TO EXCEED 6
17 MONTHS.

18 (2) ANY AMOUNT OF PAY OR ALLOWANCES THAT, EXCEPT FOR A
19 WAIVER UNDER THIS SUBSECTION, WOULD BE FORFEITED SHALL BE PAID, AS THE
20 CONVENING AUTHORITY OR OTHER PERSON TAKING ACTION DIRECTS, TO THE
21 DEPENDENTS OF THE ACCUSED.

22 (C) IF THE SENTENCE OF A MEMBER WHO FORFEITS PAY AND ALLOWANCES
23 UNDER SUBSECTION (A) OF THIS SECTION IS SET ASIDE OR DISAPPROVED OR, AS
24 FINALLY APPROVED, DOES NOT PROVIDE FOR A PUNISHMENT REFERRED TO IN
25 SUBSECTION (A) OF THIS SECTION, THE MEMBER SHALL BE PAID THE PAY AND
26 ALLOWANCES WHICH THE MEMBER WOULD HAVE BEEN PAID, EXCEPT FOR THE
27 FORFEITURE, FOR THE PERIOD DURING WHICH THE FORFEITURE WAS IN EFFECT.

28 SUBTITLE 9. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL.

29 13A-901. ERROR OF LAW; LESSER INCLUDED OFFENSE.

30 (A) A FINDING OR SENTENCE OF A COURT-MARTIAL MAY NOT BE HELD
31 INCORRECT ON THE GROUND OF AN ERROR OF LAW UNLESS THE ERROR
32 MATERIALLY PREJUDICES THE SUBSTANTIAL RIGHTS OF THE ACCUSED.

(B) ANY REVIEWING AUTHORITY WITH THE POWER TO APPROVE OR AFFIRM A FINDING OF GUILTY MAY APPROVE OR AFFIRM, INSTEAD, SO MUCH OF THE FINDING AS INCLUDES A LESSER INCLUDED OFFENSE.

13A-902. ACTION BY THE CONVENING AUTHORITY.

(A) THE FINDINGS AND SENTENCE OF A COURT-MARTIAL SHALL BE REPORTED PROMPTLY TO THE CONVENING AUTHORITY AFTER THE ANNOUNCEMENT OF THE SENTENCE.

(B) (1) (I) THE ACCUSED MAY SUBMIT TO THE CONVENING AUTHORITY MATTERS FOR CONSIDERATION BY THE CONVENING AUTHORITY WITH RESPECT TO THE FINDINGS AND THE SENTENCE.

(II) A SUBMISSION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE IN WRITING.

(III) EXCEPT IN A SUMMARY COURT-MARTIAL CASE, A SUBMISSION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE MADE WITHIN 10 DAYS AFTER THE ACCUSED HAS BEEN GIVEN AN AUTHENTICATED RECORD OF TRIAL AND, IF APPLICABLE, THE RECOMMENDATION OF A JUDGE ADVOCATE UNDER SUBSECTION (D) OF THIS SECTION.

(IV) IN A SUMMARY COURT-MARTIAL CASE, A SUBMISSION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE MADE WITHIN 7 DAYS AFTER THE SENTENCE IS ANNOUNCED.

(2) IF THE ACCUSED SHOWS THAT ADDITIONAL TIME IS REQUIRED FOR THE ACCUSED TO SUBMIT SUCH MATTERS, THE CONVENING AUTHORITY OR OTHER PERSON TAKING ACTION UNDER THIS SUBTITLE, FOR GOOD CAUSE, MAY EXTEND THE APPLICABLE PERIOD UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR NOT MORE THAN AN ADDITIONAL 20 DAYS.

(3) IN A SUMMARY COURT-MARTIAL CASE, THE ACCUSED SHALL BE PROMPTLY PROVIDED A COPY OF THE RECORD OF TRIAL FOR USE IN PREPARING A SUBMISSION AUTHORIZED BY PARAGRAPH (1) OF THIS SUBSECTION.

(4) (I) THE ACCUSED MAY WAIVE THE RIGHT TO MAKE A SUBMISSION TO THE CONVENING AUTHORITY UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(II) SUCH A WAIVER MUST BE MADE IN WRITING AND MAY NOT BE REVOKED.

(III) FOR THE PURPOSES OF SUBSECTION (C)(2) OF THIS SECTION, THE TIME WITHIN WHICH THE ACCUSED MAY MAKE A SUBMISSION UNDER THIS SUBSECTION SHALL BE DEEMED TO HAVE EXPIRED ON THE SUBMISSION OF SUCH A WAIVER TO THE CONVENING AUTHORITY.

(C) (1) (I) THE AUTHORITY UNDER THIS SECTION TO MODIFY THE FINDINGS AND SENTENCE OF A COURT-MARTIAL IS A MATTER OF COMMAND PREROGATIVE INVOLVING THE SOLE DISCRETION OF THE CONVENING AUTHORITY.

(II) IF IT IS IMPRACTICAL FOR THE CONVENING AUTHORITY TO ACT, THE CONVENING AUTHORITY SHALL FORWARD THE CASE TO A PERSON EXERCISING GENERAL COURT-MARTIAL JURISDICTION WHO MAY TAKE ACTION UNDER THIS SUBTITLE.

(2) (I) ACTION ON THE SENTENCE OF A COURT-MARTIAL SHALL BE TAKEN BY THE CONVENING AUTHORITY OR BY ANOTHER PERSON AUTHORIZED TO ACT UNDER THIS SECTION.

(II) ACTION MAY BE TAKEN ONLY AFTER CONSIDERATION OF ANY MATTERS SUBMITTED BY THE ACCUSED UNDER SUBSECTION (B) OF THIS SECTION OR AFTER THE TIME FOR SUBMITTING SUCH MATTERS EXPIRES, WHICHEVER IS EARLIER.

(III) THE CONVENING AUTHORITY OR OTHER PERSON TAKING SUCH ACTION, IN THAT PERSON'S SOLE DISCRETION, MAY APPROVE, DISAPPROVE, COMMUTE, OR SUSPEND THE SENTENCE IN WHOLE OR IN PART.

(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, ACTION ON THE FINDINGS OF A COURT-MARTIAL BY THE CONVENING AUTHORITY OR OTHER PERSON ACTING ON THE SENTENCE IS NOT REQUIRED.

(II) SUCH PERSON, IN THE PERSON'S SOLE DISCRETION, MAY:

1. DISMISS ANY CHARGE OR SPECIFICATION BY SETTING ASIDE A FINDING OF GUILTY THERETO; OR

2. CHANGE A FINDING OF GUILTY TO A CHARGE OR SPECIFICATION TO A FINDING OF GUILTY TO AN OFFENSE THAT IS A LESSER INCLUDED OFFENSE OF THE OFFENSE STATED IN THE CHARGE OR SPECIFICATION.

(D) (1) BEFORE ACTING UNDER THIS SUBTITLE ON ANY GENERAL OR SPECIAL COURT-MARTIAL CASE IN WHICH THERE IS A FINDING OF GUILT, THE

1 CONVENING AUTHORITY OR OTHER PERSON TAKING ACTION UNDER THIS SUBTITLE
2 SHALL OBTAIN AND CONSIDER THE WRITTEN RECOMMENDATION OF A JUDGE
3 ADVOCATE.

4 (2) THE CONVENING AUTHORITY OR OTHER PERSON TAKING ACTION
5 UNDER THIS SUBTITLE SHALL REFER THE RECORD OF TRIAL TO THE JUDGE
6 ADVOCATE, AND THE JUDGE ADVOCATE SHALL USE SUCH RECORD IN THE
7 PREPARATION OF THE RECOMMENDATION.

8 (3) THE RECOMMENDATION OF THE JUDGE ADVOCATE SHALL
9 INCLUDE SUCH MATTERS AS MAY BE PRESCRIBED BY REGULATION AND SHALL BE
10 SERVED ON THE ACCUSED, WHO MAY SUBMIT ANY MATTER IN RESPONSE UNDER
11 SUBSECTION (B) OF THIS SECTION.

12 (4) FAILURE TO OBJECT IN THE RESPONSE TO THE
13 RECOMMENDATION OR TO ANY MATTER ATTACHED TO THE RECOMMENDATION
14 WAIVES THE RIGHT TO OBJECT THERETO.

15 (E) (1) THE CONVENING AUTHORITY OR OTHER PERSON TAKING ACTION
16 UNDER THIS SECTION, IN THE PERSON'S SOLE DISCRETION, MAY ORDER A
17 PROCEEDING IN REVISION OR A REHEARING.

18 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A
19 PROCEEDING IN REVISION MAY BE ORDERED IF THERE IS AN APPARENT ERROR OR
20 OMISSION IN THE RECORD OR IF THE RECORD SHOWS IMPROPER OR INCONSISTENT
21 ACTION BY A COURT-MARTIAL WITH RESPECT TO THE FINDINGS OR SENTENCE THAT
22 CAN BE RECTIFIED WITHOUT MATERIAL PREJUDICE TO THE SUBSTANTIAL RIGHTS
23 OF THE ACCUSED.

24 (II) IN NO CASE MAY A PROCEEDING IN REVISION:

25 1. RECONSIDER A FINDING OF NOT GUILTY OF ANY
26 SPECIFICATION OR A RULING THAT AMOUNTS TO A FINDING OF NOT GUILTY;

27 2. RECONSIDER A FINDING OF NOT GUILTY OF ANY
28 CHARGE, UNLESS THERE HAS BEEN A FINDING OF GUILTY UNDER A SPECIFICATION
29 LAID UNDER THAT CHARGE, WHICH SUFFICIENTLY ALLEGES A VIOLATION OF SOME
30 SECTION OF THIS TITLE; OR

31 3. INCREASE THE SEVERITY OF THE SENTENCE UNLESS
32 THE SENTENCE PRESCRIBED FOR THE OFFENSE IS MANDATORY.

33 (3) (I) A REHEARING MAY BE ORDERED BY THE CONVENING

1 AUTHORITY OR OTHER PERSON TAKING ACTION UNDER THIS SECTION IF THAT
2 PERSON DISAPPROVES THE FINDINGS AND SENTENCE AND STATES THE REASONS
3 FOR DISAPPROVAL OF THE FINDINGS.

4 (II) IF SUCH PERSON DISAPPROVES THE FINDINGS AND
5 SENTENCE AND DOES NOT ORDER A REHEARING, THAT PERSON SHALL DISMISS THE
6 CHARGES.

7 (III) A REHEARING AS TO THE FINDINGS MAY NOT BE ORDERED
8 WHERE THERE IS A LACK OF SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT
9 THE FINDINGS.

10 (IV) A REHEARING AS TO THE SENTENCE MAY BE ORDERED IF
11 THE CONVENING AUTHORITY OR OTHER PERSON TAKING ACTION UNDER THIS
12 SUBSECTION DISAPPROVES THE SENTENCE.

13 **13A-903. WAIVER OF RIGHT TO APPEAL.**

14 (A) (1) IN EACH CASE SUBJECT TO APPELLATE REVIEW UNDER THIS
15 TITLE, THE ACCUSED MAY FILE WITH THE CONVENING AUTHORITY A STATEMENT
16 EXPRESSLY WAIVING THE RIGHT OF THE ACCUSED TO SUCH APPEAL.

17 (2) SUCH A WAIVER SHALL BE SIGNED BY BOTH THE ACCUSED AND
18 DEFENSE COUNSEL FOR THE ACCUSED AND SHALL BE FILED IN ACCORDANCE WITH
19 APPELLATE PROCEDURES AS PROVIDED BY LAW.

20 (B) THE ACCUSED MAY WITHDRAW AN APPEAL AT ANY TIME IN
21 ACCORDANCE WITH APPELLATE PROCEDURES AS PROVIDED BY LAW.

22 **13A-904. APPEAL BY THE STATE.**

23 (A) (1) IN A TRIAL BY GENERAL OR SPECIAL COURT-MARTIAL OR IN A
24 PRETRIAL PROCEEDING UNDER § 13A-601.1 OF THIS TITLE, THE STATE MAY
25 APPEAL THE FOLLOWING:

26 (I) AN ORDER OR A RULING OF THE MILITARY JUDGE THAT
27 TERMINATES THE PROCEEDINGS WITH RESPECT TO A CHARGE OR SPECIFICATION
28 OTHER THAN A FINDING OF GUILT;

29 (II) AN ORDER OR A RULING THAT EXCLUDES EVIDENCE THAT IS
30 SUBSTANTIAL PROOF OF A FACT MATERIAL IN THE PROCEEDING;

31 (III) AN ORDER OR A RULING THAT DIRECTS THE DISCLOSURE OF

1 CLASSIFIED INFORMATION;

2 (IV) AN ORDER OR A RULING THAT IMPOSES SANCTIONS FOR
3 NONDISCLOSURE OF CLASSIFIED INFORMATION;

4 (V) A REFUSAL OF THE MILITARY JUDGE TO ISSUE A
5 PROTECTIVE ORDER SOUGHT BY THE STATE TO PREVENT THE DISCLOSURE OF
6 CLASSIFIED INFORMATION;

7 (VI) A REFUSAL BY THE MILITARY JUDGE TO ENFORCE AN
8 ORDER DESCRIBED IN SUBSECTION (E) OF THIS SECTION THAT HAS PREVIOUSLY
9 BEEN ISSUED BY APPROPRIATE AUTHORITY; AND

10 (VII) AN ORDER OR RULING OF THE MILITARY JUDGE ENTERING
11 A FINDING OF NOT GUILTY WITH RESPECT TO A CHARGE OR SPECIFICATION
12 FOLLOWING THE RETURN OF A FINDING OF GUILTY BY THE MEMBERS.

13 (2) (I) 1. AN APPEAL OF AN ORDER OR RULING MAY NOT BE
14 TAKEN UNLESS THE TRIAL COUNSEL PROVIDES THE MILITARY JUDGE WITH
15 WRITTEN NOTICE OF APPEAL FROM THE ORDER OR RULING WITHIN
16 72 HOURS OF THE ORDER OR RULING.

17 2. SUCH NOTICE SHALL INCLUDE A CERTIFICATION BY
18 THE TRIAL COUNSEL THAT THE APPEAL IS NOT TAKEN FOR THE PURPOSE OF DELAY
19 AND, IF THE ORDER OR RULING APPEALED IS ONE THAT EXCLUDES EVIDENCE, THAT
20 THE EVIDENCE EXCLUDED IS SUBSTANTIAL PROOF OF A FACT MATERIAL IN THE
21 PROCEEDING.

22 (II) AN APPEAL OF AN ORDER OR RULING MAY NOT BE TAKEN
23 WHEN PROHIBITED BY § 13A-709 OF THIS TITLE.

24 (3) AN APPEAL UNDER THIS SECTION SHALL BE DILIGENTLY
25 PROSECUTED AS PROVIDED BY LAW.

26 (B) (1) AN APPEAL UNDER THIS SECTION SHALL BE FORWARDED TO THE
27 COURT PRESCRIBED IN § 13A-908 OF THIS SUBTITLE.

