

## No. 91

## AN ACT

SB 744

Amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, adding provisions relating to military justice.

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MILITARY AFFAIRS

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 51, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a title analysis and part to read:

TITLE 51  
MILITARY AFFAIRS

## Part

## IV. Military Justice.

PART IV  
MILITARY JUSTICE

## Chapter

- 51. General Provisions
- 52. Apprehension and Restraint
- 53. Non-judicial Punishment
- 54. Courts-martial Jurisdiction
- 55. Appointment and Composition of Courts-martial
- 56. Pre-trial Procedure
- 57. Trial Procedure
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CHAPTER 51  
GENERAL PROVISIONS

## Sec.

- 5100. Short title of part.
- 5101. Definitions.
- 5102. Persons subject to part.
- 5103. Jurisdiction to try certain personnel.
- 5104. Dismissal of commissioned officer.
- 5105. Territorial applicability.
- 5106. Judge advocates and legal officers.

## § 5100. Short title of part.

This part shall be known and may be cited as the "Pennsylvania Code of Military Justice."

## § 5101. Definitions.

The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Accuser." A person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, or any person who has an interest other than an official interest in the prosecution of the accused.

"Active State duty." Full-time duty in the active military service of the Commonwealth under an order of the Governor, or by a superior commissioned officer pursuant to law. It includes travel to and from such duty.

“Adjutant General.” The Adjutant General of the Commonwealth of Pennsylvania.

“Convening authority.” Includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

“Duty status.” Includes any periods of drill, annual field training, active State duty and such other training, and service as may be required under State or Federal laws, regulations or orders, and includes travel to and from such duty.

“Enemy.” Includes, for the purposes of the punitive provisions of this part, not only the organized forces of a hostile nation in time of war but also any hostile body the State military forces may be opposing, such as looters, a riot, a rebellious mob or band of renegades or outlaws.

“Enlisted person.” A person in an enlisted grade.

“Federal service.” Periods of active duty other than active State duty, but excludes active duty for training, active duty for periods of less than 30 days, and active duty for the purpose of attending service schools.

“Grade.” A step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

“May.” Is used in a permissive sense. The words “no person may. . . .” means that no person is required, authorized, or permitted to do the act prescribed.

“Military.” Any or all of the armed forces.

“Military court.” A court-martial, a court of inquiry, or a provost court.

“Military judge.” An official of a general or special court-martial appointed in accordance with section 5505 (relating to military judge of a general or special court-martial).

“Officer.” Commissioned or warrant officer.

“Rank.” The order of precedence among members of the State military forces.

“State Judge Advocate.” The commissioned officer responsible for supervising the administration of the military justice in the State military forces. He shall be the military staff judge advocate to the Governor.

“Superior commissioned officer.” A commissioned officer superior in rank and command.

§ 5102. Persons subject to part.

This part applies to all members of the State military forces who are not in Federal service.

§ 5103. Jurisdiction to try certain personnel.

(a) Discharge obtained fraudulently.—Each person subject to this part discharged from the State military forces who is later charged with having fraudulently obtained his discharge shall be, subject to section 5708 (relating to statute of limitations), subject to trial by court-martial

on said charge and shall after apprehension be subject to this part while in the custody of the military for such trial. Upon conviction of said charge he shall be subject to trial by court-martial for all offenses under this part committed before the fraudulent discharge.

(b) Deserters.—No person subject to this part who has deserted from the State military forces shall be relieved from amenability to the jurisdiction of this part by virtue of a separation from any subsequent period of service.

§ 5104. Dismissal of commissioned officer.

(a) Court-martial proceedings.—Any commissioned officer, subject to this part dismissed by order of the Governor, may make a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed. In such event, the Governor, as soon as practicable, shall convene a general court-martial to try such officer on the charges on which he was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on such charge, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the Adjutant General shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issue.

(b) Failure to convene court-martial.—If the Governor fails to convene a general court-martial within six months from the presentation of an application for trial under this section, the Adjutant General shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issue.

§ 5105. Territorial applicability.

(a) General rule.—This part applies throughout this Commonwealth. It also applies to all persons otherwise subject to this part while they are serving outside this Commonwealth, and while they are going to and returning from such service outside this Commonwealth, in the same manner and to the same extent as if they were serving inside this Commonwealth.

(b) Location of proceedings.—Courts-martial and courts of inquiry may be convened and held in units of the State military forces while those units are serving outside this Commonwealth with the same jurisdiction and powers as to persons subject to this part as if the proceedings were held inside this Commonwealth, and persons subject to this part accused of committing offenses outside this Commonwealth shall be subject to trial and punishment either inside or outside this Commonwealth.

§ 5106. Judge advocates and legal officers.

(a) Appointment of State Judge Advocate.—The Governor, on the recommendation of the Adjutant General, shall appoint a judge advocate officer of the State military forces as State Judge Advocate. To be eligible for appointment, such officer shall have been a member of the bar of the Supreme Court of Pennsylvania for at least five years.

(b) Appointment of assistants.—The Adjutant General may appoint as many assistant State judge advocates as he considers necessary. To be eligible for appointment, assistant State judge advocates must be judge advocate officers of the State military forces and members of the bar of the Supreme Court of Pennsylvania.

(c) Field inspections.—The State Judge Advocate or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Direct communications.—Convening authorities shall at all times communicate directly with their staff judge advocates or legal officer in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the State Judge Advocate.

(e) Disqualification in case.—No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

## CHAPTER 52 APPREHENSION AND RESTRAINT

Sec.

5201. Apprehension.

5202. Apprehension of persons absent without leave.

5203. Imposition of restraint.

5204. Restraint of persons charged with offenses.

5205. Confinement in jails.

5206. Reports and receiving of prisoners.

5207. Punishment prohibited before trial.

5208. Delivery of offenders to civil authorities.

§ 5201. Apprehension.