28 (2) IN RULING ON AN APPEAL UNDER THIS SECTION, THAT COURT
29 MAY ACT ONLY WITH RESPECT TO MATTERS OF LAW.

30 (C) ANY PERIOD OF DELAY RESULTING FROM AN APPEAL UNDER THIS
31 SECTION SHALL BE EXCLUDED IN DECIDING ANY ISSUE REGARDING DENIAL OF A
32 SPEEDY TRIAL UNLESS AN APPROPRIATE AUTHORITY DETERMINES THAT THE

1 APPEAL WAS FILED SOLELY FOR THE PURPOSE OF DELAY WITH THE KNOWLEDGE
2 THAT IT WAS TOTALLY FRIVOLOUS AND WITHOUT MERIT.

3 **13A-905. REHEARINGS.**

4 (A) (1) EACH REHEARING UNDER THIS TITLE SHALL TAKE PLACE BEFORE
5 A COURT-MARTIAL COMPOSED OF MEMBERS WHO ARE NOT MEMBERS OF THE
6 COURT-MARTIAL THAT FIRST HEARD THE CASE.

7 (2) ON A REHEARING, THE ACCUSED MAY NOT BE TRIED FOR ANY
8 OFFENSE OF WHICH THE ACCUSED WAS FOUND NOT GUILTY BY THE FIRST
9 COURT-MARTIAL, AND NO SENTENCE IN EXCESS OF OR MORE SEVERE THAN THE
10 ORIGINAL SENTENCE MAY BE APPROVED, UNLESS THE SENTENCE IS BASED ON A
11 FINDING OF GUILTY OF AN OFFENSE NOT CONSIDERED ON THE MERITS IN THE
12 ORIGINAL PROCEEDINGS, OR UNLESS THE SENTENCE PRESCRIBED FOR THE
13 OFFENSE IS MANDATORY.

14 (3) IF THE SENTENCE APPROVED AFTER THE FIRST COURT-MARTIAL
15 WAS IN ACCORDANCE WITH A PRETRIAL AGREEMENT AND THE ACCUSED AT THE
16 REHEARING CHANGES A PLEA WITH RESPECT TO THE CHARGES OR SPECIFICATIONS
17 ON WHICH THE PRETRIAL AGREEMENT WAS BASED, OR OTHERWISE DOES NOT
18 COMPLY WITH THE PRETRIAL AGREEMENT, THE APPROVED SENTENCE AS TO THOSE
19 CHARGES OR SPECIFICATIONS MAY INCLUDE ANY PUNISHMENT NOT IN EXCESS OF
20 THAT LAWFULLY ADJUDGED AT THE FIRST COURT-MARTIAL.

21 (B) IF, AFTER APPEAL BY THE GOVERNMENT UNDER § 13A-802 OF THIS
22 TITLE, THE SENTENCE ADJUDGED IS SET ASIDE AND A REHEARING ON SENTENCE IS
23 ORDERED BY THE COURT OF MILITARY APPEALS OR COURT OF APPEALS OF
24 MARYLAND, THE COURT-MARTIAL MAY IMPOSE ANY SENTENCE THAT IS IN
25 ACCORDANCE WITH THE ORDER OR RULING SETTING ASIDE THE ADJUDGED
26 SENTENCE, SUBJECT TO SUCH LIMITATIONS AS THE ADJUTANT GENERAL MAY
27 PRESCRIBE BY REGULATION.

28 **13A-906. REVIEW BY THE SENIOR FORCE JUDGE ADVOCATE.**

29 (A) (1) EACH GENERAL AND SPECIAL COURT-MARTIAL CASE IN WHICH
30 THERE HAS BEEN A FINDING OF GUILTY SHALL BE REVIEWED BY THE SENIOR FORCE
31 JUDGE ADVOCATE, OR A DESIGNEE.

32 (2) THE SENIOR FORCE JUDGE ADVOCATE, OR DESIGNEE, MAY NOT
33 REVIEW A CASE UNDER THIS SUBSECTION IF THAT PERSON HAS ACTED IN THE SAME
34 CASE AS AN ACCUSER, INVESTIGATING OFFICER, MEMBER OF THE COURT, MILITARY
35 JUDGE, OR COUNSEL OR HAS OTHERWISE ACTED ON BEHALF OF THE PROSECUTION

1 OR DEFENSE.

2 (3) THE SENIOR FORCE JUDGE ADVOCATE'S REVIEW SHALL BE IN
3 WRITING AND SHALL CONTAIN THE FOLLOWING:

4 (I) CONCLUSIONS AS TO WHETHER:

5 1. THE COURT HAD JURISDICTION OVER THE ACCUSED
6 AND THE OFFENSE;

7 2. THE CHARGE AND SPECIFICATION STATED AN
8 OFFENSE; AND

9 3. THE SENTENCE WAS WITHIN THE LIMITS PRESCRIBED
10 AS A MATTER OF LAW;

11 (II) A RESPONSE TO EACH ALLEGATION OF ERROR MADE IN
12 WRITING BY THE ACCUSED; AND

13 (III) IF THE CASE IS SENT FOR ACTION UNDER SUBSECTION (B)
14 OF THIS SECTION, A RECOMMENDATION AS TO THE APPROPRIATE ACTION TO BE
15 TAKEN AND AN OPINION AS TO WHETHER CORRECTIVE ACTION IS REQUIRED AS A
16 MATTER OF LAW.

17 (B) THE RECORD OF TRIAL AND RELATED DOCUMENTS IN EACH CASE
18 REVIEWED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE SENT FOR ACTION
19 TO THE ADJUTANT GENERAL, IF:

20 (1) THE JUDGE ADVOCATE WHO REVIEWED THE CASE RECOMMENDS
21 CORRECTIVE ACTION;

22 (2) THE SENTENCE APPROVED UNDER § 13A-902 OF THIS SUBTITLE
23 EXTENDS TO DISMISSAL, A BAD- CONDUCT OR DISHONORABLE DISCHARGE, OR
24 CONFINEMENT FOR MORE THAN 6 MONTHS; OR

25 (3) SUCH ACTION IS OTHERWISE REQUIRED BY REGULATIONS OF THE
26 ADJUTANT GENERAL.

27 (C) (1) THE ADJUTANT GENERAL MAY:

28 (I) DISAPPROVE OR APPROVE THE FINDINGS OR SENTENCE, IN
29 WHOLE OR IN PART;

1 (II) REMIT, COMMUTE, OR SUSPEND THE SENTENCE IN WHOLE
2 OR IN PART;

3 (III) EXCEPT WHERE THE EVIDENCE WAS INSUFFICIENT AT THE
4 TRIAL TO SUPPORT THE FINDINGS, ORDER A REHEARING ON THE FINDINGS, ON THE
5 SENTENCE, OR ON BOTH; OR

6 (IV) DISMISS THE CHARGES.

7 (2) IF A REHEARING IS ORDERED BUT THE CONVENING AUTHORITY
8 FINDS A REHEARING IMPRACTICABLE, THE CONVENING AUTHORITY SHALL DISMISS
9 THE CHARGES.

10 (3) IF THE OPINION OF THE SENIOR FORCE JUDGE ADVOCATE, OR
11 DESIGNEE, IN THE SENIOR FORCE JUDGE ADVOCATE'S REVIEW UNDER SUBSECTION
12 (A) OF THIS SECTION IS THAT CORRECTIVE ACTION IS REQUIRED AS A MATTER OF
13 LAW AND IF THE ADJUTANT GENERAL DOES NOT TAKE ACTION THAT IS AT LEAST AS
14 FAVORABLE TO THE ACCUSED AS THAT RECOMMENDED BY THE JUDGE ADVOCATE,
15 THE RECORD OF TRIAL AND ACTION THEREON SHALL BE SENT TO THE GOVERNOR
16 FOR REVIEW AND ACTION AS DEEMED APPROPRIATE.

17 (D) (1) THE SENIOR FORCE JUDGE ADVOCATE, OR A DESIGNEE, MAY
18 REVIEW ANY CASE IN WHICH THERE HAS BEEN A FINDING OF NOT GUILTY OF ALL
19 CHARGES AND SPECIFICATIONS.

20 (2) THE SENIOR FORCE JUDGE ADVOCATE, OR DESIGNEE, MAY NOT
21 REVIEW A CASE UNDER THIS SUBSECTION IF THAT PERSON HAS ACTED IN THE SAME
22 CASE AS AN ACCUSER, INVESTIGATING OFFICER, MEMBER OF THE COURT, MILITARY
23 JUDGE, OR COUNSEL OR HAS OTHERWISE ACTED ON BEHALF OF THE PROSECUTION
24 OR DEFENSE.

25 (3) THE SENIOR FORCE JUDGE ADVOCATE'S REVIEW SHALL BE
26 LIMITED TO QUESTIONS OF SUBJECT MATTER JURISDICTION.

27 (E) (1) THE RECORD OF TRIAL AND RELATED DOCUMENTS IN EACH CASE
28 REVIEWED UNDER SUBSECTION (D) OF THIS SECTION SHALL BE SENT FOR ACTION
29 TO THE ADJUTANT GENERAL.

30 (2) THE ADJUTANT GENERAL MAY:

31 (I) WHEN SUBJECT MATTER JURISDICTION IS FOUND TO BE
32 LACKING, VOID THE COURT-MARTIAL AB INITIO, WITH OR WITHOUT PREJUDICE TO
33 THE GOVERNMENT, AS THE ADJUTANT GENERAL DEEMS APPROPRIATE; OR

(II) RETURN THE RECORD OF TRIAL AND RELATED DOCUMENTS TO THE SENIOR FORCE JUDGE ADVOCATE FOR APPEAL BY THE GOVERNMENT AS PROVIDED BY LAW.

13A-907. DISPOSITION OF RECORDS AFTER REVIEW BY THE CONVENING AUTHORITY.

EXCEPT AS OTHERWISE REQUIRED BY THIS TITLE, ALL RECORDS OF TRIAL AND RELATED DOCUMENTS SHALL BE TRANSMITTED AND DISPOSED OF AS PRESCRIBED BY REGULATION AND PROVIDED BY LAW.

13A-908. REVIEW BY COURT OF MILITARY APPEALS; APPOINTMENT, POWERS, PRACTICES, AND PROCEDURES.

(A) (1) DECISIONS OF A COURT-MARTIAL ARE FROM A COURT WITH JURISDICTION TO ISSUE FELONY CONVICTIONS AND APPEALS ARE TO THE COURT OF MILITARY APPEALS.

(2) THE COURT OF MILITARY APPEALS SHALL FOLLOW THE FEDERAL MANUAL FOR COURTS-MARTIAL AND PROCEDURES AS PROVIDED BY THE COURT OF CRIMINAL APPEALS FOR THE SERVICE OF THE DEFENDANT.

(3) THE COURT SHALL HAVE THREE JUDGES PRESENT TO CONVENE.

(4) THE CHIEF JUDGE MAY CONVENE THE COURT AND MAY APPOINT ALTERNATES.

(5) THE COURT HAS THE AUTHORITY TO ADOPT A SEAL.

(B) (1) THE GOVERNOR SHALL:

(I) APPOINT UP TO 10 JUDGES, BUT AT LEAST THREE, TO THE COURT FOR 5-YEAR TERMS; AND

(II) APPOINT ONE JUDGE AS CHIEF JUDGE.

(2) JUDGES ARE NOT LIMITED TO ONE TERM.

(3) JUDGES SHOULD HAVE DEMONSTRATED EXPERIENCE IN MILITARY LAW AND BE A MEMBER OF THE MARYLAND BAR.

(C) THE COURT OF MILITARY APPEALS SHALL HAVE POWER OVER:

1 **(1) THE ISSUANCE OF EXTRAORDINARY WRITS RELATIVE TO ALL**
2 **MATTERS ARISING UNDER:**

3 **(I) THE PROVISIONS OF THIS TITLE;**

4 **(II) THE UNIFORM CODE OF MILITARY JUSTICE;**

5 **(III) ANY REGULATION ISSUED BY THE GOVERNOR PERTAINING**
6 **TO MEMBERS OF THE MARYLAND ORGANIZED MILITIA; AND**

7 **(IV) COURT-MARTIAL ACTIONS PENDING BEFORE ANY**
8 **MILITARY JUDGE OF THE MARYLAND MILITARY DEPARTMENT;**

9 **(2) ADJUDICATING APPEALS BY VICTIMS AS DESCRIBED IN § 13A-105**
10 **OF THIS TITLE; AND**

11 **(3) ADJUDICATING APPEALS OF SENTENCES OF A**
12 **COURT-MARTIAL THAT HAVE BEEN APPROVED BY THE CONVENING AUTHORITY,**
13 **WHICH MAY INCLUDE;**

14 **(I) DISMISSAL, IN THE CASE OF A COMMISSIONED OR WARRANT**
15 **OFFICER;**

16 **(II) DISHONORABLE DISCHARGE, IN THE CASE OF AN ENLISTED**
17 **PERSON;**

18 **(III) BAD-CONDUCT DISCHARGE, IN THE CASE OF AN ENLISTED**
19 **PERSON;**

20 **(IV) FORFEITURE OF ALL PAY AND ALLOWANCES; AND**

21 **(V) ANY CONFINEMENT.**

22 **(D) (1) AN APPELLANT MUST PETITION THE COURT FOR REVIEW, WHICH**
23 **IS A RIGHT ON REQUEST.**

24 **(2) THERE IS NO AUTOMATIC REVIEW OF SENTENCE.**

25 **(3) AN APPELLANT MAY WAIVE THE RIGHT TO REVIEW.**

26 **(E) THE MARYLAND NATIONAL GUARD STATE JUDGE ADVOCATE SHALL:**

(1) PROVIDE A FULL-TIME CLERK FOR THE COURT WHOSE OFFICE SHALL BE LOCATED WITH THE MARYLAND NATIONAL GUARD HEADQUARTERS; AND

(2) PROVIDE ADMINISTRATIVE SUPPORT FOR APPELLATE JUDGES, AS REQUIRED.

13A-909. APPELLATE COUNSEL.

(A) (1) THE SENIOR FORCE JUDGE ADVOCATE SHALL DETAIL A JUDGE ADVOCATE AS APPELLATE GOVERNMENT COUNSEL TO REPRESENT THE STATE IN THE REVIEW OR APPEAL OF CASES SPECIFIED IN § 13A-908 OF THIS SUBTITLE AND BEFORE ANY FEDERAL COURT WHEN REQUESTED TO DO SO BY THE STATE ATTORNEY GENERAL.

(2) APPELLATE GOVERNMENT COUNSEL MUST BE A MEMBER IN GOOD STANDING OF THE BAR OF THE HIGHEST COURT OF THE STATE TO WHICH THE APPEAL IS TAKEN.

(B) ON AN APPEAL BY THE STATE, AN ACCUSED HAS THE RIGHT TO BE REPRESENTED BY DETAILED MILITARY COUNSEL BEFORE ANY REVIEWING AUTHORITY AND BEFORE ANY APPELLATE COURT.

(C) ON THE APPEAL BY AN ACCUSED, THE ACCUSED HAS THE RIGHT TO BE REPRESENTED BY MILITARY COUNSEL BEFORE ANY REVIEWING AUTHORITY.

(D) ON THE REQUEST OF AN ACCUSED ENTITLED TO BE SO REPRESENTED, THE SENIOR FORCE JUDGE ADVOCATE SHALL APPOINT A JUDGE ADVOCATE TO REPRESENT THE ACCUSED IN THE REVIEW OR APPEAL OF CASES SPECIFIED IN SUBSECTIONS (B) AND (C) OF THIS SECTION.

(E) AN ACCUSED MAY BE REPRESENTED BY CIVILIAN APPELLATE COUNSEL AT NO EXPENSE TO THE STATE.

13A-910. VACATION OF SUSPENSION.

(A) (1) BEFORE THE VACATION OF THE SUSPENSION OF A SPECIAL COURT-MARTIAL SENTENCE, WHICH AS APPROVED INCLUDES A BAD-CONDUCT DISCHARGE, OR OF ANY GENERAL COURT-MARTIAL SENTENCE, THE OFFICER HAVING SPECIAL COURT-MARTIAL JURISDICTION OVER THE PROBATIONER SHALL HOLD A HEARING ON AN ALLEGED VIOLATION OF PROBATION.

(2) THE STAFF JUDGE ADVOCATE MAY DETAIL A JUDGE ADVOCATE, WHO IS CERTIFIED UNDER § 13A-506 OF THIS TITLE, TO CONDUCT THE HEARING.

1 **(3) THE PROBATIONER SHALL BE REPRESENTED AT THE HEARING BY**
2 **MILITARY COUNSEL IF THE PROBATIONER SO DESIRES.**

3 **(B) (1) THE RECORD OF THE HEARING AND THE RECOMMENDATION OF**
4 **THE OFFICER HAVING SPECIAL COURT-MARTIAL JURISDICTION SHALL BE SENT FOR**
5 **ACTION TO THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION**
6 **OVER THE PROBATIONER.**

7 **(2) IF THE OFFICER VACATES THE SUSPENSION, ANY UNEXECUTED**
8 **PART OF THE SENTENCE, EXCEPT A DISMISSAL, SHALL BE EXECUTED, SUBJECT TO**
9 **APPLICABLE RESTRICTIONS IN THIS TITLE.**

10 **(C) THE SUSPENSION OF ANY OTHER SENTENCE MAY BE VACATED BY ANY**
11 **AUTHORITY COMPETENT TO CONVENE, FOR THE COMMAND IN WHICH THE ACCUSED**
12 **IS SERVING OR ASSIGNED, A COURT OF THE KIND THAT IMPOSED THE SENTENCE.**

13 **13A-911. PETITION FOR A NEW TRIAL.**

14 **AT ANY TIME WITHIN 2 YEARS AFTER APPROVAL BY THE CONVENING**
15 **AUTHORITY OF A COURT-MARTIAL SENTENCE, THE ACCUSED MAY PETITION THE**
16 **ADJUTANT GENERAL FOR A NEW TRIAL ON THE GROUNDS OF NEWLY DISCOVERED**
17 **EVIDENCE OR FRAUD ON THE COURT-MARTIAL.**

18 **13A-912. REMISSION AND SUSPENSION.**

19 **(A) ANY AUTHORITY COMPETENT TO CONVENE, FOR THE COMMAND IN**
20 **WHICH THE ACCUSED IS SERVING OR ASSIGNED, A COURT OF THE KIND THAT**
21 **IMPOSED THE SENTENCE MAY REMIT OR SUSPEND ANY PART OR AMOUNT OF THE**
22 **UNEXECUTED PART OF ANY SENTENCE, INCLUDING ALL UNCOLLECTED**
23 **FORFEITURES OTHER THAN A SENTENCE APPROVED BY THE GOVERNOR.**

24 **(B) THE GOVERNOR MAY, FOR GOOD CAUSE, SUBSTITUTE AN**
25 **ADMINISTRATIVE FORM OF DISCHARGE FOR A DISCHARGE OR DISMISSAL EXECUTED**
26 **IN ACCORDANCE WITH THE SENTENCE OF A COURT-MARTIAL.**

27 **13A-913. RESTORATION.**

28 **(A) UNDER SUCH REGULATIONS AS MAY BE PRESCRIBED, ALL RIGHTS,**
29 **PRIVILEGES, AND PROPERTY AFFECTED BY AN EXECUTED PART OF A**
30 **COURT-MARTIAL SENTENCE, WHICH HAS BEEN SET ASIDE OR DISAPPROVED,**
31 **EXCEPT AN EXECUTED DISMISSAL OR DISCHARGE, SHALL BE RESTORED UNLESS A**
32 **NEW TRIAL OR REHEARING IS ORDERED AND SUCH EXECUTED PART IS INCLUDED IN**

1 A SENTENCE IMPOSED ON THE NEW TRIAL OR REHEARING.

2 (B) IF A PREVIOUSLY EXECUTED SENTENCE OF DISHONORABLE OR
3 BAD-CONDUCT DISCHARGE IS NOT IMPOSED ON A NEW TRIAL, THE GOVERNOR MAY
4 SUBSTITUTE THEREFOR A FORM OF DISCHARGE AUTHORIZED FOR ADMINISTRATIVE
5 ISSUANCE UNLESS THE ACCUSED IS TO SERVE OUT THE REMAINDER OF THE
6 ACCUSED'S ENLISTMENT.

7 (C) (1) IF A PREVIOUSLY EXECUTED SENTENCE OF DISMISSAL IS NOT
8 IMPOSED ON A NEW TRIAL, THE GOVERNOR MAY SUBSTITUTE THEREFOR A FORM OF
9 DISCHARGE AUTHORIZED FOR ADMINISTRATIVE ISSUE, AND THE COMMISSIONED
10 OFFICER DISMISSED BY THAT SENTENCE MAY BE REAPPOINTED BY THE GOVERNOR
11 ALONE TO SUCH COMMISSIONED GRADE AND WITH SUCH RANK AS IN THE OPINION
12 OF THE GOVERNOR THAT FORMER OFFICER WOULD HAVE ATTAINED HAD THE
13 FORMER OFFICER NOT BEEN DISMISSED.

14 (2) THE REAPPOINTMENT OF SUCH A FORMER OFFICER SHALL BE
15 WITHOUT REGARD TO THE EXISTENCE OF A VACANCY AND SHALL AFFECT THE
16 PROMOTION STATUS OF OTHER OFFICERS ONLY INsofar AS THE GOVERNOR MAY
17 DIRECT.

18 (3) ALL TIME BETWEEN THE DISMISSAL AND THE REAPPOINTMENT
19 SHALL BE CONSIDERED AS ACTUAL SERVICE FOR ALL PURPOSES, INCLUDING THE
20 RIGHT TO PAY AND ALLOWANCES.

21 13A-914. FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES.

22 (A) THE APPELLATE REVIEW OF RECORDS OF TRIAL PROVIDED BY THIS
23 TITLE, THE PROCEEDINGS, FINDINGS, AND SENTENCES OF COURTS-MARTIAL AS
24 APPROVED, REVIEWED, OR AFFIRMED AS REQUIRED BY THIS TITLE, AND ALL
25 DISMISSALS AND DISCHARGES CARRIED INTO EXECUTION UNDER SENTENCES BY
26 COURTS-MARTIAL FOLLOWING APPROVAL, REVIEW, OR AFFIRMATION AS REQUIRED
27 BY THIS TITLE, ARE FINAL AND CONCLUSIVE.

28 (B) ORDERS PUBLISHING THE PROCEEDINGS OF COURTS-MARTIAL AND
29 ALL ACTION TAKEN PURSUANT TO THOSE PROCEEDINGS ARE BINDING ON ALL
30 DEPARTMENTS, COURTS, AGENCIES, AND OFFICERS OF THE UNITED STATES AND
31 THE SEVERAL STATES, SUBJECT ONLY TO ACTION ON A PETITION FOR A NEW TRIAL
32 AS PROVIDED IN § 13A-911 OF THIS SUBTITLE AND TO ACTION UNDER § 13A-912 OF
33 THIS SUBTITLE.

34 13A-915. LEAVE REQUIRED TO BE TAKEN PENDING REVIEW OF CERTAIN
35 COURT-MARTIAL CONVICTIONS.

1 (A) UNDER REGULATIONS PRESCRIBED, AN ACCUSED WHO HAS BEEN
2 SENTENCED BY A COURT-MARTIAL MAY BE REQUIRED TO TAKE LEAVE PENDING
3 COMPLETION OF ACTION UNDER THIS SECTION IF THE SENTENCE, AS APPROVED
4 UNDER § 13A-902 OF THIS SUBTITLE, INCLUDES AN UNSUSPENDED DISMISSAL OR
5 AN UNSUSPENDED DISHONORABLE OR BAD-CONDUCT DISCHARGE.

6 (B) THE ACCUSED MAY BE REQUIRED TO BEGIN SUCH LEAVE ON THE DATE
7 ON WHICH THE SENTENCE IS APPROVED UNDER § 13A-902 OF THIS SUBTITLE OR AT
8 ANY TIME AFTER SUCH DATE, AND SUCH LEAVE MAY BE CONTINUED UNTIL THE DATE
9 ON WHICH ACTION UNDER THIS SECTION IS COMPLETED OR MAY BE TERMINATED AT
10 ANY EARLIER TIME.

11 **13A-916. LACK OF MENTAL CAPACITY OR MENTAL RESPONSIBILITY: COMMITMENT**
12 **OF ACCUSED FOR EXAMINATION AND TREATMENT.**

13 (A) (1) IN THE CASE OF A PERSON DETERMINED UNDER THIS TITLE TO BE
14 PRESENTLY SUFFERING FROM A MENTAL DISEASE OR DEFECT RENDERING THE
15 PERSON MENTALLY INCOMPETENT TO THE EXTENT THAT THE PERSON IS UNABLE
16 TO UNDERSTAND THE NATURE OF THE PROCEEDINGS AGAINST THAT PERSON OR TO
17 CONDUCT OR COOPERATE INTELLIGENTLY IN THE DEFENSE OF THE CASE, THE
18 GENERAL COURT-MARTIAL CONVENING AUTHORITY FOR THAT PERSON SHALL
19 COMMIT THE PERSON TO THE CUSTODY OF THE STATE ATTORNEY GENERAL.

20 (2) (I) THE STATE ATTORNEY GENERAL SHALL TAKE ACTION IN
21 ACCORDANCE WITH THE STATE LAW APPLICABLE TO PERSONS INCOMPETENT TO
22 STAND TRIAL.

23 (II) IF AT THE END OF THE PERIOD FOR HOSPITALIZATION
24 PROVIDED FOR IN THE STATE LAW APPLICABLE TO PERSONS INCOMPETENT TO
25 STAND TRIAL IT IS DETERMINED THAT THE COMMITTED PERSON'S MENTAL
26 CONDITION HAS NOT SO IMPROVED AS TO ALLOW THE TRIAL TO PROCEED, ACTION
27 SHALL BE TAKEN IN ACCORDANCE WITH THE STATE LAW APPLICABLE TO PERSONS
28 INCOMPETENT TO STAND TRIAL.

29 (3) (I) WHEN THE DIRECTOR OF A FACILITY IN WHICH A PERSON IS
30 HOSPITALIZED UNDER TO PARAGRAPH (2) OF THIS SUBSECTION DETERMINES THAT
31 THE PERSON HAS RECOVERED TO SUCH AN EXTENT THAT THE PERSON IS ABLE TO
32 UNDERSTAND THE NATURE OF THE PROCEEDINGS AGAINST THE PERSON AND TO
33 CONDUCT OR COOPERATE INTELLIGENTLY IN THE DEFENSE OF THE CASE, THE
34 DIRECTOR SHALL PROMPTLY TRANSMIT A NOTIFICATION OF THAT DETERMINATION
35 TO THE STATE ATTORNEY GENERAL, THE GENERAL COURT-MARTIAL CONVENING
36 AUTHORITY FOR THE PERSON, AND THE PERSON'S COUNSEL.

1 (II) 1. ON RECEIPT OF A NOTIFICATION, THE GENERAL
2 COURT-MARTIAL CONVENING AUTHORITY SHALL PROMPTLY TAKE CUSTODY OF THE
3 PERSON UNLESS THE PERSON COVERED BY THE NOTIFICATION IS NO LONGER
4 SUBJECT TO THIS TITLE.

5 2. IF THE PERSON IS NO LONGER SUBJECT TO THIS
6 TITLE, THE STATE ATTORNEY GENERAL SHALL TAKE ANY ACTION WITHIN THE
7 AUTHORITY OF THE STATE ATTORNEY GENERAL THAT THE STATE ATTORNEY
8 GENERAL CONSIDERS APPROPRIATE REGARDING THE PERSON.

9 (III) THE DIRECTOR OF THE FACILITY MAY RETAIN CUSTODY OF
10 THE PERSON FOR NOT MORE THAN 30 DAYS AFTER TRANSMITTING THE
11 NOTIFICATIONS REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH.

12 (4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IN
13 THE APPLICATION OF THE STATE LAW APPLICABLE TO PERSONS INCOMPETENT TO
14 STAND TRIAL TO A CASE UNDER THIS SUBSECTION, REFERENCES TO THE COURT
15 THAT ORDERED THE COMMITMENT OF A PERSON, AND TO THE CLERK OF SUCH
16 COURT, SHALL BE DEEMED TO REFER TO THE GENERAL COURT-MARTIAL
17 CONVENING AUTHORITY FOR THAT PERSON.

18 (II) IF THE PERSON IS NO LONGER SUBJECT TO THIS TITLE AT A
19 TIME RELEVANT TO THE APPLICATION OF SUCH LAW TO THE PERSON, THE STATE
20 TRIAL COURT WITH FELONY JURISDICTION IN THE COUNTY WHERE THE PERSON IS
21 HOSPITALIZED OR OTHERWISE MAY BE FOUND SHALL BE CONSIDERED AS THE
22 COURT THAT ORDERED THE COMMITMENT OF THE PERSON.

23 (B) (1) IF A PERSON IS FOUND BY A COURT-MARTIAL NOT GUILTY ONLY
24 BY REASON OF LACK OF MENTAL RESPONSIBILITY, THE PERSON SHALL BE
25 COMMITTED TO A SUITABLE FACILITY UNTIL THE PERSON IS ELIGIBLE FOR RELEASE
26 IN ACCORDANCE WITH THIS SECTION.

27 (2) THE COURT-MARTIAL SHALL CONDUCT A HEARING ON THE
28 MENTAL CONDITION IN ACCORDANCE WITH THE STATE LAW APPLICABLE TO
29 PERSONS INCOMPETENT TO STAND TRIAL.

30 (3) A REPORT OF THE RESULTS OF THE HEARING SHALL BE MADE TO
31 THE GENERAL COURT-MARTIAL CONVENING AUTHORITY FOR THE PERSON.