(a) Definition.—Apprehension is the taking of a person subject to this part into custody.

(b) Persons authorized to apprehend.—Any person authorized by this part, or by regulations issued under it, and any peace officer authorized by law, may apprehend persons subject to this part upon reasonable belief that an offense under this part has been committed and that the person apprehended committed it.



(c) Authority of officers.—Commissioned officers, warrant officers, petty officers and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this part and to apprehend persons subject to this part who take part therein. § 5202. Apprehension of persons absent without leave.

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth or possession, or of the District of Columbia, or any military officer subject to this part who has been authorized by the Governor by regulation may summarily apprehend any person subject to this part absent without leave from the State military forces and deliver him into the custody of the State military forces.

§ 5203. Imposition of restraint.

(a) Definitions.—Arrest is the restraint of a person subject to this part by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person subject to this part.

(b) Enlisted personnel.—An enlisted person subject to this part may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this part or through any person authorized by this part to apprehend persons. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) Commissioned and warrant officers.—A commissioned officer or a warrant officer subject to this part may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) Probable cause.—No person subject to this part may be ordered apprehended or into arrest or confinement except for probable cause.

(e) Construction of section.—This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified. § 5204. Restraint of persons charged with offenses.

(a) General rule.—Any person subject to this part charged with an offense under this part may be ordered into arrest or confinement. When any person subject to this part is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused, to try him, or to dismiss the charges and release him.

(b) Issuing warrants to peace officers.—The convening authority of any court-martial shall have the power to issue warrants of

apprehension directed to the sheriff or any constable or peace officer within the proper county to apprehend persons subject to this part charged with an offense under this part and to deliver such persons into the custody of the State military forces.

(c) Admission to bail.—In cases where the unit of which the accused is a member is not in a status of active State duty or engaged in annual field training, such accused, if apprehended or ordered into confinement prior to or during trial by a military court, may be admitted to bail by the officer exercising special court-martial jurisdiction over him or by a superior commanding officer, or the Adjutant General.

§ 5205. Confinement in jails.

Persons subject to this part confined other than in a military installation, whether before, during or after trial by a military court, shall be confined in municipal, county, or State places of confinement.

§ 5206. Reports and receiving of prisoners.

(a) Duty to receive prisoner.—No provost marshal, commander of a guard, warden, keeper, or officer of a municipal, county, or State place of confinement may refuse to receive or keep any prisoner subject to this part, committed to his charge, when the committing person furnishes a statement, signed by him of the offense charged against the prisoner.

(b) Report of commitment.—Every commander of a guard, warden, keeper, or officer of a municipal, county, or State place of confinement to whose charge a prisoner subject to this part, is committed shall, within 24 hours after that commitment report to the commanding officer of the prisoner, the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

§ 5207. Punishment prohibited before trial.

Subject to section 5803 (relating to effective date of sentences), no person subject to this part, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence. He may be subjected to minor punishment during that period for other infractions of discipline.

§ 5208. Delivery of offenders to civil authorities.

(a) General rule.—Under such regulations as may be prescribed under this part, a person subject to this part on active State duty, accused of an offense against civil authority, may be delivered, upon request of such civil authority, to such civil authority for trial.

(b) Effect on sentence of court martial.—When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial. The offender after having answered to the civil authorities for his offense,

shall, upon the request of competent military authority, be returned to military custody for the completion of such sentence of the court-martial.

## CHAPTER 53 NON-JUDICIAL PUNISHMENT

Sec.

5301. Commanding officer's non-judicial punishment.

§ 5301. Commanding officer's non-judicial punishment.

(a) General rule.—Under such regulations as the Governor may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) Upon an officer of his command:

(i) withholding of privileges for not more than two consecutive weeks;

(ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or

(iii) if imposed by the Governor, the commanding officer of a division or a wing or a separate brigade or a similar organization, a fine or forfeiture of pay and allowances of not more than \$100.

(2) Upon other military personnel of his command:

(i) withholding of privileges for not more than two consecutive weeks;

(ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(iii) extra duties for not more than 14 days, which need not be consecutive, and for not more than two hours per day, holidays included;

(iv) reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or

(v) if imposed by an officer exercising special court-martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than \$10.

(b) Limitations imposed by Governor.—The Governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

(c) Appeal from punishment.—A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided. The officer who imposes the punishment, his successor in command, and

superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected.

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

(e) Application of forfeiture.—Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after the date that punishment is imposed and to any pay and allowances accrued before that date.

(f) Court-martial in lieu of punishment.—Punishment may not be imposed upon any member of the State military forces under this chapter if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment.

## CHAPTER 54 COURTS-MARTIAL JURISDICTION

Sec.

5401. Courts-martial classified.

5402. Jurisdiction of courts-martial in general.

5403. Jurisdiction of general courts-martial.

5404. Jurisdiction of special courts-martial.

5405. Jurisdiction of summary courts-martial.

5406. Sentences of dismissal, dishonorable discharge or bad conduct to be approved by the Governor.

5407. Record of bad conduct discharge proceedings.

5408. Confinement instead of fine.

§ 5401. Courts-martial classified.

The three kinds of courts-martial in the State military forces are:

(1) General courts-martial, consisting of:

(i) a military judge and not less than five members; or

(ii) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.

(2) Special courts-martial, consisting of:

(i) not less than three members;

(ii) a military judge and not less than three members; or

(iii) only a military judge, if one has been detailed to the court,

and the accused under the same conditions as those prescribed in paragraph (1)(ii) so requests.

(3) Summary courts-martial, consisting of one commissioned officer.

§ 5402. Jurisdiction of courts-martial in general.

Each force of the State military forces has court-martial jurisdiction over all persons subject to this part. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

§ 5403. Jurisdiction of general courts-martial.