32 (4) IF THE COURT-MARTIAL FAILS TO FIND BY THE STANDARD
33 SPECIFIED IN THE STATE LAW APPLICABLE TO PERSONS INCOMPETENT TO STAND
34 TRIAL THAT THE PERSON'S RELEASE WOULD NOT CREATE A SUBSTANTIAL RISK OF

1 BODILY INJURY TO ANOTHER PERSON OR SERIOUS DAMAGE OF PROPERTY OF
2 ANOTHER DUE TO A PRESENT MENTAL DISEASE OR DEFECT:

3 (I) THE GENERAL COURT-MARTIAL CONVENING AUTHORITY
4 MAY COMMIT THE PERSON TO THE CUSTODY OF THE STATE ATTORNEY GENERAL;
5 AND

6 (II) THE STATE ATTORNEY GENERAL SHALL TAKE ACTION IN
7 ACCORDANCE WITH THE STATE LAW APPLICABLE TO PERSONS INCOMPETENT TO
8 STAND TRIAL.

9 (5) THE STATE LAW APPLICABLE TO PERSONS INCOMPETENT TO
10 STAND TRIAL SHALL APPLY IN THE CASE OF A PERSON HOSPITALIZED PURSUANT TO
11 PARAGRAPH (4)(II) OF THIS SUBSECTION, EXCEPT THAT THE STATE TRIAL COURT
12 WITH FELONY JURISDICTION IN THE COUNTY WHERE THE PERSON IS HOSPITALIZED
13 SHALL BE CONSIDERED AS THE COURT THAT ORDERED THE PERSON'S
14 COMMITMENT.

15 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND IN
16 SUBSECTION (D)(1) OF THIS SECTION, THE STATE LAW MOST CLOSELY COMPARABLE
17 TO 18 U.S.C. 4247(D) SHALL APPLY IN THE ADMINISTRATION OF THIS ARTICLE.

18 (2) IN THE APPLICATION OF THE STATE LAW MOST CLOSELY
19 COMPARABLE TO 18 U.S.C. 4247(D) TO HEARINGS CONDUCTED BY A
20 COURT-MARTIAL UNDER THIS SECTION OR BY, OR BY ORDER OF, A GENERAL
21 COURT-MARTIAL CONVENING AUTHORITY UNDER THIS SECTION, THE REFERENCE
22 IN THAT ARTICLE TO ARTICLE 3006A OF SUCH TITLE DOES NOT APPLY.

23 (D) (1) TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE APPLIES
24 ACCORDING TO THE PROVISIONS OF THIS SECTION NOTWITHSTANDING 18 U.S.C.
25 4247(J).

26 (2) IF THE STATUS OF A PERSON AS DESCRIBED IN § 13A-102 OF THIS
27 TITLE TERMINATES WHILE THE PERSON IS, PURSUANT TO THIS SECTION, IN THE
28 CUSTODY OF THE STATE ATTORNEY GENERAL, HOSPITALIZED, OR ON CONDITIONAL
29 RELEASE UNDER A PRESCRIBED REGIMEN OF MEDICAL, PSYCHIATRIC, OR
30 PSYCHOLOGICAL CARE OR TREATMENT, THE PROVISIONS OF THIS SECTION
31 ESTABLISHING REQUIREMENTS AND PROCEDURES REGARDING A PERSON NO
32 LONGER SUBJECT TO THIS TITLE SHALL CONTINUE TO APPLY TO THAT PERSON
33 NOTWITHSTANDING THE CHANGE OF STATUS.

34 SUBTITLE 10. PUNITIVE PROVISIONS.

1 **13A-1001. PRINCIPALS.**

2 **A PERSON SUBJECT TO THIS TITLE IS A PRINCIPAL, IF THE PERSON:**

3 **(1) COMMITS AN OFFENSE PUNISHABLE BY THIS TITLE, OR AIDS,**
4 **ABETS, COUNSELS, COMMANDS, OR PROCURES ITS COMMISSION; OR**

5 **(2) CAUSES AN ACT TO BE DONE WHICH, IF DIRECTLY PERFORMED BY**
6 **THE PERSON, WOULD BE PUNISHABLE BY THIS TITLE.**

7 **13A-1002. ACCESSORY AFTER THE FACT.**

8 **A PERSON SUBJECT TO THIS TITLE WHO, KNOWING THAT AN OFFENSE**
9 **PUNISHABLE BY THIS TITLE HAS BEEN COMMITTED, RECEIVES, COMFORTS, OR**
10 **ASSISTS THE OFFENDER IN ORDER TO HINDER OR PREVENT THE OFFENDER'S**
11 **APPREHENSION, TRIAL, OR PUNISHMENT SHALL BE PUNISHED AS A**
12 **COURT-MARTIAL MAY DIRECT.**

13 **13A-1003. CONVICTION OF LESSER INCLUDED OFFENSE.**

14 **AN ACCUSED MAY BE FOUND GUILTY OF AN OFFENSE NECESSARILY INCLUDED**
15 **IN THE OFFENSE CHARGED OR OF AN ATTEMPT TO COMMIT EITHER THE OFFENSE**
16 **CHARGED OR AN OFFENSE NECESSARILY INCLUDED THEREIN.**

17 **13A-1004. ATTEMPTS.**

18 **(A) AN ACT, DONE WITH SPECIFIC INTENT TO COMMIT AN OFFENSE UNDER**
19 **THIS TITLE, AMOUNTING TO MORE THAN MERE PREPARATION AND TENDING, EVEN**
20 **THOUGH FAILING TO EFFECT ITS COMMISSION, IS AN ATTEMPT TO COMMIT THAT**
21 **OFFENSE.**

22 **(B) A PERSON SUBJECT TO THIS TITLE WHO ATTEMPTS TO COMMIT AN**
23 **OFFENSE PUNISHABLE BY THIS TITLE SHALL BE PUNISHED AS A**
24 **COURT-MARTIAL MAY DIRECT, UNLESS OTHERWISE SPECIFICALLY PRESCRIBED.**

25 **(C) A PERSON SUBJECT TO THIS TITLE MAY BE CONVICTED OF AN ATTEMPT**
26 **TO COMMIT AN OFFENSE, ALTHOUGH IT APPEARS ON THE TRIAL THAT THE OFFENSE**
27 **WAS CONSUMMATED.**

28 **13A-1005. CONSPIRACY.**

29 **A PERSON SUBJECT TO THIS TITLE WHO CONSPIRES WITH ANOTHER PERSON**
30 **TO COMMIT AN OFFENSE UNDER THIS TITLE SHALL, IF ONE OR MORE OF THE**

1 CONSPIRATORS DOES AN ACT TO EFFECT THE OBJECT OF THE CONSPIRACY, BE
2 PUNISHED AS A COURT-MARTIAL MAY DIRECT.

3 **13A-1006. SOLICITING COMMISSION OF OFFENSES.**

4 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON
5 SUBJECT TO THIS TITLE WHO SOLICITS OR ADVISES ANOTHER TO COMMIT AN
6 OFFENSE UNDER THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY
7 DIRECT.

8 (B) A PERSON SUBJECT TO THIS TITLE WHO SOLICITS OR ADVISES ANOTHER
9 TO VIOLATE § 13A-1009 OR § 13A-1021 OF THIS SUBTITLE:

10 (1) IF THE OFFENSE SOLICITED OR ADVISED IS ATTEMPTED OR IS
11 COMMITTED, SHALL BE PUNISHED WITH THE PUNISHMENT PROVIDED FOR THE
12 COMMISSION OF THE OFFENSE; AND

13 (2) IF THE OFFENSE SOLICITED OR ADVISED IS NOT ATTEMPTED OR
14 COMMITTED, SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

15 **13A-1007. MALINGERING.**

16 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
17 MAY DIRECT IF THE PERSON, WITH THE INTENT TO AVOID WORK, DUTY, OR SERVICE:

18 (1) FEIGNS ILLNESS, PHYSICAL DISABLEMENT, MENTAL LAPSE, OR
19 MENTAL DERANGEMENT; OR

20 (2) INTENTIONALLY INFLECTS SELF-INJURY.

21 **13A-1008. BREACH OF MEDICAL QUARANTINE.**

22 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
23 MAY DIRECT IF THE PERSON:

24 (1) IS ORDERED INTO MEDICAL QUARANTINE BY A PERSON
25 AUTHORIZED TO ISSUE SUCH ORDER; AND

26 (2) WITH KNOWLEDGE OF THE QUARANTINE AND THE LIMITS OF THE
27 QUARANTINE, GOES BEYOND THOSE LIMITS BEFORE BEING RELEASED FROM THE
28 QUARANTINE BY PROPER AUTHORITY.

29 **13A-1009. DESERTION.**

(A) A MEMBER OF THE STATE MILITARY FORCES IS GUILTY OF DESERTION IF THE MEMBER:

(1) WITHOUT AUTHORITY, GOES OR REMAINS ABSENT FROM THE MEMBER'S UNIT, ORGANIZATION, OR PLACE OF DUTY WITH INTENT TO REMAIN AWAY THEREFROM PERMANENTLY;

(2) QUILTS THE MEMBER'S UNIT, ORGANIZATION, OR PLACE OF DUTY WITH INTENT TO AVOID HAZARDOUS DUTY OR TO SHIRK IMPORTANT SERVICE; OR

(3) WITHOUT BEING REGULARLY SEPARATED FROM ONE OF THE STATE MILITARY FORCES:

(I) ENLISTS OR ACCEPTS AN APPOINTMENT IN THE SAME OR ANOTHER ONE OF THE STATE MILITARY FORCES, OR IN ONE OF THE ARMED FORCES OF THE UNITED STATES, WITHOUT FULLY DISCLOSING THE FACT THAT THE MEMBER HAS NOT BEEN REGULARLY SEPARATED; OR

(II) ENTERS ANY FOREIGN ARMED SERVICE EXCEPT WHEN AUTHORIZED BY THE UNITED STATES.

(B) A COMMISSIONED OFFICER OF THE STATE MILITARY FORCES WHO, AFTER TENDER OF THE OFFICER'S RESIGNATION AND BEFORE NOTICE OF ITS ACCEPTANCE, QUILTS THE OFFICER'S POST OR PROPER DUTIES WITHOUT LEAVE AND WITH INTENT TO REMAIN AWAY THEREFROM PERMANENTLY IS GUILTY OF DESERTION.

(C) (1) A PERSON FOUND GUILTY OF DESERTION OR ATTEMPT TO DESERT SHALL BE PUNISHED, IF THE OFFENSE IS COMMITTED IN TIME OF WAR, BY CONFINEMENT OF NOT MORE THAN 10 YEARS OR SUCH OTHER PUNISHMENT AS A COURT-MARTIAL MAY DIRECT.

(2) A PERSON FOUND GUILTY OF DESERTION OR ATTEMPT TO DESERT OTHER THAN IN TIME OF WAR SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1010. ABSENCE WITHOUT LEAVE.

A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON, WITHOUT AUTHORITY:

(1) FAILS TO GO TO THE PERSON'S APPOINTED PLACE OF DUTY AT

1 THE TIME PRESCRIBED;

2 (2) GOES FROM THAT PLACE; OR

3 (3) LEAVES OR REMAINS ABSENT FROM THE PERSON'S UNIT,
4 ORGANIZATION, OR PLACE OF DUTY AT WHICH THE PERSON IS REQUIRED TO BE AT
5 THE TIME PRESCRIBED.

6 13A-1011. MISSING MOVEMENT; JUMPING FROM VESSEL.

7 (A) A PERSON SUBJECT TO THIS TITLE WHO THROUGH NEGLIGENCE OR DESIGN
8 MISSES THE MOVEMENT OF A SHIP, AIRCRAFT, OR UNIT WITH WHICH THE PERSON IS
9 REQUIRED IN THE COURSE OF DUTY TO MOVE SHALL BE PUNISHED AS A
10 COURT-MARTIAL MAY DIRECT.

11 (B) A PERSON SUBJECT TO THIS TITLE WHO WRONGFULLY AND
12 INTENTIONALLY JUMPS INTO THE WATER FROM A VESSEL IN USE BY THE ARMED
13 FORCES SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

14 13A-1012. RESISTANCE, FLIGHT, BREACH OF ARREST, AND ESCAPE.

15 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
16 MAY DIRECT IF THE PERSON:

17 (1) RESISTS APPREHENSION;

18 (2) FLEES FROM APPREHENSION;

19 (3) BREAKS ARREST; OR

20 (4) ESCAPES FROM CUSTODY OR CONFINEMENT.

21 13A-1013. OFFENSES AGAINST CORRECTIONAL CUSTODY AND RESTRICTION.

22 (A) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
23 COURT-MARTIAL MAY DIRECT IF THE PERSON:

24 (1) IS PLACED IN CORRECTIONAL CUSTODY BY A PERSON
25 AUTHORIZED TO DO SO;

26 (2) WHILE IN CORRECTIONAL CUSTODY, IS UNDER PHYSICAL
27 RESTRAINT; AND

1 **(3) ESCAPES FROM THE PHYSICAL RESTRAINT BEFORE BEING**
2 **RELEASED FROM THE PHYSICAL RESTRAINT BY PROPER AUTHORITY.**

3 **(B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A**
4 **COURT-MARTIAL MAY DIRECT IF THE PERSON:**

5 **(1) IS PLACED IN CORRECTIONAL CUSTODY BY A PERSON**
6 **AUTHORIZED TO DO SO;**

7 **(2) WHILE IN CORRECTIONAL CUSTODY, IS UNDER RESTRAINT OTHER**
8 **THAN PHYSICAL RESTRAINT; AND**

9 **(3) GOES BEYOND THE LIMITS OF THE RESTRAINT BEFORE BEING**
10 **RELEASED FROM THE CORRECTIONAL CUSTODY OR RELIEVED OF THE RESTRAINT**
11 **BY PROPER AUTHORITY.**

12 **(C) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A**
13 **COURT-MARTIAL MAY DIRECT IF THE PERSON:**

14 **(1) IS ORDERED TO BE RESTRICTED TO CERTAIN LIMITS BY A PERSON**
15 **AUTHORIZED TO DO SO; AND**

16 **(2) WITH KNOWLEDGE OF THE LIMITS OF THE RESTRICTION, GOES**
17 **BEYOND THOSE LIMITS BEFORE BEING RELEASED BY PROPER AUTHORITY.**

18 **13A-1014. CONTEMPT TOWARD OFFICIALS.**

19 **A COMMISSIONED OFFICER SHALL BE PUNISHED AS A COURT-MARTIAL MAY**
20 **DIRECT IF THE OFFICER USES CONTEMPTUOUS WORDS AGAINST:**

21 **(1) THE PRESIDENT;**

22 **(2) THE VICE PRESIDENT;**

23 **(3) CONGRESS;**

24 **(4) THE SECRETARY OF DEFENSE;**

25 **(5) THE SECRETARY OF A MILITARY DEPARTMENT;**

26 **(6) THE SECRETARY OF HOMELAND SECURITY;**

27 **(7) THE GOVERNOR; OR**

(8) THE GENERAL ASSEMBLY.