Subject to section 5402 (relating to jurisdiction of courts-martial in general), general courts-martial have jurisdiction to try persons subject to this part for any offense made punishable by this part and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than \$200.
- (2) Forfeiture of pay and allowances for a period not exceeding six months.
- (3) A reprimand.
- (4) Dismissal, dishonorable discharge or bad conduct discharge.
- (5) Reduction of a noncommissioned officer to any lower enlisted grade.
- (6) Any combination of these punishments.

§ 5404. Jurisdiction of special courts-martial.

Subject to section 5402 (relating to jurisdiction of courts-martial in general), special courts-martial shall have jurisdiction to try persons subject to this part, except commissioned officers for any offense made punishable by this part and may, under such limitations as the Governor may prescribe adjudge any of the following punishments:

- (1) A fine of not more than \$100.
- (2) Forfeiture of pay and allowances for a period not exceeding three months.
- (3) A reprimand.
- (4) Reduction of a noncommissioned officer to any lower enlisted grade.
- (5) A bad conduct discharge.
- (6) Any combination of these punishments.

§ 5405. Jurisdiction of summary courts-martial.

(a) General rule.—Subject to section 5402 (relating to jurisdiction of courts-martial in general), summary courts-martial shall have jurisdiction to try enlisted persons subject to this part for any offense made punishable by this part and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than \$25 for a single offense.
- (2) Forfeiture of pay and allowances for a period not exceeding one month.

(3) Reduction to the next lower grade.

(b) Objection to summary court-martial.—No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial shall be ordered by special or general court-martial, as may be appropriate.

§ 5406. Sentences of dismissal, dishonorable discharge or bad conduct to be approved by the Governor.

In the State military forces, no sentence of dismissal, dishonorable discharge, or bad conduct discharge shall be executed until it is approved by the Governor.

§ 5407. Record of bad conduct discharge proceedings.

A bad conduct discharge may not be adjudged by any special court-martial unless a complete written record of the proceedings and testimony before the court has been made.

§ 5408. Confinement instead of fine.

In the State military forces, a court-martial may sentence to confinement for not more than one day for each dollar of the authorized fine.

## CHAPTER 55

### APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

Sec.

5501. Who may convene general courts-martial.

5502. Who may convene special courts-martial.

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5504. Who may serve on courts-martial.

5505. Military judge of a general or special court-martial.

5506. Appointment of trial counsel and defense counsel.

5507. Appointment or employment of reporters and interpreters.

5508. Absent and additional members.

§ 5501. Who may convene general courts-martial.

(a) General rule.—General courts-martial may be convened by any of the following:

(1) The Governor.

(2) The Adjutant General.

(3) The commanding officer of a division, a separate brigade, or a separate wing.

(4) Any other commanding officer in any of the State military forces when empowered by the Governor.

(b) Commanding officer as accuser.—When any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed desirable by such authority.

§ 5502. Who may convene special courts-martial.

In the State military forces any person authorized to convene a general court-martial, the commanding officer of a garrison, fort, post,

camp, station, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, separate battalion, separate squadron, or other detached command, may convene special courts-martial. When any such officer is an accuser, the court shall be convened by superior competent authority and may, in any case, be convened by such authority when deemed advisable by him.

§ 5503. Who may convene summary courts-martial.

(a) General rule.—In the State military forces any person authorized to convene a general or special court-martial, the commanding officer of a garrison, fort, post, camp, station, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, separate battalion, separate squadron, or other detached command, may convene a summary court-martial.

(b) Commissioned officer or superior authority.—When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

§ 5504. Who may serve on courts-martial.

(a) Commissioned officer.—Any commissioned officer of the State military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Warrant officer.—Any warrant officer of the State military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c) Enlisted person.—

(1) Any enlisted person of the State military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial. He shall serve as a member of a court only if, before the convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial, the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this subsection, the word "unit" means any regularly organized body of the State military forces not larger in size than a company, or a corresponding body.

(d) Ineligible persons.—

(1) No person subject to this part may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall appoint as members thereof such members as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

§ 5505. Military judge of a general or special court-martial.

(a) Appointment and eligibility.—The authority convening a general or special court-martial shall appoint as military judge thereof a commissioned officer who is a member of the bar of the Supreme Court of the Commonwealth of Pennsylvania, and who is certified as qualified for such duty by the State Judge Advocate. No person shall be eligible to act as military judge in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) Limitation on powers.—The military judge may not consult with the members of the court, other than on the form of the findings as provided in section 5704 (relating to sessions), except in the presence of the accused, trial counsel, and defense counsel. He shall not vote with the members of the court.

§ 5506. Appointment of trial counsel and defense counsel.

(a) General rule.—For each general and special court-martial the authority convening the court shall appoint trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge or court member in any case shall act subsequently as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act later in the same case for the defense, nor shall any person who has acted for the defense act later in the same case for the prosecution.

(b) Eligibility.—Any person who is appointed trial counsel or defense counsel in the case of a general or a special court-martial:

(1) shall be a person who is a member of the bar of the Supreme Court of Pennsylvania; and

(2) shall be certified as competent to perform such duties by the State Judge Advocate.

§ 5507. Appointment or employment of reporters and interpreters.

Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial or court of inquiry shall appoint or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. Under like



regulations the convening authority of a military court may appoint or employ interpreters who shall interpret for the court.

§ 5508. Absent and additional members.

(a) Authorized absence.—No member of a general or special court-martial shall be absent or excused after the court has been assembled for the trial of the accused, except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) New members of general court-martial.—Whenever a general court-martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When such new members have been sworn, the trial may proceed 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) New members of special court-martial.—Whenever a special court-martial is reduced below three members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When such new members have been sworn, the trial shall proceed with the new members present as if no evidence has previously been introduced 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, if any, the accused, and counsel for both sides.

## CHAPTER 56 PRE-TRIAL PROCEDURE

Sec.