13A-1015. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER; ASSAULT OF SUPERIOR COMMISSIONED OFFICER.

(A) A PERSON SUBJECT TO THIS TITLE WHO BEHAVES WITH DISRESPECT TOWARD THAT PERSON'S SUPERIOR COMMISSIONED OFFICER SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

(B) A PERSON SUBJECT TO THIS TITLE WHO STRIKES THAT PERSON'S SUPERIOR COMMISSIONED OFFICER OR DRAWS OR LIFTS UP ANY WEAPON OR OFFERS ANY VIOLENCE AGAINST THAT OFFICER WHILE THE OFFICER IS IN THE EXECUTION OF THE OFFICER'S OFFICE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1016. WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER.

A PERSON SUBJECT TO THIS TITLE WHO WILLFULLY DISOBEYS A LAWFUL COMMAND OF THAT PERSON'S SUPERIOR COMMISSIONED OFFICER SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1017. INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER OR NONCOMMISSIONED OFFICER.

ANY WARRANT OFFICER OR ENLISTED MEMBER SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE WARRANT OFFICER OR ENLISTED MEMBER:

(1) STRIKES OR ASSAULTS A WARRANT OFFICER OR NONCOMMISSIONED OFFICER WHILE THAT OFFICER IS IN THE EXECUTION OF THE OFFICER'S OFFICE;

(2) WILLFULLY DISOBEYS THE LAWFUL ORDER OF A WARRANT OFFICER OR NONCOMMISSIONED OFFICER; OR

(3) TREATS WITH CONTEMPT OR IS DISRESPECTFUL IN LANGUAGE OR DEPORTMENT TOWARD A WARRANT OFFICER OR NONCOMMISSIONED OFFICER WHILE THAT OFFICER IS IN THE EXECUTION OF THE OFFICER'S OFFICE

13A-1018. FAILURE TO OBEY ORDER OR REGULATION.

A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON:

(1) VIOLATES OR FAILS TO OBEY A LAWFUL GENERAL ORDER OR REGULATION;

(2) HAVING KNOWLEDGE OF ANY OTHER LAWFUL ORDER ISSUED BY A MEMBER OF THE STATE MILITARY FORCES, WHICH IT IS THE PERSON'S DUTY TO OBEY, FAILS TO OBEY THE ORDER; OR

(3) IS DERELICT IN THE PERFORMANCE OF THE PERSON'S DUTIES.

13A-1019. CRUELTY AND MALTREATMENT.

A PERSON SUBJECT TO THIS TITLE WHO IS GUILTY OF CRUELTY TOWARD, OR OPPRESSION OR MALTREATMENT OF, ANY PERSON SUBJECT TO THE PERSON'S ORDERS SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1020. PROHIBITED ACTIVITIES WITH MILITARY RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "APPLICANT FOR MILITARY SERVICE" MEANS A PERSON WHO, UNDER REGULATIONS PRESCRIBED BY THE SECRETARY CONCERNED, IS AN APPLICANT FOR ORIGINAL ENLISTMENT OR APPOINTMENT IN THE ARMED FORCES.

(3) "MILITARY RECRUITER" MEANS A PERSON WHO, UNDER REGULATIONS PRESCRIBED BY THE SECRETARY CONCERNED, HAS THE PRIMARY DUTY TO RECRUIT PERSONS FOR MILITARY SERVICE.

(4) "PROHIBITED SEXUAL ACTIVITY" MEANS, AS SPECIFIED IN REGULATIONS PRESCRIBED BY THE SECRETARY CONCERNED, INAPPROPRIATE PHYSICAL INTIMACY UNDER CIRCUMSTANCES DESCRIBED IN SUCH REGULATIONS.

(5) "SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES" MEANS:

(I) A MEMBER OF THE ARMED FORCES 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;

(II) A MEMBER OF THE ARMED FORCES WHO IS A CADET, AN

1 OFFICER CANDIDATE, OR A STUDENT IN ANY OTHER OFFICER QUALIFICATION
2 PROGRAM; OR

3 (III) A MEMBER OF THE ARMED FORCES IN ANY PROGRAM THAT,
4 BY REGULATION PRESCRIBED BY THE SECRETARY CONCERNED, IS IDENTIFIED AS A
5 TRAINING PROGRAM FOR INITIAL CAREER QUALIFICATION.

6 (6) "TRAINING LEADERSHIP POSITION" MEANS, WITH RESPECT TO A
7 SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES:

8 (I) A DRILL INSTRUCTOR POSITION OR OTHER LEADERSHIP
9 POSITION IN A BASIC TRAINING PROGRAM, AN OFFICER CANDIDATE SCHOOL, A
10 RESERVE OFFICERS' TRAINING CORPS UNIT, A TRAINING PROGRAM FOR ENTRY INTO
11 THE ARMED FORCES, OR ANY PROGRAM THAT, BY REGULATION PRESCRIBED BY THE
12 SECRETARY CONCERNED, IS IDENTIFIED AS A TRAINING PROGRAM FOR INITIAL
13 CAREER QUALIFICATION; OR

14 (II) FACULTY AND STAFF OF THE UNITED STATES MILITARY
15 ACADEMY, THE UNITED STATES NAVAL ACADEMY, THE UNITED STATES AIR FORCE
16 ACADEMY, OR THE UNITED STATES COAST GUARD ACADEMY.

17 (B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
18 COURT-MARTIAL MAY DIRECT IF THE PERSON:

19 (1) IS AN OFFICER OR A NONCOMMISSIONED OFFICER;

20 (2) IS IN A TRAINING LEADERSHIP POSITION WITH RESPECT TO A
21 SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES; AND

22 (3) ENGAGES IN PROHIBITED SEXUAL ACTIVITY WITH SUCH
23 SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES.

24 (C) ANY PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-
25 MARTIAL MAY DIRECT IF THE PERSON:

26 (1) IS A MILITARY RECRUITER AND ENGAGES IN PROHIBITED SEXUAL
27 ACTIVITY WITH AN APPLICANT FOR MILITARY SERVICE; OR

28 (2) IS A MILITARY RECRUITER AND ENGAGES IN PROHIBITED SEXUAL
29 ACTIVITY WITH A SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES
30 WHO IS ENLISTED UNDER A DELAYED ENTRY PROGRAM.

31 (D) CONSENT IS NOT A DEFENSE FOR ANY CONDUCT AT ISSUE IN A

1 PROSECUTION UNDER THIS SECTION.

2 13A-1021. MUTINY OR SEDITION.

3 (A) (1) A PERSON SUBJECT TO THIS TITLE IS GUILTY OF MUTINY IF THE
4 PERSON, WITH INTENT TO USURP OR OVERRIDE LAWFUL MILITARY AUTHORITY,
5 REFUSES, IN CONCERT WITH ANOTHER PERSON, TO OBEY ORDERS OR OTHERWISE
6 DO THE PERSON'S DUTY OR CREATES ANY VIOLENCE OR DISTURBANCE.

7 (2) A PERSON SUBJECT TO THIS TITLE IS GUILTY OF SEDITION IF THE
8 PERSON, WITH INTENT TO CAUSE THE OVERTHROW OR DESTRUCTION OF LAWFUL
9 CIVIL AUTHORITY, CREATES, IN CONCERT WITH ANOTHER PERSON, REVOLT,
10 VIOLENCE, OR OTHER DISTURBANCE AGAINST THAT AUTHORITY.

11 (3) A PERSON SUBJECT TO THIS TITLE IS GUILTY OF FAILURE TO
12 SUPPRESS OR REPORT A MUTINY OR SEDITION IF THE PERSON FAILS TO DO THE
13 PERSON'S UTMOST TO PREVENT AND SUPPRESS A MUTINY OR SEDITION BEING
14 COMMITTED IN THE PERSON'S PRESENCE, OR FAILS TO TAKE ALL REASONABLE
15 MEANS TO INFORM THE PERSON'S SUPERIOR COMMISSIONED OFFICER OR
16 COMMANDING OFFICER OF A MUTINY OR SEDITION WHICH THE PERSON KNOWS OR
17 HAS REASON TO BELIEVE IS TAKING PLACE.

18 (B) A PERSON WHO IS FOUND GUILTY OF ATTEMPTED MUTINY, MUTINY,
19 SEDITION, OR FAILURE TO SUPPRESS OR REPORT A MUTINY OR SEDITION SHALL BE
20 PUNISHED AS A COURT-MARTIAL MAY DIRECT.

21 13A-1022. OFFENSES BY SENTINEL OR LOOKOUT.

22 (A) A SENTINEL OR LOOKOUT WHO IS DRUNK ON POST, WHO SLEEPS ON
23 POST, OR WHO LEAVES POST BEFORE BEING REGULARLY RELIEVED, SHALL BE
24 PUNISHED BY SUCH PUNISHMENT AS A COURT-MARTIAL MAY DIRECT.

25 (B) A SENTINEL OR LOOKOUT WHO LOITERS OR WRONGFULLY SITS DOWN
26 ON POST SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

27 13A-1023. DISRESPECT TOWARD SENTINEL OR LOOKOUT.

28 (A) A PERSON SUBJECT TO THIS TITLE WHO, KNOWING THAT ANOTHER
29 PERSON IS A SENTINEL OR LOOKOUT, USES WRONGFUL AND DISRESPECTFUL
30 LANGUAGE THAT IS DIRECTED TOWARD AND WITHIN THE HEARING OF THE
31 SENTINEL OR LOOKOUT, WHO IS IN THE EXECUTION OF DUTIES AS A SENTINEL OR
32 LOOKOUT, SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

(B) A PERSON SUBJECT TO THIS TITLE WHO, KNOWING THAT ANOTHER PERSON IS A SENTINEL OR LOOKOUT, BEHAVES IN A WRONGFUL AND DISRESPECTFUL MANNER THAT IS DIRECTED TOWARD AND WITHIN THE SIGHT OF THE SENTINEL OR LOOKOUT, WHO IS IN THE EXECUTION OF DUTIES AS A SENTINEL OR LOOKOUT, SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1024. UNLAWFUL DETENTION.

A PERSON SUBJECT TO THIS TITLE WHO, EXCEPT AS PROVIDED BY LAW OR REGULATION, APPREHENDS, ARRESTS, OR CONFINES ANOTHER PERSON SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1025. PUBLIC RECORDS OFFENSES.

A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON WILLFULLY AND UNLAWFULLY:

(1) ALTERS, CONCEALS, REMOVES, MUTILATES, OBLITERATES, OR DESTROYS A PUBLIC RECORD; OR

(2) TAKES A PUBLIC RECORD WITH THE INTENT TO ALTER, CONCEAL, REMOVE, MUTILATE, OBLITERATE, OR DESTROY THE PUBLIC RECORD.

13A-1026. FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION.

A PERSON SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON:

(1) PROCURES THE PERSON'S OWN ENLISTMENT OR APPOINTMENT IN THE ARMED FORCES BY KNOWING FALSE REPRESENTATION OR DELIBERATE CONCEALMENT AS TO THE PERSON'S QUALIFICATIONS FOR THAT ENLISTMENT OR APPOINTMENT AND RECEIVES PAY OR ALLOWANCES THEREUNDER; OR

(2) PROCURES THE PERSON'S OWN SEPARATION FROM THE ARMED FORCES BY KNOWING FALSE REPRESENTATION OR DELIBERATE CONCEALMENT AS TO THE PERSON'S ELIGIBILITY FOR THAT SEPARATION.

13A-1027. UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION.

A PERSON SUBJECT TO THIS TITLE WHO EFFECTS AN ENLISTMENT OR APPOINTMENT IN OR A SEPARATION FROM THE ARMED FORCES OF ANY PERSON WHO IS KNOWN TO THE PERSON TO BE INELIGIBLE FOR THAT ENLISTMENT, APPOINTMENT, OR SEPARATION BECAUSE IT IS PROHIBITED BY LAW, REGULATION,

1 OR ORDER SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

2 13A-1028. FORGERY.

3 A PERSON SUBJECT TO THIS TITLE IS GUILTY OF FORGERY AND SHALL BE
4 PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON, WITH INTENT TO
5 DEFRAUD:

6 (1) FALSELY MAKES OR ALTERS A SIGNATURE TO, OR ANY PART OF, A
7 WRITING WHICH WOULD, IF GENUINE, APPARENTLY IMPOSE A LEGAL LIABILITY ON
8 ANOTHER OR CHANGE THE PERSON'S LEGAL RIGHT OR LIABILITY TO THE PERSON'S
9 PREJUDICE; OR

10 (2) UTTERS, OFFERS, ISSUES, OR TRANSFERS SUCH A WRITING,
11 KNOWN BY THE PERSON TO BE SO MADE OR ALTERED.

12 13A-1029. FALSE OR UNAUTHORIZED PASS OFFENSES.

13 (A) A PERSON SUBJECT TO THIS TITLE WHO, WRONGFULLY AND FALSELY,
14 MAKES, ALTERS, COUNTERFEITS, OR TAMPERS WITH A MILITARY OR OFFICIAL PASS,
15 PERMIT, DISCHARGE CERTIFICATE, OR IDENTIFICATION CARD SHALL BE PUNISHED
16 AS A COURT-MARTIAL MAY DIRECT.

17 (B) A PERSON SUBJECT TO THIS TITLE WHO WRONGFULLY SELLS, GIVES,
18 LENDS, OR DISPOSES OF A FALSE OR UNAUTHORIZED MILITARY OR OFFICIAL PASS,
19 PERMIT, DISCHARGE CERTIFICATE, OR IDENTIFICATION CARD, KNOWING THAT THE
20 PASS, PERMIT, DISCHARGE CERTIFICATE, OR IDENTIFICATION CARD IS FALSE OR
21 UNAUTHORIZED, SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

22 (C) A PERSON SUBJECT TO THIS TITLE WHO WRONGFULLY USES OR
23 POSSESSES A FALSE OR UNAUTHORIZED MILITARY OR OFFICIAL PASS, PERMIT,
24 DISCHARGE CERTIFICATE, OR IDENTIFICATION CARD, KNOWING THAT THE PASS,
25 PERMIT, DISCHARGE CERTIFICATE, OR IDENTIFICATION CARD IS FALSE OR
26 UNAUTHORIZED, SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

27 13A-1030. IMPERSONATION OF OFFICER, NONCOMMISSIONED, OR AGENT OR
28 OFFICIAL.

29 (A) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
30 COURT-MARTIAL MAY DIRECT IF THE PERSON WRONGFULLY AND WILLFULLY,
31 IMPERSONATES:

32 (1) AN OFFICER OR A NONCOMMISSIONED OFFICER;

1 (2) AN AGENT OF SUPERIOR AUTHORITY OF ONE OF THE ARMED
2 FORCES; OR

3 (3) AN OFFICIAL OF A GOVERNMENT.

4 (B) A PERSON SUBJECT TO THIS TITLE WHO, WRONGFULLY, WILLFULLY,
5 AND WITH INTENT TO DEFRAUD, IMPERSONATES A PERSON REFERRED TO IN
6 SUBSECTION (A)(1), (2), OR (3) OF THIS SECTION SHALL BE PUNISHED AS A
7 COURT-MARTIAL MAY DIRECT.

8 (C) A PERSON SUBJECT TO THIS TITLE WHO, WRONGFULLY, WILLFULLY,
9 AND WITHOUT INTENT TO DEFRAUD, IMPERSONATES AN OFFICIAL OF A
10 GOVERNMENT BY COMMITTING AN ACT THAT EXERCISES OR ASSERTS THE
11 AUTHORITY OF THE OFFICE THAT THE PERSON CLAIMS TO HAVE SHALL BE
12 PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13 13A-1031. WEARING UNAUTHORIZED INSIGNIA, DECORATION, BADGE, RIBBON,
14 DEVICE, OR LAPEL BUTTON.

15 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
16 MAY DIRECT IF THE PERSON:

17 (1) IS NOT AUTHORIZED TO WEAR AN INSIGNIA, DECORATION, BADGE,
18 RIBBON, DEVICE, OR LAPEL BUTTON; AND

19 (2) WRONGFULLY WEARS SUCH INSIGNIA, DECORATION, BADGE,
20 RIBBON, DEVICE, OR LAPEL BUTTON UPON THE PERSON'S UNIFORM OR CIVILIAN
21 CLOTHING.

22 13A-1032. FALSE OFFICIAL STATEMENTS; FALSE SWEARING.

23 (A) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
24 COURT-MARTIAL MAY DIRECT IF THE PERSON, WITH INTENT TO DECEIVE:

25 (1) SIGNS A FALSE RECORD, RETURN, REGULATION, ORDER, OR
26 OTHER OFFICIAL DOCUMENT, KNOWING IT TO BE FALSE; OR

27 (2) MAKES ANY OTHER FALSE OFFICIAL STATEMENT KNOWING IT TO
28 BE FALSE.

29 (B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
30 COURT-MARTIAL MAY DIRECT IF THE PERSON:

(1) TAKES AN OATH THAT:

(I) IS ADMINISTERED IN A MATTER IN WHICH SUCH OATH IS REQUIRED OR AUTHORIZED BY LAW; AND

(II) IS ADMINISTERED BY A PERSON WITH AUTHORITY TO DO SO; AND

(2) ON SUCH OATH, MAKES OR SUBSCRIBES TO A STATEMENT THAT IS FALSE AND AT THE TIME OF TAKING THE OATH, THE PERSON DOES NOT BELIEVE THE STATEMENT TO BE TRUE.

13A-1033. PAROLE VIOLATION.

A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON:

(1) HAVING BEEN A PRISONER AS THE RESULT OF A COURT-MARTIAL CONVICTION OR OTHER CRIMINAL PROCEEDING, IS ON PAROLE WITH CONDITIONS; AND

(2) VIOLATES THE CONDITIONS OF PAROLE.

13A-1034. MILITARY PROPERTY-LOSS, DAMAGE, DESTRUCTION, OR WRONGFUL DISPOSITION.

A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON, WITHOUT PROPER AUTHORITY, SELLS OR OTHERWISE DISPOSES OF, WILLFULLY OR THROUGH NEGLIGENCE DAMAGES, DESTROYS, OR LOSES, OR WILLFULLY OR THROUGH NEGLIGENCE SUFFERS TO BE LOST, DAMAGED, DESTROYED, SOLD, OR WRONGFULLY DISPOSED OF ANY MILITARY PROPERTY OF THE UNITED STATES OR OF ANY STATE.

13A-1035. CAPTURED OR ABANDONED PROPERTY.

(A) A PERSON SUBJECT TO THIS TITLE SHALL SECURE ALL PUBLIC PROPERTY TAKEN FROM THE ENEMY FOR THE SERVICE OF THE UNITED STATES, AND SHALL GIVE NOTICE AND TURN OVER TO THE PROPER AUTHORITY WITHOUT DELAY ALL CAPTURED OR ABANDONED PROPERTY IN THE PERSON'S POSSESSION, CUSTODY, OR CONTROL.

(B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A

1 COURT-MARTIAL MAY DIRECT IF THE PERSON:

2 (1) FAILS TO CARRY OUT THE DUTIES PRESCRIBED IN SUBSECTION
3 (A) OF THIS SECTION;

4 (2) BUYS, SELLS, TRADES, OR IN ANY WAY DEALS IN OR DISPOSES OF
5 CAPTURED OR ABANDONED PROPERTY, WHEREBY THE PERSON RECEIVES OR
6 EXPECTS ANY PROFIT, BENEFIT, OR ADVANTAGE TO THE PERSON OR ANOTHER
7 DIRECTLY OR INDIRECTLY CONNECTED WITH THE PERSON; OR

8 (3) ENGAGES IN LOOTING OR PILLAGING.

9 13A-1036. PROPERTY OTHER THAN MILITARY PROPERTY-WASTE, SPOILAGE, OR
10 DESTRUCTION.

11 A PERSON SUBJECT TO THIS TITLE WHO WILLFULLY OR RECKLESSLY WASTES,
12 SPOILS, OR OTHERWISE WILLFULLY AND WRONGFULLY DESTROYS OR DAMAGES ANY
13 PROPERTY OTHER THAN MILITARY PROPERTY OF THE UNITED STATES OR OF ANY
14 STATE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

15 13A-1037. MAIL MATTER: WRONGFUL TAKING, OPENING, ETC.

16 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
17 MAY DIRECT IF THE PERSON:

18 (1) WITH THE INTENT TO OBSTRUCT THE CORRESPONDENCE OF, OR
19 TO PRY INTO THE BUSINESS OR SECRETS OF, ANY PERSON OR ORGANIZATION,
20 WRONGFULLY TAKES MAIL MATTER BEFORE THE MAIL MATTER IS DELIVERED TO OR
21 RECEIVED BY THE ADDRESSEE; OR

22 (2) WRONGFULLY OPENS, SECRETES, DESTROYS, OR STEALS MAIL
23 MATTER BEFORE THE MAIL MATTER IS DELIVERED TO OR RECEIVED BY THE
24 ADDRESSEE.

25 13A-1038. IMPROPER HAZARDING OF VESSEL.

26 (A) A PERSON SUBJECT TO THIS TITLE WHO, WILLFULLY AND WRONGFULLY,
27 HAZARDS OR SUFFERS TO BE HAZARDED ANY VESSEL OR AIRCRAFT OF THE ARMED
28 FORCES SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

29 (B) A PERSON SUBJECT TO THIS TITLE WHO NEGLIGENTLY HAZARDS OR
30 SUFFERS TO BE HAZARDED ANY VESSEL OR AIRCRAFT OF THE ARMED FORCES SHALL
31 BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

1 **13A-1039. LEAVING SCENE OF VEHICLE ACCIDENT.**

2 (A) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
3 COURT-MARTIAL MAY DIRECT IF THE PERSON:

4 (1) IS THE DRIVER OF A VEHICLE THAT IS INVOLVED IN AN ACCIDENT
5 THAT RESULTS IN PERSONAL INJURY OR PROPERTY DAMAGE; AND

6 (2) WRONGFULLY LEAVES THE SCENE OF THE ACCIDENT:

7 (I) WITHOUT PROVIDING ASSISTANCE TO AN INJURED PERSON;
8 OR

9 (II) WITHOUT PROVIDING PERSONAL IDENTIFICATION TO
10 OTHERS INVOLVED IN THE ACCIDENT OR TO APPROPRIATE AUTHORITIES.

11 (B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
12 COURT-MARTIAL MAY DIRECT IF THE PERSON:

13 (1) IS A PASSENGER IN A VEHICLE THAT IS INVOLVED IN AN ACCIDENT
14 THAT RESULTS IN PERSONAL INJURY OR PROPERTY DAMAGE;

15 (2) IS THE SUPERIOR COMMISSIONED OR NONCOMMISSIONED
16 OFFICER OF THE DRIVER OF THE VEHICLE OR IS THE COMMANDER OF THE VEHICLE;
17 AND

18 (3) WRONGFULLY AND UNLAWFULLY ORDERS, CAUSES, OR PERMITS
19 THE DRIVER TO LEAVE THE SCENE OF THE ACCIDENT:

20 (I) WITHOUT PROVIDING ASSISTANCE TO AN INJURED PERSON;
21 OR

22 (II) WITHOUT PROVIDING PERSONAL IDENTIFICATION TO
23 OTHERS INVOLVED IN THE ACCIDENT OR TO APPROPRIATE AUTHORITIES.

24 **13A-1040. DRUNKENNESS AND OTHER INCAPACITATION OFFENSES.**

25 (A) A PERSON SUBJECT TO THIS TITLE WHO IS DRUNK ON DUTY SHALL BE
26 PUNISHED AS A COURT-MARTIAL MAY DIRECT.

27 (B) A PERSON SUBJECT TO THIS TITLE WHO, AS A RESULT OF INDULGENCE
28 IN AN ALCOHOLIC BEVERAGE OR DRUG, IS INCAPACITATED FOR THE PROPER

PERFORMANCE OF DUTY SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

(C) A PERSON SUBJECT TO THIS TITLE WHO IS A PRISONER AND, WHILE IN SUCH STATUS, IS DRUNK SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1041. WRONGFUL USE, POSSESSION, ETC., OF CONTROLLED SUBSTANCES.

(A) A PERSON SUBJECT TO THIS TITLE 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 IN SUBSECTION (B) OF THIS SECTION SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

(B) THE SUBSTANCES REFERRED TO IN SUBSECTION (A) OF THIS SECTION ARE:

(1) OPIUM, HEROIN, COCAINE, AMPHETAMINE, LYSERGIC ACID METHAMPHETAMINE, PHENCYCLIDINE, BARBITURIC ACID, AND MARIJUANA AND ANY DERIVATIVE OF ANY SUCH SUBSTANCE OR COMPOUND;

(2) ANY SUBSTANCE NOT SPECIFIED IN ITEM (1) OF THIS SUBSECTION THAT IS LISTED ON A SCHEDULE OF CONTROLLED SUBSTANCES PRESCRIBED BY THE PRESIDENT FOR THE PURPOSES OF THE UNIFORM CODE OF MILITARY JUSTICE OF THE ARMED FORCES OF THE UNITED STATES, 10 U.S.C. § 801 ET SEQ.; AND

(3) ANY OTHER SUBSTANCE NOT SPECIFIED IN ITEM (1) OF THIS SUBSECTION OR CONTAINED ON A LIST PRESCRIBED BY THE PRESIDENT UNDER ITEM (2) OF THIS SUBSECTION THAT IS LISTED IN SCHEDULES I THROUGH V OF ARTICLE 202 OF THE CONTROLLED SUBSTANCES ACT, 21 U.S.C. § 812.

13A-1042. DRUNKEN OR RECKLESS OPERATION OF A VEHICLE, AIRCRAFT, OR VESSEL.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "BLOOD ALCOHOL CONTENT LIMIT" MEANS THE AMOUNT OF ALCOHOL CONCENTRATION IN A PERSON'S BLOOD OR BREATH AT WHICH OPERATION OR CONTROL OF A VEHICLE, AIRCRAFT, OR VESSEL IS PROHIBITED.

(3) "UNITED STATES" INCLUDES THE DISTRICT OF COLUMBIA, THE

1 **COMMONWEALTH OF PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AND AMERICAN**
2 **SAMOA.**

3 **(B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A**
4 **COURT-MARTIAL MAY DIRECT IF THE PERSON:**

5 **(1) OPERATES OR PHYSICALLY CONTROLS A VEHICLE, AIRCRAFT, OR**
6 **VESSEL IN A RECKLESS OR WANTON MANNER OR WHILE IMPAIRED BY A SUBSTANCE**
7 **DESCRIBED IN § 13A-1036.1(B) OF THIS SUBTITLE; OR**

8 **(2) OPERATES OR IS IN ACTUAL PHYSICAL CONTROL OF A VEHICLE,**
9 **AIRCRAFT, OR VESSEL WHILE DRUNK OR WHEN THE ALCOHOL CONCENTRATION IN**
10 **THE PERSON'S BLOOD OR BREATH IS EQUAL TO OR EXCEEDS THE APPLICABLE LIMIT**
11 **UNDER SUBSECTION (C) OF THIS SECTION.**

12 **(C) FOR PURPOSES OF SUBSECTION (B) OF THIS SECTION, THE APPLICABLE**
13 **LIMIT ON THE ALCOHOL CONCENTRATION IN A PERSON'S BLOOD OR BREATH IS:**

14 **(1) IN THE CASE OF THE OPERATION OR CONTROL OF A VEHICLE,**
15 **AIRCRAFT, OR VESSEL IN THE UNITED STATES, THE LESSER OF:**

16 **(I) THE BLOOD ALCOHOL CONTENT LIMIT UNDER THE LAW OF**
17 **THE STATE IN WHICH THE CONDUCT OCCURRED, EXCEPT AS MAY BE PROVIDED**
18 **UNDER PARAGRAPH (3) OF THIS SUBSECTION FOR CONDUCT ON A MILITARY**
19 **INSTALLATION THAT IS IN MORE THAN ONE STATE; OR**

20 **(II) THE BLOOD ALCOHOL CONTENT LIMIT SPECIFIED IN**
21 **SUBSECTION (D) OF THIS SECTION;**

22 **(2) IN THE CASE OF THE OPERATION OR CONTROL OF A VEHICLE,**
23 **AIRCRAFT, OR VESSEL OUTSIDE THE UNITED STATES, THE BLOOD ALCOHOL**
24 **CONTENT LIMIT SPECIFIED IN SUBSECTION (D) OF THIS SECTION OR SUCH LOWER**
25 **LIMIT AS THE SECRETARY OF DEFENSE MAY BY REGULATION PRESCRIBE; AND**

26 **(3) IN THE CASE OF A MILITARY INSTALLATION THAT IS IN MORE**
27 **THAN ONE STATE, IF THOSE STATES HAVE DIFFERENT BLOOD ALCOHOL CONTENT**
28 **LIMITS UNDER THEIR RESPECTIVE STATE LAWS, THE BLOOD ALCOHOL CONTENT**
29 **LIMIT SELECTED BY THE SECRETARY TO APPLY UNIFORMLY ON THAT**
30 **INSTALLATION.**

31 **(D) (1) FOR PURPOSES OF SUBSECTION (C) OF THIS SECTION, THE BLOOD**
32 **ALCOHOL LIMIT WITH RESPECT TO ALCOHOL CONCENTRATION, AS SHOWN BY**
33 **CHEMICAL ANALYSIS:**

(I) IN A PERSON'S BLOOD IS 0.08 GRAMS OF ALCOHOL PER 100
MILLILITERS OF BLOOD; AND

(II) IN A PERSON'S BREATH IS 0.08 GRAMS OF ALCOHOL PER 210
LITERS OF BREATH.