5601. Charges and specifications.

5602. Compulsory self-incrimination prohibited.

5603. Investigation.

5604. Forwarding of charges.

5605. Advice of staff judge advocate and reference for trial.

5606. Service of charges.

§ 5601. Charges and specifications.

(a) Execution and contents.—Charges and specifications shall be signed by a person subject to this part under oath before a person authorized by this part to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein.

(2) That they are true in fact to the best of his knowledge and belief.

(b) Disposition.—Upon 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. The

person accused shall be informed of the charges against him as soon as practicable.

§ 5602. Compulsory self-incrimination prohibited.

(a) General rule.—No person subject to this part shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) Advising accused of his rights.—No person subject to this part shall interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and fully advising him of his right to be represented by counsel, that he does not have to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him can and will be used as evidence against him in a trial by court-martial, as well as other constitutional safeguards provided for an accused or a person suspected of an offense.

(c) Immaterial or degrading evidence.—No person subject to this part shall compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) Unlawfully obtained statement inadmissible.—No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial.

§ 5603. Investigation.

(a) General rule.—No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) Rights of accused.—The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel appointed by the person exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) Further investigation.—If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) Requirements mandatory.—The requirements of this section are binding on all persons administering this part.

§ 5604. Forwarding of charges.

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to such officer the reasons for delay.

§ 5605. Advice of staff judge advocate and reference for trial.

(a) General rule.—Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority shall not refer a charge to general court-martial for trial unless he has found that the charge alleges an offense under this part and is warranted by evidence indicated in the report of the investigation.

(b) Changes in charges and specifications.—If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made by the appointing authority.

§ 5606. Service of charges.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person shall, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 5704(a) (relating to sessions) in a general court-martial case within a period of five days after the service of the charges upon him, or in a special court-martial within a period of three days after the service of the charges upon him.

CHAPTER 57  
TRIAL PROCEDURE

Sec.

- 5701. Governor may prescribe rules.
  - 5702. Unlawfully influencing action of court.
  - 5703. Duties of trial counsel and defense counsel.
  - 5704. Sessions.
  - 5705. Continuances.
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  - 5708. Statute of limitations.
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  - 5712. Refusal to appear or testify.
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  - 5716. Voting and rulings.
  - 5717. Number of votes required.
  - 5718. Court to announce action.
  - 5719. Record of trial.
- § 5701. Governor may prescribe rules.

(a) General rule.—The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations, which shall apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State but which shall not be contrary to or inconsistent with this part.

(b) Uniformity.—All rules and regulations made pursuant to the provisions of this section shall be uniform in so far as practicable among the State military forces.

§ 5702. *Unlawfully influencing action of court.*

(a) General rule.—No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, shall censure, reprimand, or admonish the court or any member, military judge or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceedings. No person subject to this part shall attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, reviewing authority with respect to his judicial acts.

(b) Performance reports on members and counsel.—In the preparation of an effectiveness, fitness or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the State military forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the State military forces, no person subject to this part may, in preparing any such report:

(1) consider or evaluate the performance of duty of any such member as a member of a court-martial; or

(2) give a less favorable rating or evaluation of any member of the State military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

§ 5703. Duties of trial counsel and defense counsel.

(a) Trial counsel.—The trial counsel of a general or special court-martial shall prosecute in the name of the Commonwealth, and shall, under the direction of the court, prepare the record of the proceedings.

(b) Defense counsel.—The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel appointed under section 5506 (relating to appointment of trial counsel and defense counsel). Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were appointed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) Brief by defense counsel.—In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) Assistant trial counsel.—An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 5506, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) Assistant defense counsel.—An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 5506, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

§ 5704. Sessions.

(a) Proceedings in absence of members.—At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may,

subject to section 5606 (relating to service of charges) call the court into session without the presence of the members for the purpose of:

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this section, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this part or under rules prescribed pursuant to section 5701 (relating to Governor may prescribe rules) and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) *Other proceedings.*—When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

#### § 5705. Continuances.

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

#### § 5706. Challenges.

(a) *Challenges for cause.*—The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or if none, the court shall determine the relevancy and validity of challenges for cause, and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) *Preemptory challenges.*—Each accused and the trial counsel is entitled to one preemptory challenge, but the military judge may not be challenged except for cause.

#### § 5707. Oaths.

(a) *General rule.*—Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their

duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be in accordance with regulations prescribed by the Governor. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate, or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person is detailed to that duty.

(b) Witnesses.—Each witness before a military court shall be examined on oath or affirmation.

§ 5708. Statute of limitations.

(a) No limitation.—A person subject to this part, charged with desertion or absence without leave in time of war or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Three-year limitation.—Except as otherwise provided in this section, a person subject to this part charged with desertion in time of peace or with the offense punishable under section 6041 (relating to frauds against the government) shall not be liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Two-year limitation.—Except as otherwise provided in this section, a person subject to this part charged with any offense is not liable to be tried by court-martial or punished under section 5301 (relating to commanding officer's non-judicial punishment) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 5301.

(d) Computation of period of limitation.—Periods in which the accused was absent from territory in which the Commonwealth has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

§ 5709. Former jeopardy.

(a) General rule.—No person subject to this part shall, without his consent, be tried a second time for the same offense in a military court convened under this part. Prosecution under this part shall not bar prosecution by civil authorities for a crime or offense growing out of the same act or omission committed in violation of the laws of the civil jurisdiction.

(b) Definition of trial.—No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is 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. However, a proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority, or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused, is a trial in the sense of this section.

§ 5710. Pleas of the accused.

(a) Inadequacy or lack of pleading.—A plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty, if after arraignment before a court martial:

(1) an accused makes an irregular pleading;

(2) after a plea of guilty an accused sets up matter inconsistent with the plea;

(3) it appears that an accused has entered a plea of guilty improvidently or through lack of understanding or its meaning and effect; or

(4) an accused fails or refuses to plead.