(2) THE SECRETARY MAY BY REGULATION PRESCRIBE LIMITS THAT
ARE LOWER THAN THE LIMITS SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION
IF SUCH LOWER LIMITS ARE BASED ON SCIENTIFIC DEVELOPMENTS AS REFLECTED
IN FEDERAL LAW OF GENERAL APPLICABILITY.

13A-1043. ENDANGERMENT OFFENSES.

(A) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
COURT-MARTIAL MAY DIRECT IF THE PERSON ENGAGES IN CONDUCT THAT:

(1) IS WRONGFUL AND RECKLESS OR IS WANTON; AND

(2) IS LIKELY TO PRODUCE DEATH OR GRIEVOUS BODILY HARM TO
ANOTHER PERSON.

(B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A
COURT-MARTIAL MAY DIRECT IF THE PERSON:

(1) FIGHTS OR PROMOTES, OR IS CONCERNED IN OR CONNIVES AT
FIGHTING A DUEL; OR

(2) HAVING KNOWLEDGE OF A CHALLENGE SENT OR ABOUT TO BE
SENT, FAILS TO REPORT THE FACTS PROMPTLY TO THE PROPER AUTHORITY.

(C) A PERSON SUBJECT TO THIS TITLE WHO, WILLFULLY AND WRONGFULLY,
DISCHARGES A FIREARM UNDER CIRCUMSTANCES SUCH AS TO ENDANGER HUMAN
LIFE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

(D) A PERSON SUBJECT TO THIS TITLE WHO UNLAWFULLY CARRIES A
DANGEROUS WEAPON CONCEALED ON OR ABOUT THE PERSON SHALL BE PUNISHED
AS A COURT-MARTIAL MAY DIRECT.

13A-1044. COMMUNICATING THREATS.

(A) A PERSON SUBJECT TO THIS TITLE WHO WRONGFULLY COMMUNICATES
A THREAT TO INJURE THE PERSON, PROPERTY, OR REPUTATION OF ANOTHER SHALL

1 BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

2 (B) A PERSON SUBJECT TO THIS TITLE WHO WRONGFULLY COMMUNICATES
3 A THREAT TO INJURE THE PERSON OR PROPERTY OF ANOTHER BY USE OF AN
4 EXPLOSIVE, A WEAPON OF MASS DESTRUCTION, A BIOLOGICAL OR CHEMICAL
5 AGENT, SUBSTANCE, OR WEAPON, OR A HAZARDOUS MATERIAL SHALL BE PUNISHED
6 AS A COURT-MARTIAL MAY DIRECT.

7 (C) (1) IN THIS SUBSECTION, "FALSE THREAT" MEANS A THREAT THAT,
8 AT THE TIME THE THREAT IS COMMUNICATED, IS KNOWN TO BE FALSE BY THE
9 PERSON COMMUNICATING THE THREAT.

10 (2) A PERSON SUBJECT TO THIS TITLE WHO MALICIOUSLY
11 COMMUNICATES A FALSE THREAT CONCERNING INJURY TO THE PERSON OR
12 PROPERTY OF ANOTHER BY USE OF AN EXPLOSIVE, A WEAPON OF MASS
13 DESTRUCTION, A BIOLOGICAL OR CHEMICAL AGENT, SUBSTANCE, OR WEAPON, OR A
14 HAZARDOUS MATERIAL, SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

15 13A-1045. RIOT OR BREACH OF PEACE.

16 A PERSON SUBJECT TO THIS TITLE WHO CAUSES OR PARTICIPATES IN A RIOT
17 OR BREACH OF THE PEACE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

18 13A-1046. PROVOKING SPEECHES OR GESTURES.

19 A PERSON SUBJECT TO THIS TITLE WHO USES PROVOKING OR REPROACHFUL
20 WORDS OR GESTURES TOWARDS ANOTHER PERSON SUBJECT TO THIS TITLE SHALL
21 BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

22 13A-1047. OFFENSES CONCERNING GOVERNMENT COMPUTERS.

23 (A) IN THIS SECTION, "COMPUTER" HAS THE MEANING STATED IN 18 U.S.C.
24 1030.

25 (B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT
26 MARTIAL MAY DIRECT IF THE PERSON:

27 (1) KNOWINGLY ACCESSES A GOVERNMENT COMPUTER WITH AN
28 UNAUTHORIZED PURPOSE, AND BY DOING SO OBTAINS CLASSIFIED INFORMATION,
29 WITH REASON TO BELIEVE SUCH INFORMATION COULD BE USED TO THE INJURY OF
30 THE UNITED STATES OR TO THE ADVANTAGE OF ANY FOREIGN NATION, AND
31 INTENTIONALLY COMMUNICATES, DELIVERS, TRANSMITS, OR CAUSES TO BE
32 COMMUNICATED, DELIVERED, OR TRANSMITTED SUCH INFORMATION TO ANY

1 PERSON NOT ENTITLED TO RECEIVE IT;

2 (2) INTENTIONALLY ACCESSES A GOVERNMENT COMPUTER WITH AN
3 UNAUTHORIZED PURPOSE, AND THEREBY OBTAINS CLASSIFIED OR OTHER
4 PROTECTED INFORMATION FROM ANY SUCH GOVERNMENT COMPUTER; OR

5 (3) KNOWINGLY CAUSES THE TRANSMISSION OF A PROGRAM,
6 INFORMATION, CODE, OR COMMAND, AND AS A RESULT OF SUCH CONDUCT,
7 INTENTIONALLY CAUSES DAMAGE WITHOUT AUTHORIZATION TO A GOVERNMENT
8 COMPUTER.

9 13A-1048. FRAUDS AGAINST THE UNITED STATES.

10 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
11 MAY DIRECT IF THE PERSON:

12 (1) KNOWING IT TO BE FALSE OR FRAUDULENT:

13 (I) MAKES A CLAIM AGAINST THE UNITED STATES OR AN
14 OFFICER THEREOF; OR

15 (II) PRESENTS TO A PERSON IN THE CIVIL OR MILITARY SERVICE
16 THEREOF, FOR APPROVAL OR PAYMENT, A CLAIM AGAINST THE UNITED STATES OR
17 AN OFFICER THEREOF; OR

18 (2) FOR THE PURPOSE OF OBTAINING THE APPROVAL, ALLOWANCE,
19 OR PAYMENT OF A CLAIM AGAINST THE UNITED STATES OR AN OFFICER THEREOF,
20 MAKES OR USES A WRITING OR OTHER PAPER KNOWING IT TO CONTAIN ONE OR
21 MORE FALSE OR FRAUDULENT STATEMENTS.

22 13A-1049. PERJURY.

23 A PERSON SUBJECT TO THIS TITLE IS GUILTY OF PERJURY AND SHALL BE
24 PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON, IN A JUDICIAL
25 PROCEEDING OR IN A COURSE OF JUSTICE, WILLFULLY AND CORRUPTLY:

26 (1) ON A LAWFUL OATH OR IN ANY FORM ALLOWED BY LAW TO BE
27 SUBSTITUTED FOR AN OATH, GIVES FALSE TESTIMONY MATERIAL TO THE ISSUE OR
28 MATTER OF INQUIRY; OR

29 (2) IN A DECLARATION, CERTIFICATE, VERIFICATION, OR STATEMENT
30 UNDER PENALTY OF PERJURY AS PERMITTED UNDER SECTION 28 U.S.C. 1746,
31 SUBSCRIBES ANY FALSE STATEMENT MATERIAL TO THE ISSUE OR MATTER OF

1 INQUIRY.

2 **13A-1050. SUBORNATION OF PERJURY.**

3 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
4 MAY DIRECT IF THE PERSON INDUCES AND PROCURES ANOTHER PERSON TO TAKE
5 AN OATH AND TO FALSELY TESTIFY, DEPOSE, OR STATE ON SUCH OATH, IF:

6 (1) THE OATH IS ADMINISTERED WITH RESPECT TO A MATTER FOR
7 WHICH SUCH OATH IS REQUIRED OR AUTHORIZED BY LAW;

8 (2) THE OATH IS ADMINISTERED BY A PERSON HAVING AUTHORITY TO
9 DO SO;

10 (3) ON THE OATH, THE OTHER PERSON WILLFULLY MAKES OR
11 SUBSCRIBES A STATEMENT;

12 (4) THE STATEMENT IS MATERIAL;

13 (5) THE STATEMENT IS FALSE; AND

14 (6) WHEN THE STATEMENT IS MADE OR SUBSCRIBED, THE PERSON
15 SUBJECT TO THIS TITLE AND THE OTHER PERSON DO NOT BELIEVE THAT THE
16 STATEMENT IS TRUE.

17 **13A-1051. OBSTRUCTING JUSTICE.**

18 A PERSON SUBJECT TO THIS TITLE WHO ENGAGES IN CONDUCT INVOLVING A
19 PERSON AGAINST WHOM THE ACCUSED HAD REASON TO BELIEVE THERE WERE OR
20 WOULD BE CRIMINAL OR DISCIPLINARY PROCEEDINGS PENDING, WITH INTENT TO
21 INFLUENCE, IMPEDE, OR OTHERWISE OBSTRUCT THE DUE ADMINISTRATION OF
22 JUSTICE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

23 **13A-1052. MISPRISION OF SERIOUS OFFENSE.**

24 A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL
25 MAY DIRECT IF THE PERSON:

26 (1) KNOWS THAT ANOTHER PERSON HAS COMMITTED A SERIOUS
27 OFFENSE;

28 (2) WRONGFULLY CONCEALS THE COMMISSION OF THE OFFENSE;
29 AND

(3) FAILS TO MAKE THE COMMISSION OF THE OFFENSE KNOWN TO CIVILIAN OR MILITARY AUTHORITIES AS SOON AS POSSIBLE.

13A-1053. WRONGFUL REFUSAL TO TESTIFY.

A PERSON SUBJECT TO THIS TITLE WHO, IN THE PRESENCE OF A COURT-MARTIAL, A BOARD OF OFFICERS, A MILITARY COMMISSION, A COURT OF INQUIRY, A PRELIMINARY HEARING, OR AN OFFICER TAKING A DEPOSITION, OF OR FOR THE UNITED STATES, WRONGFULLY REFUSES TO QUALIFY AS A WITNESS OR TO ANSWER A QUESTION AFTER HAVING BEEN DIRECTED TO DO SO BY THE PERSON PRESIDING SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1054. PREVENTION OF AUTHORIZED SEIZURE OF PROPERTY.

A PERSON SUBJECT TO THIS TITLE WHO, KNOWING THAT ONE OR MORE PERSONS AUTHORIZED TO MAKE SEARCHES AND SEIZURES ARE SEIZING, ARE ABOUT TO SEIZE, OR ARE ENDEAVORING TO SEIZE PROPERTY, DESTROYS, REMOVES, OR OTHERWISE DISPOSES OF THE PROPERTY WITH INTENT TO PREVENT THE SEIZURE THEREOF SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

13A-1055. NONCOMPLIANCE WITH PROCEDURAL RULES.

A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF THE PERSON:

(1) IS RESPONSIBLE FOR UNNECESSARY DELAY IN THE DISPOSITION OF A CASE OF A PERSON ACCUSED OF AN OFFENSE UNDER THIS TITLE; OR

(2) KNOWINGLY AND INTENTIONALLY FAILS TO ENFORCE OR COMPLY WITH A PROVISION OF THIS TITLE REGULATING THE PROCEEDINGS BEFORE, DURING, OR AFTER TRIAL OF AN ACCUSED.

13A-1056. WRONGFUL INTERFERENCE WITH ADVERSE ADMINISTRATIVE PROCEEDING.

A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF, HAVING REASON TO BELIEVE THAT AN ADVERSE ADMINISTRATIVE PROCEEDING IS PENDING AGAINST A PERSON SUBJECT TO THIS TITLE, THE PERSON WRONGFULLY ACTS WITH THE INTENT:

(1) TO INFLUENCE, IMPEDE, OR OBSTRUCT THE CONDUCT OF THE PROCEEDING; OR

(2) OTHERWISE TO OBSTRUCT THE DUE ADMINISTRATION OF JUSTICE.

13A-1057. RETALIATION.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COVERED INDIVIDUAL OR ORGANIZATION" MEANS A RECIPIENT OF A COMMUNICATION SPECIFIED IN CLAUSES (I) THROUGH (V) OF 10 U.S.C. 1034(B)(1)(B).

(3) "INSPECTOR GENERAL" HAS THE MEANING STATED IN 10 U.S.C. 1034(J).

(4) "PROTECTED COMMUNICATION" MEANS:

(I) A LAWFUL COMMUNICATION TO A MEMBER OF CONGRESS OR AN INSPECTOR GENERAL; OR

(II) A COMMUNICATION TO A COVERED INDIVIDUAL OR ORGANIZATION IN WHICH A MEMBER OF THE ARMED FORCES COMPLAINS OF, OR DISCLOSES INFORMATION THAT THE MEMBER REASONABLY BELIEVES CONSTITUTES EVIDENCE OF:

1. A VIOLATION OF LAW OR REGULATION, INCLUDING A LAW OR REGULATION PROHIBITING SEXUAL HARASSMENT OR UNLAWFUL DISCRIMINATION; OR

2. GROSS MISMANAGEMENT, A GROSS WASTE OF FUNDS, AN ABUSE OF AUTHORITY, OR A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY.

(B) A PERSON SUBJECT TO THIS TITLE SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT IF, WITH THE INTENT TO RETALIATE AGAINST A PERSON FOR REPORTING OR PLANNING TO REPORT A CRIMINAL OFFENSE, OR MAKING OR PLANNING TO MAKE A PROTECTED COMMUNICATION, OR WITH THE INTENT TO DISCOURAGE A PERSON FROM REPORTING A CRIMINAL OFFENSE OR MAKING OR PLANNING TO MAKE A PROTECTED COMMUNICATION, THE PERSON:

(1) WRONGFULLY TAKES OR THREATENS TO TAKE AN ADVERSE PERSONNEL ACTION AGAINST A PERSON; OR

1 (2) WRONGFULLY WITHHOLDS OR THREATENS TO WITHHOLD A
2 FAVORABLE PERSONNEL ACTION WITH RESPECT TO A PERSON.

3 **13A-1058. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN.**

4 A COMMISSIONED OFFICER, CADET, OR CANDIDATE WHO IS CONVICTED OF
5 CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN SHALL BE PUNISHED AS A
6 COURT-MARTIAL MAY DIRECT.

7 **13A-1059. GENERAL ARTICLE.**

8 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THOUGH NOT
9 SPECIFICALLY MENTIONED IN THIS TITLE, ALL DISORDERS AND NEGLECTS TO THE
10 PREJUDICE OF GOOD ORDER AND DISCIPLINE IN THE STATE MILITARY FORCES AND
11 ALL CONDUCT OF A NATURE TO BRING DISCREDIT ON THE STATE MILITARY FORCES,
12 AND CRIMES BOTH FEDERAL AND STATE AND OFFENSES NOT CAPITAL, SHALL BE
13 TAKEN COGNIZANCE OF BY A COURT-MARTIAL AND PUNISHED AT THE DISCRETION
14 OF A MILITARY COURT.