(b) Plea of guilty.—With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

§ 5711. Opportunity to obtain witnesses and other evidence.

(a) General rule.—The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the Governor may prescribe.

(b) Issuance of process.—Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which the courts of this Commonwealth having criminal jurisdiction may lawfully issue and shall run to any part of the Commonwealth and to any other state or territory, district or possession in which the court-martial may be sitting.

§ 5712. Refusal to appear or testify.

Any person not subject to this part who has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before such a court and who wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been



legally subpoenaed to produce is guilty of an offense against the Commonwealth and a military court may punish him in the same manner as the civil courts of this Commonwealth.

§ 5713. Contempts.

A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100 or both.

§ 5714. Depositions.

(a) General rule.—At any time after charges have been signed, as provided in section 5601 (relating to charges and specifications) any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) Notice of taking deposition.—The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Persons authorized to take depositions.—Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of this Commonwealth or by the laws of the place where the deposition is taken to administer oaths.

(d) Admissibility in evidence.—A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or in any proceeding before a court of inquiry, if it appears:

(1) that the witness resides or is beyond the state in which the court is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

§ 5715. Admissibility of records of courts of inquiry.

(a) Court-martial.—In any case not extending to dismissal or dishonorable discharge, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if

the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Use of testimony by defense.—Such testimony may be read in evidence only by the defense in cases extending to dismissal or dishonorable discharge.

(c) Court of inquiry or military board.—Such testimony may also be read in evidence before a court of inquiry or a military board by either party.

§ 5716. Voting and rulings.

(a) Findings, sentences and challenges.—Voting by members of a general or special court-martial on the findings and on the sentence and by members of a court-martial without a military judge upon questions of challenge shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) Questions of law and interlocutory questions.—The military judge and except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change any such ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 5717 (relating to number of votes required), beginning with the junior in rank.

(c) Instructions to members of court.—Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the prosecution.

(d) Proceedings before military judge only.—Subsections (a), (b) and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

§ 5717. Number of votes required.

(a) Conviction.—No person subject to this part shall be convicted of any offense, except as provided in section 5710 (b) (relating to pleas of the accused) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) Sentence.—All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) Other questions.—All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

§ 5718. Court to announce action.

Every court-martial shall announce its findings and sentence to the parties as soon as determined.

§ 5719. Record of trial.

(a) General court-martial.—Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signatures of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. If the proceedings have resulted in an acquittal of all charges and specifications or in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record need not contain a verbatim account of the proceedings and testimony before the court, but shall contain such matters as the Governor may by regulation prescribe.

(b) Special and summary courts-martial.—Each special and summary courts-martial shall keep a separate record of the proceedings in each case, which record shall contain such matter and shall be authenticated in such manner as the Governor may by regulation prescribe.

(c) Furnishing record to accused.—A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated. If a verbatim record of trial by general court-martial is not required by subsection (a), but has been made, the accused may buy such a record under such regulations as the Governor may prescribe.

## CHAPTER 58 SENTENCES

Sec.

5801. Cruel and unusual punishments prohibited.

5802. Maximum limits.

5803. Effective date of sentences.

5804. Execution of confinement.

§ 5801. Cruel and unusual punishments prohibited.

Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this part. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

§ 5802. Maximum limits.

The punishment which a court-martial may direct for an offense may not exceed such limits as the Governor may prescribe for that offense subject to the limits prescribed by this part.

§ 5803. Effective date of sentences.

(a) Forfeiture of pay and allowances.—Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Confinement.—Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement. Regulations prescribed by the Governor may provide that sentences of confinement may not be executed until approved by designated officers.

(c) Other sentences.—All other sentences of courts-martial are effective on the date ordered executed.

§ 5804. Execution of confinement.

(a) Place of confinement.—A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the State military forces or in any county or State jail, prison or other place of confinement. Persons so confined in a jail or prison are subject to the same discipline and treatment as persons confined or committed to the jail or prison by the courts of this Commonwealth or of any political subdivision thereof.

(b) Authority to require hard labor.—The omission of the words “hard labor” from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) Duty of county prison officials.—The keepers, officers, and wardens of county jails or prisons under section 5205 (relating to confinement in jails) shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

## CHAPTER 59 REVIEW OF COURTS-MARTIAL

Sec.

- 5901. Error of law; lesser included offense.
  - 5902. Initial action on the record.
  - 5903. Action on general court-martial records.
  - 5904. Reconsideration and revision.
  - 5905. Rehearings.
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(a) Error of law.—A finding or sentence of court-martial shall not be held incorrect on the ground of an error of law unless the error

materially prejudices the substantial rights of the accused.

(b) Approval of lesser offense.—Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense.

§ 5902. Initial action on the record.

After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, in the absence of the convening authority, a successor in command, or by any officer exercising general court-martial jurisdiction.

§ 5903. Action on general court-martial records.

The convening authority shall refer the record of each general court-martial to his staff judge advocate or legal officer who shall submit his written opinion thereon to the convening authority. If there is no qualified staff judge advocate or legal officer available, the State Judge Advocate shall assign a judge advocate officer for such purpose. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

§ 5904. Reconsideration and revision.

(a) Reconsideration of motion dismissing specification.—If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Record disclosing error or improper action.—Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

- (1) for reconsideration of a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;
- (2) for reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this part; or
- (3) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

§ 5905. Rehearings.

(a) General rule.—If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing, in which case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Rehearing body composition and authority.—Every rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

§ 5906. Approval by the convening authority.

In acting on the findings and sentence of a court-martial, the convening authority shall approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence shall constitute approval of the findings and sentence.

§ 5907. Disposition of records after review by the convening authority.

(a) Final action by Governor.—When the Governor has taken final action in a court-martial case in which he is the convening authority, there shall be no further review.