15 (B) WHERE A CRIME CONSTITUTES AN OFFENSE THAT VIOLATES BOTH THIS
16 TITLE AND THE CRIMINAL LAWS OF THE STATE WHERE THE OFFENSE OCCURS OR
17 CRIMINAL LAWS OF THE UNITED STATES, JURISDICTION OF THE MILITARY COURT
18 MUST BE DETERMINED IN ACCORDANCE WITH § 13A-102 OF THIS TITLE.

19 **SUBTITLE 11. MISCELLANEOUS PROVISIONS.**

20 **13A-1101. COURTS OF INQUIRY.**

21 (A) A COURTS OF INQUIRY TO INVESTIGATE ANY MATTER OF CONCERN TO
22 THE STATE MILITARY FORCES MAY BE CONVENED BY ANY PERSON AUTHORIZED TO
23 CONVENE A GENERAL COURT-MARTIAL, WHETHER OR NOT THE PERSONS INVOLVED
24 HAVE REQUESTED SUCH AN INQUIRY.

25 (B) (1) A COURT OF INQUIRY CONSISTS OF THREE OR MORE
26 COMMISSIONED OFFICERS.

27 (2) FOR EACH COURT OF INQUIRY, THE CONVENING AUTHORITY
28 SHALL ALSO APPOINT COUNSEL FOR THE COURT.

29 (C) (1) A PERSON SUBJECT TO THIS TITLE WHOSE CONDUCT IS SUBJECT
30 TO INQUIRY SHALL BE DESIGNATED AS A PARTY.

1 **(2) A PERSON SUBJECT TO THIS TITLE WHO HAS A DIRECT INTEREST**
2 **IN THE SUBJECT OF INQUIRY HAS THE RIGHT TO BE DESIGNATED AS A PARTY ON**
3 **REQUEST TO THE COURT.**

4 **(3) A PERSON DESIGNATED AS A PARTY SHALL BE GIVEN DUE NOTICE**
5 **AND HAS THE RIGHT TO BE PRESENT, TO BE REPRESENTED BY COUNSEL, TO**
6 **CROSS-EXAMINE WITNESSES, AND TO INTRODUCE EVIDENCE.**

7 **(D) A MEMBER OF A COURT OF INQUIRY MAY BE CHALLENGED BY A PARTY,**
8 **BUT ONLY FOR CAUSE STATED TO THE COURT.**

9 **(E) THE MEMBERS, COUNSEL, THE REPORTER, AND INTERPRETERS OF A**
10 **COURT OF INQUIRY SHALL TAKE AN OATH TO FAITHFULLY PERFORM THEIR DUTIES.**

11 **(F) WITNESSES MAY BE SUMMONED TO APPEAR AND TESTIFY AND BE**
12 **EXAMINED BEFORE A COURT OF INQUIRY, AS PROVIDED FOR**
13 **COURTS-MARTIAL.**

14 **(G) A COURT OF INQUIRY SHALL MAKE FINDINGS OF FACT BUT MAY NOT**
15 **EXPRESS OPINIONS OR MAKE RECOMMENDATIONS UNLESS REQUIRED TO DO SO BY**
16 **THE CONVENING AUTHORITY.**

17 **(H) (1) A COURT OF INQUIRY SHALL KEEP A RECORD OF ITS**
18 **PROCEEDINGS, WHICH SHALL BE AUTHENTICATED BY THE SIGNATURES OF THE**
19 **PRESIDENT AND COUNSEL FOR THE COURT AND FORWARDED TO THE CONVENING**
20 **AUTHORITY.**

21 **(2) IF THE RECORD CANNOT BE AUTHENTICATED BY THE PRESIDENT,**
22 **IT SHALL BE SIGNED BY A MEMBER IN LIEU OF THE PRESIDENT.**

23 **(3) IF THE RECORD CANNOT BE AUTHENTICATED BY THE COUNSEL**
24 **FOR THE COURT, IT SHALL BE SIGNED BY A MEMBER IN LIEU OF THE COUNSEL.**

25 **13A-1102. AUTHORITY TO ADMINISTER OATHS AND TO ACT AS NOTARY.**

26 **(A) THE FOLLOWING PERSONS MAY ADMINISTER OATHS FOR THE**
27 **PURPOSES OF MILITARY ADMINISTRATION, INCLUDING MILITARY JUSTICE:**

28 **(1) A JUDGE ADVOCATE;**

29 **(2) A SUMMARY COURT-MARTIAL;**

30 **(3) AN ADJUTANT, ASSISTANT ADJUTANT, ACTING ADJUTANT, AND**

1 PERSONNEL ADJUTANT; AND

2 (4) ALL OTHER PERSONS DESIGNATED BY REGULATIONS FOR THE
3 MARYLAND MILITARY DEPARTMENT.

4 (B) THE FOLLOWING PERSONS MAY ADMINISTER OATHS NECESSARY IN THE
5 PERFORMANCE OF THEIR DUTIES:

6 (1) THE PRESIDENT, MILITARY JUDGE, AND TRIAL COUNSEL FOR ALL
7 GENERAL AND SPECIAL COURTS-MARTIAL;

8 (2) THE PRESIDENT AND THE COUNSEL FOR THE GOVERNMENT OF
9 ANY COURT OF INQUIRY;

10 (3) AN OFFICER DESIGNATED TO TAKE A DEPOSITION;

11 (4) A PERSON DETAILED TO CONDUCT AN INVESTIGATION;

12 (5) A RECRUITING OFFICER; AND

13 (6) ALL OTHER PERSONS DESIGNATED BY REGULATIONS OF THE
14 ARMED FORCES OF THE UNITED STATES OR BY STATUTE.

15 (C) THE SIGNATURE WITHOUT SEAL OF ANY SUCH PERSON, TOGETHER WITH
16 THE TITLE OF THE PERSON'S OFFICE, IS PRIMA FACIE EVIDENCE OF THE PERSON'S
17 AUTHORITY.

18 13A-1103. SECTIONS TO BE EXPLAINED.

19 (A) (1) THIS SUBSECTION APPLIES WITH RESPECT TO §§ 13A-102,
20 13A-103, 13A-201 THROUGH 13A-301, 13A-504, 13A-506, 13A-602, 13A-702,
21 13A-703, 13A-801, AND 13A-1001 THROUGH 13A-1059 OF THIS TITLE AND §§
22 13A-1103 THROUGH 13A-1105 OF THIS SUBTITLE.

23 (2) THE SECTIONS OF THIS TITLE SPECIFIED IN PARAGRAPH (1) OF
24 THIS SUBSECTION SHALL BE CAREFULLY EXPLAINED TO EACH ENLISTED MEMBER
25 AT THE TIME OF, OR WITHIN 30 DAYS AFTER, THE MEMBER'S INITIAL ENTRANCE
26 INTO A DUTY STATUS WITH THE STATE MILITARY FORCES.

27 (3) THE SECTIONS OF THIS TITLE SPECIFIED IN PARAGRAPH (1) OF
28 THIS SUBSECTION SHALL BE EXPLAINED AGAIN:

29 (I) AFTER THE MEMBER HAS COMPLETED BASIC OR RECRUIT

1 TRAINING; AND

2 (II) AT THE TIME WHEN THE MEMBER REENLISTS.

3 (B) THE TEXT OF THIS TITLE AND OF THE REGULATIONS PRESCRIBED
4 UNDER THIS TITLE SHALL BE MADE AVAILABLE TO A MEMBER OF THE STATE
5 MILITARY FORCES, ON REQUEST BY THE MEMBER, FOR THE MEMBER'S PERSONAL
6 EXAMINATION.

7 13A-1104. COMPLAINTS OF WRONGS.

8 (A) A MEMBER OF THE STATE MILITARY FORCES WHO BELIEVES THE
9 MEMBER TO HAVE BEEN WRONGED BY A COMMANDING OFFICER, AND WHO, ON DUE
10 APPLICATION TO THAT COMMANDING OFFICER, IS REFUSED REDRESS, MAY
11 COMPLAIN TO A SUPERIOR COMMISSIONED OFFICER, WHO SHALL FORWARD THE
12 COMPLAINT TO THE OFFICER EXERCISING GENERAL COURT-MARTIAL
13 JURISDICTION OVER THE OFFICER AGAINST WHOM IT IS MADE.

14 (B) THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION
15 SHALL:

16 (1) EXAMINE INTO THE COMPLAINT AND TAKE PROPER MEASURES
17 FOR REDRESSING THE WRONG COMPLAINED OF; AND

18 (2) AS SOON AS POSSIBLE, SEND TO THE ADJUTANT GENERAL A TRUE
19 STATEMENT OF THAT COMPLAINT, WITH THE PROCEEDINGS HAD THEREON.

20 13A-1105. REDRESS OF INJURIES TO PROPERTY.

21 (A) (1) WHENEVER COMPLAINT IS MADE TO A COMMANDING OFFICER
22 THAT WILLFUL DAMAGE HAS BEEN DONE TO THE PROPERTY OF A PERSON OR THAT
23 THE PERSON'S PROPERTY HAS BEEN WRONGFULLY TAKEN BY MEMBERS OF THE
24 STATE MILITARY FORCES WHILE IN THE LINE OF DUTY, THAT PERSON MAY, UNDER
25 SUCH REGULATIONS PRESCRIBED, CONVENE A BOARD TO INVESTIGATE THE
26 COMPLAINT.

27 (2) THE BOARD SHALL CONSIST OF FROM ONE TO THREE
28 COMMISSIONED OFFICERS AND, FOR THE PURPOSE OF THAT INVESTIGATION, THE
29 BOARD HAS POWER TO:

30 (I) SUMMON WITNESSES AND EXAMINE THEM ON OATH;

31 (II) RECEIVE DEPOSITIONS OR OTHER DOCUMENTARY

1 EVIDENCE; AND

2 (III) ASSESS THE DAMAGES SUSTAINED AGAINST THE
3 RESPONSIBLE PARTIES.

4 (3) THE ASSESSMENT OF DAMAGES MADE BY THE BOARD IS SUBJECT
5 TO THE APPROVAL OF THE COMMANDING OFFICER, AND IN THE AMOUNT APPROVED
6 BY THAT OFFICER SHALL BE CHARGED AGAINST THE PAY OF THE OFFENDERS.

7 (4) THE ORDER OF THE COMMANDING OFFICER DIRECTING CHARGES
8 HEREIN AUTHORIZED IS CONCLUSIVE ON ANY DISBURSING OFFICER FOR PAYMENT
9 TO THE INJURED PARTIES OF THE DAMAGES SO ASSESSED AND APPROVED.

10 (B) IF THE OFFENDERS CANNOT BE ASCERTAINED, BUT THE ORGANIZATION
11 OR DETACHMENT TO WHICH THEY BELONG IS KNOWN, CHARGES TOTALING THE
12 AMOUNT OF DAMAGES ASSESSED AND APPROVED MAY BE MADE IN SUCH
13 PROPORTION AS MAY BE CONSIDERED JUST UPON THE INDIVIDUAL MEMBERS
14 THEREOF WHO ARE SHOWN TO HAVE BEEN PRESENT AT THE SCENE AT THE TIME THE
15 DAMAGES COMPLAINED OF WERE INFLICTED, AS DETERMINED BY THE APPROVED
16 FINDINGS OF THE BOARD.

17 13A-1106. DELEGATION BY THE GOVERNOR.

18 THE GOVERNOR MAY DELEGATE ANY AUTHORITY VESTED IN THE GOVERNOR
19 UNDER THIS TITLE, AND PROVIDE FOR THE SUB-DELEGATION OF ANY SUCH
20 AUTHORITY, EXCEPT THE POWER GIVEN THE GOVERNOR BY § 13A-501 OF THIS
21 TITLE.

22 13A-1107. PAYMENT OF FINES AND DISPOSITION THEREOF.

23 (A) FINES IMPOSED BY A MILITARY COURT OR THROUGH IMPOSITION OF
24 NON-JUDICIAL PUNISHMENT MAY BE PAID TO THE U.S. TREASURY.

25 (B) FINES MAY BE COLLECTED BY:

26 (1) CASH OR MONEY ORDER;

27 (2) RETENTION OF PAY OR ALLOWANCES DUE OR TO BECOME DUE
28 THE PERSON FINED FROM ANY STATE OR THE UNITED STATES; OR

29 (3) GARNISHMENT OR LEVY, TOGETHER WITH COSTS, ON THE WAGES,
30 GOODS, AND CHATTELS OF A PERSON DELINQUENT IN PAYING A FINE, AS PROVIDED
31 BY LAW.

1 **13A-1108. UNIFORMITY OF INTERPRETATION.**

2 **THIS TITLE SHALL BE SO CONSTRUED AS TO EFFECTUATE ITS GENERAL**
3 **PURPOSE TO MAKE IT UNIFORM, SO FAR AS PRACTICAL, WITH THE UNIFORM CODE**
4 **OF MILITARY JUSTICE, 10 U.S.C. 47.**

5 **13A-1109. IMMUNITY FOR ACTION OF MILITARY COURTS.**

6 **A PERSON ACTING UNDER THE PROVISIONS OF THIS TITLE, WHETHER AS A**
7 **MEMBER OF THE MILITARY OR AS A CIVILIAN, SHALL BE IMMUNE FROM PERSONAL**
8 **LIABILITY FOR ANY OF THE ACTS OR OMISSIONS THAT THE PERSON DID OR FAILED**
9 **TO DO AS PART OF THE PERSON'S DUTIES UNDER THIS TITLE.**

10 **13A-1110. SEVERABILITY.**

11 **THE PROVISIONS OF THIS TITLE ARE HEREBY DECLARED TO BE SEVERABLE**
12 **AND IF ANY PROVISION OF THIS TITLE OR THE APPLICATION OF SUCH PROVISION TO**
13 **ANY PERSON OR CIRCUMSTANCE IS DECLARED INVALID FOR ANY REASON, SUCH**
14 **DECLARATION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF**
15 **THIS TITLE.**

16 **13A-1111. SHORT TITLE.**

17 **THIS ACT MAY BE CITED AS THE MARYLAND CODE OF MILITARY JUSTICE.**

18 **13A-1112. SUPERSEDES EXISTING STATE MILITARY JUSTICE CODES.**

19 **ON ENACTMENT, THIS LAW SUPERSEDES ALL EXISTING STATUTES,**
20 **ORDINANCES, DIRECTIVES, RULES, REGULATIONS, ORDERS, AND OTHER LAWS IN**
21 **THE STATE COVERED BY THE SUBJECT MATTER OF THIS LAW, AND ALL SUCH**
22 **STATUTES, ORDINANCES, DIRECTIVES, RULES, REGULATIONS, ORDERS, AND OTHER**
23 **LAWS ARE HEREBY REPEALED.**

24 **SECTION 3. AND BE IT FURTHER ENACTED, That the catchlines contained in**
25 **this Act are not law and may not be considered to have been enacted as part of this Act.**

26 **SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect**
27 **October 1, 2020.**