(b) Final action by other authority.—When a convening authority other than the Governor has taken final action in a general court-martial case, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the State Judge Advocate.

(c) Bad conduct discharge.—Where the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by a general court-martial. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be forwarded to the State Judge Advocate.

(d) Review and disposition of other records.—All other special and summary court-martial records shall be reviewed by a judge advocate of the Army National Guard or Air National Guard and shall be transmitted and disposed of as the Adjutant General may prescribe by regulations.

§ 5908. Review in the office of the State Judge Advocate.

Every record of trial by general court-martial in which there has been a finding of guilty and a sentence, and every record of trial by special court-martial in which the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, shall be examined in the office of the State Judge Advocate. If the State

Judge Advocate so directs, the record shall be reviewed by a board of review in accordance with section 5909 (relating to review by a board of review).

§ 5909. Review by a board of review.

(a) Composition of boards of review.—The State Judge Advocate may constitute one or more boards of review, each composed of not less than three commissioned officers, each of whom shall be a member of the bar of the Supreme Court of Pennsylvania, and one of whom shall be a judge advocate of the Army or Air National Guard.

(b) Affirming findings and sentence.—In a case referred to it, the board of review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record it shall have authority to weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(c) Setting aside findings and sentence.—If the board of review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(d) Action by convening authority.—The State Judge Advocate shall, unless there is to be further action by the Governor, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(e) Uniform rules of procedure.—In the event one or more boards of review are constituted in accordance with this section, the State Judge Advocate shall prescribe uniform rules of procedure for proceedings in and before such board or boards of review.

§ 5910. Appellate counsel.

Upon review of the record of trial by general court-martial in which there has been a finding of guilty and a sentence and upon review of the record of trial by special court-martial in which the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, the accused shall have the right to be represented before the State Judge Advocate or the board of review, as the case may be, by military counsel if requested by him or by civilian counsel if provided by him. Appellate military counsel shall be a commissioned officer of the State military forces and shall be a member of the bar of the Supreme Court of Pennsylvania.

§ 5911. Execution of sentence; suspension of sentence.

(a) Approval of certain sentences by Governor.—No sentence



extending to the dismissal of a commissioned officer or dishonorable discharge or bad-conduct discharge shall be executed until approved by the Governor. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him.

(b) Authority of convening authority.—All other court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence.

§ 5912. Vacation of suspension.

(a) Bad-conduct discharges and general court-martial sentences.—Prior to 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 the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) Hearing record, recommendation and action.—The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be forwarded for action to the officer exercising general court-martial jurisdiction. If he vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) Other sentences.—The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

§ 5913. Petition for a new trial.

At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal, dishonorable discharge or bad-conduct discharge, the accused may petition the Governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.

§ 5914. Remission and suspension.

(a) General rule.—A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures, other than a sentence approved by the Governor.

(b) Substitution of administrative discharge by Governor.—The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

§ 5915. Restoration.

(a) General rule.—Under such regulations as the Governor may prescribe, all rights, privileges, and property affected by an executed

portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon a new trial or rehearing.

(b) Substitution of administrative discharge for invalid discharge.—When a previously executed sentence of dishonorable discharge or bad-conduct discharge is not sustained on a new trial, the Adjutant General shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) Substitution of administrative discharge for invalid dismissal.—When a previously executed sentence of dismissal is not sustained on a new trial, the Adjutant General shall substitute therefor a form of discharge authorized for administrative issue.

§ 5916. Finality of proceedings, findings and sentences.

The proceedings, findings and sentences of courts-martial as reviewed and approved, as required by this part, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this part, shall be final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the Commonwealth, subject only to action upon a petition for a new trial as provided in section 5913 (relating to petition for a new trial) and to action by the Governor as provided in section 5914 (relating to remission and suspension).

## CHAPTER 60 PUNITIVE SECTIONS

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- § 6001. Principals.

Any person subject to this part who:

- (1) commits an offense punishable by this part, or aids, abets, counsels, commands, or procures its commission; or
- (2) causes an act to be done which if directly performed by him would be punishable by this part;

is a principal.

§ 6002. Accessory after the fact.

Any person subject to this part who, knowing that an offense punishable by this part has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial,

or punishment shall be punished as a court-martial may direct.

§ 6003. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

§ 6004. Attempts.

(a) *Attempt defined.*—An act, done with specific intent to commit an offense under this part, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

(b) *Punishment.*—Any person subject to this part who attempts to commit any offense punishable by this part shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) *Effect of consummation of offense.*—Any person subject to this part may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

§ 6005. Conspiracy.

Any person subject to this part who conspires with any other person to commit an offense under this part shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

§ 6006. Solicitation.

(a) *Desertion and mutiny.*—Any person subject to this part who solicits or advises another or others to desert in violation of section 6009 (relating to desertion) or mutiny in violation of section 6018 (relating to mutiny or sedition) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) *Misbehavior before enemy and sedition.*—Any person subject to this part who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 6023 (relating to misbehavior before the enemy) or sedition in violation of section 6018 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

§ 6007. Fraudulent enlistment, appointment or separation.

Any person who:

(1) procures his own enlistment or appointment in the State military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the State military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

§ 6008. Unlawful enlistment, appointment, or separation.

Any person subject to this part who effects an enlistment or appointment in or a separation from the State military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

§ 6009. Desertion.

(a) Offense defined.—Any member of the State military forces who:

(1) without authority goes or remains absent from his unit, organization or place of duty with intent to remain away therefrom permanently;

(2) quits his 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 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 he has not been regularly separated;

is guilty of desertion.

(b) Commissioned officer tendering resignation.—Any commissioned officer of the State military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Punishment.—Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

§ 6010. Absence without leave.

Any person subject to this part who, without authority:

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; shall be punished as a court-martial may direct.

§ 6011. Missing movement.

Any person subject to this part who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

§ 6012. Contempt towards officials.

Any person subject to this part who uses contemptuous words against the President of the United States, Vice-President of the United States, Congress, Secretary of Defense, or a secretary of a department, the Governor of the Commonwealth of Pennsylvania, the General Assembly of the Commonwealth of Pennsylvania or the Adjutant General of the Commonwealth of Pennsylvania, the Governor or the

legislature of any state, territory or other possession of the United States in which he is on duty or present shall be punished as a court-martial may direct.

§ 6013. Disrespect towards superior commissioned officer.

Any person subject to this part who behaves with disrespect towards his superior commissioned officer shall be punished as a court-martial may direct.

§ 6014. Assaulting or wilfully disobeying superior commissioned officer.

Any person subject to this part who:

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) wilfully disobeys a lawful command of his superior commissioned officer;

shall be punished as a court-martial may direct.

§ 6015. Insubordinate conduct toward warrant officer, noncommissioned officer.

Any warrant officer or enlisted member who:

(1) strikes or assaults a warrant officer, noncommissioned officer, while that officer is in the execution of his office;

(2) wilfully disobeys the lawful order of a warrant officer, noncommissioned officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

§ 6016. Failure to obey order or regulation.

Any person subject to this part who:

(1) violates or fails to obey any lawful general order or regulation; or

(2) having knowledge of any other lawful order issued by a member of the State military forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

§ 6017. Cruelty and maltreatment.

Any person subject to this part who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

§ 6018. Mutiny or sedition.

(a) Offenses defined.—Any person subject to this part who:

(1) with intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise to do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition; or

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) Punishment.—A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

§ 6019. Resistance, breach of arrest, and escape.

Any person subject to this part who resists apprehension or breaks arrest or who escapes from custody, restraint, or confinement imposed under this part shall be punished as a court-martial may direct.

§ 6020. Releasing prisoner without proper authority.

Any person subject to this part who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct.

§ 6021. Unlawful detention of another.

Any person subject to this part who, except as provided by law or regulation, apprehends, arrests, restrains, or confines any person shall be punished as a court-martial may direct.

§ 6022. Noncompliance with procedural rules.

Any person subject to this part who:

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this part; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this part regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

§ 6023. Misbehavior before the enemy.

Any person subject to this part who before or in the presence of the enemy:

(1) runs away;

(2) shamefully abandons, or surrenders any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces of the United States or the State military forces;

(8) wilfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the State when engaged in battle or in suppressing civil disorders;

shall be punished as a court-martial may direct.

§ 6024. Subordinate compelling surrender.

Any person subject to this part who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the State military forces to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

§ 6025. Improper use of countersign.

Any person subject to this part who discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

§ 6026. Forcing a safeguard.

Any person subject to this part who forces a safeguard shall be punished as a court-martial may direct.

§ 6027. Captured or abandoned property.

(a) Duty to secure property.—All persons subject to this part shall secure all public property taken from the enemy for the service of the United States or the Commonwealth, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Offenses defined and punishment.—Any person subject to this part who:

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.



§ 6028. Aiding the enemy.

Any person subject to this part who:

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

§ 6029. Misconduct of a prisoner.

Any person subject to this part who, while in the hands of the enemy:

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

§ 6030. False official statements.

Any person subject to this part who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

§ 6031. Loss, damage, destruction or wrongful disposition of military property.

Any person subject to this part, who without proper authority;

(1) sells or otherwise disposes of;

(2) wilfully or through neglect damages, destroys, or loses; or

(3) wilfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States or of the State; shall be punished as a court-martial may direct.

§ 6032. Waste, spoilage, or destruction of nonmilitary property.

Any person subject to this part who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property belonging to the United States or of the State shall be punished as a court-martial may direct.

§ 6033. Improper hazarding of vessel.

(a) Wilful conduct.—Any person subject to this part who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the State military forces shall be punished as a court-martial may direct.

(b) Negligent conduct.—Any person subject to this part who negligently hazards or suffers to be hazarded any vessel of the armed

forces of the United States or of the State military forces shall be punished as a court-martial may direct.

§ 6034. Drunken or reckless driving.

Any person subject to this part who while in a duty status operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

§ 6035. Drunk on duty, sleeping on post and leaving post before relief.

Any person subject to this part who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

§ 6036. Dueling.

Any person subject to this part who, while in a duty status, fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

§ 6037. Malingering.

Any person subject to this part who for the purpose of avoiding work, duty or service in the State military forces:

(1) feigns illness, physical disablement, mental lapse or derangement; or

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

§ 6038. Riot or breach of peace.

Any person subject to this part who while in a duty status causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

§ 6039. Provoking speeches or gestures.

Any person subject to this part who while in a duty status uses provoking or reproachful words or gestures towards any other person subject to this part shall be punished as a court-martial may direct.

§ 6040. Perjury.

Any person subject to this part who in a judicial proceeding or in a course of justice conducted under this part wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

§ 6041. Frauds against the government.

Any person subject to this part:

(1) who, knowing it to be false or fraudulent:

(i) makes any claim against the United States, the Commonwealth, or any officer thereof; or

(ii) presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the Commonwealth, or any officer thereof; or

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the Commonwealth, or any officer thereof;

(i) makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements;

(ii) makes any oath to any fact or to any writing or other paper knowing such oath to be false; or

(iii) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited; or

(3) who, having charge, possession, custody, or control of any money, or other property of the United States or the Commonwealth, furnished or intended for the armed forces of the United States or the State military forces, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the Commonwealth, furnished or intended for the armed forces of the United States or the State military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the Commonwealth;

shall, upon conviction, be punished as a court-martial may direct.

§ 6042. Larceny and wrongful appropriation.

(a) Offenses defined.—Any person subject to this part who while in a duty status wrongfully takes, obtains, or withholds, by any means whatever from the possession of the true owner or of any other person any money, personal property, or article of value of any kind:

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, steals such property, is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, is guilty of wrongful appropriation.

(b) Punishment.—Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

§ 6043. Assault.

Any person subject to this part who while in a duty status attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

§ 6044. Conduct unbecoming an officer and a gentleman.

Any commissioned officer who is convicted of conduct unbecoming of an officer and a gentleman shall be punished as a court-martial may direct.

§ 6045. General article.

Though not specifically mentioned in this part, all disorders and neglects to the prejudice of good order and discipline in the State military forces, and all conduct of a nature to bring discredit upon the State military forces, of which persons subject to this part may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of such court. However, jurisdiction shall not be extended to crimes not included herein, and normally within the jurisdiction of the civil courts of this Commonwealth.

§ 6046. Embezzlement.

Any person subject to this part who shall embezzle, misapply or convert to his own use, without authority, any moneys received by or entrusted to him for disbursement or articles of military equipment shall be punished as a court-martial may direct.

§ 6047. Purchasing and receiving military property in pawn.

If any person shall knowingly and wilfully purchase, or receive in pawn or pledge any military property of the Commonwealth of Pennsylvania or of the United States in use by the Commonwealth of Pennsylvania, he shall be punished as a court-martial may direct.

## CHAPTER 61 MISCELLANEOUS PROVISIONS

Sec.

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§ 6101. Courts of inquiry.

(a) Who may convene.—Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Governor for that purpose, whether or not the persons involved have requested such an inquiry.

(b) *Composition.*—A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) *Parties.*—Any person subject to this part whose conduct is subject to inquiry shall be designated as a party. Any person subject to this part or employed in the Department of Military Affairs who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) *Challenging members.*—Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) *Oath or affirmation.*—The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) *Witnesses.*—Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) *Findings and recommendations.*—Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) *Record.*—Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. In case the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. In case the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

§ 6102. *Authority to administer oaths.*

(a) *Military administration and justice.*—The following members of the State military forces may administer oaths for the purposes of military administration, including military justice:

(1) The State Judge Advocate and all assistant State judge advocates.

(2) All law specialists.

(3) All summary courts-martial.

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(5) All staff judge advocates and legal officers and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by law or regulation.

(b) *Performance of particular duties.*—The following persons in the State military forces shall have authority to administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All other persons designated by law or any regulation.

(c) Evidence of authority.—The signature without seal of any such person, together with the title of his office, is prima facie evidence of his authority.

§ 6103. Text of part to be available.

A complete text of this part and of the regulations prescribed by the Governor thereunder shall be made available to any member of the State military forces, upon his request, for his personal examination.

§ 6104. Complaints of wrongs.

Any member of the State military forces who believes himself wronged by his commanding officer, and who, upon due application to such commander, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. That officer shall examine into said complaint and take proper measures for redressing the wrong.

§ 6105. Redress of injuries to property.

(a) Assessment of damages.—Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that his property has been wrongfully taken by members of the State military forces, he may, subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and shall have for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board is subject to the approval of the commanding officer, and in the amount approved by him and may be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive, except as provided in subsection (b) on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) Rights of accused.—Any person subject to this part who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. He has the right of appeal to the next higher commander.

§ 6106. Execution of process and sentence.

In the State military forces, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of this Commonwealth or by the officers of the State military forces as the circumstances may require. Fees for serving processes provided for in this part shall be the same as prescribed by law for similar processes of a civil nature, and shall upon proper vouchers being filed, be paid by the Adjutant General in the usual manner.

§ 6107. Disposition of fines and penalties.

All fines and penalties imposed and collected through the sentence of courts-martial shall be forwarded to the Adjutant General who shall deposit the same in the State Treasury. It shall be proper for the Department of Military Affairs to request each session of the General Assembly to appropriate such moneys as have been so deposited for the welfare of the State military forces.

§ 6108. Liability of public officers for non-execution of process.

The neglect or refusal of any sheriff, constable, peace officer or jail warden to execute any process, or to make proper return of all fines and penalties collected, or to receive in custody any prisoner, shall be deemed a misdemeanor and shall subject the offender to a prosecution by the proper district attorney, and to a penalty, upon conviction of each such offense, of \$100 to the use of the Commonwealth.

§ 6109. Compensation of court.

Military judges, military counsel and members of courts-martial and courts of inquiry shall be allowed transportation and per diem pay as per military grade for time actually employed in the duties assigned them. Transportation shall be furnished to all prosecutors, prisoners, witnesses, sheriffs, peace officers and constables to and from the place or places designated for the meetings of said courts. The per diem pay for military and civilian witnesses shall be the same as in civil courts of law. The fees of sheriffs, peace officers and constables for serving the processes provided for in this part shall be the same as prescribed by law for similar processes of a civil nature and shall, upon proper vouchers being filed, be paid by the Adjutant General in the usual manner.

§ 6110. Immunity for action of military courts.

No accused may bring an action or proceeding against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.

§ 6111. Delegation of authority by the Governor.

The Governor may delegate any authority vested in him under this part, and may provide for the subdelegation of any such authority, except the power given him by section 5406 (relating to sentences of dismissal, dishonorable discharge or bad conduct to be approved by the

Governor) and section 5501 (relating to who may convene general courts-martial).

§ 6112. Uniformity of interpretation.

This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and, so far as practical, to make that law uniform with the law of the United States, especially as embodied in the Uniform Code of Military Justice.

Section 2. Repeals.—The following acts and parts of acts are repealed absolutely:

Sections 845 and 846, act of May 27, 1949 (P.L.1903, No.568), known as "The Military Code of 1949."

Act of November 24, 1967 (P.L.561, No.272), known as the "Pennsylvania Code of Military Justice."

Section 3. Effective Date.—This act shall take effect January 1, 1976.

APPROVED—The 1st day of August, A. D. 1975.

MILTON J. SHAPP