

No. 85

AN ACT

SB 1014

Amending the act of November 24, 1967 (P.L.561), entitled "An act providing for the administration of military justice in the State military forces," replacing the law officer with a military judge, further defining the classifications of courts-martial and further providing for submitting evidence before additional court members, for explaining the rights of an accused to him, for unlawfully influencing action of a court, for court sessions, for challenges, for oaths, for pleas, for voting and rulings and for records of trial.

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

Section 1. Clause (10) of section 101, subsection (e) of section 106, section 401, subsection (b) of section 405, section 505, subsection (a) of section 506, section 508, subsection (b) of section 602, sections 606 and 702, subsection (b) of section 703, sections 704, 705, 706, 707 and 710, subsection (a) of section 714, sections 716 and 717, subsection (a) of section 719 and clause (1) of subsection (b) of section 1102, act of November 24, 1967 (P.L.561), known as the "Pennsylvania Code of Military Justice" are amended to read:

Section 101. Definitions.—In this act, unless the context otherwise requires:

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(10) ["**Law officer**"] "**Military judge**" means an official of a general or special court-martial appointed in accordance with section 505 of this act.

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Section 106. Judge Advocates and Legal Officers.—* * *

(e) No person who has acted as member, [law officer] *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.

Section 401. Courts-Martial Classified.—[There shall be] *The* three kinds of courts-martial *in the State military forces are:*

(1) General courts-martial, [which shall consist of a law officer and any number of members not less than five;] *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, [which shall consist of any number of members not less than three; and] *consisting of (i) not less than three*

members; or (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 clause (1) (ii) so requests; and

(3) Summary courts-martial, [which shall consist] *consisting* of one commissioned officer.

Section 405. Jurisdiction of Summary Courts-Martial.—* * *

(b) 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 [**unless under section 301 he has been permitted and has elected to refuse punishment under that section**]. If objection to trial by summary court-martial is made by an accused [**who has not been permitted to refuse punishment under section 301**], trial shall be ordered by special or general court-martial, as may be appropriate.

Section 505. [Law Officer] *Military Judge* of a General or Special Court-Martial.—(a) The authority convening a general or special court-martial shall appoint as [law officer] *military judge* thereof a commissioned officer who is a member of the bar of the [highest court] *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 [law officer] *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) The [law officer] *military judge* may not consult with the members of the court, other than on the form of the findings as provided in section 704, except in the presence of the accused, trial counsel, and defense counsel. He shall not vote with the members of the court.

Section 506. Appointment of Trial Counsel and Defense Counsel.—(a) 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, [law 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.

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Section 508. Absent and Additional Members.—(a) No member of a general or special court-martial shall be absent or excused after the [accused has been arraigned] *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) 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 [testimony of each witness] *evidence* previously [examined] *introduced before the members of the court* has been read to the court in the presence of the [law officer] *military judge*, the accused, and counsel *for both sides*.

(c) 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 [testimony of] *evidence* previously [examined witnesses] *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*.

Section 602. Compulsory Self-Incrimination Prohibited.— * * *

(b) No person subject to this act 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 [may] *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.

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Section 606. 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, [before] *or be required to participate by himself or counsel in a session called by the military judge under section 704 (a) of this act* in a general court-martial *case* within a period of five days after the service of the charges upon him, or [before] *in a special court-martial* within a period of three days after the service of the charges upon him.

Section 702. Unlawfully Influencing Action of Court.—(a) 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, [law officer] *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 act 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) 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 act may, in preparing any such report, (i) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (ii) 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.

Section 703. Duties of Trial Counsel and Defense Counsel.— * * *

(b) 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 506. 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 [the court] a court-martial without a military judge.

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Section 704. Sessions.—[Whenever a general or special court-martial deliberates or votes, only the members of the court shall be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record.] *(a) 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 606 of this act, call the court into session without the presence of the members for the purpose of (i) 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, (ii) 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, (iii) holding the arraignment and receiving the pleas of the accused, and (iv) performing any other procedural function which may be performed by the military judge under this act or under rules prescribed pursuant to section 701 of this act 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) 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 [law officer] *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 [general court-martial cases, the law officer] *cases in which a military judge has been detailed to the court, the military judge.*

Section 705. Continuances.—[A] *The military judge or a court-martial without a military judge* may, for reasonable cause, grant a continuance to any [part] *party* for such time, and as often, as may appear to be just.

Section 706. Challenges.—(a) [Members] *The military judge and members* of a general or special court-martial [and the law officer of a general 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) Each accused and the trial counsel is entitled to one preemptory challenge, but the [law officer] *military judge* may not be challenged except for cause.

Section 707. Oaths.—(a) [The law officer, interpreters, and, in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully] *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) Each witness before a military court shall be examined on oath or affirmation.

Section 710. Pleas of the Accused.—(a) If an accused [upon] *after* arraignment before a court-martial makes (i) an irregular pleading, or (ii) after a plea of guilty sets up matter inconsistent with the plea, or (iii) if it appears that he has entered the plea of guilty improvidently or through

lack of understanding of its meaning and effect, or (iv) if he fails or refuses to plead: a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) 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.

Section 714. Depositions.—(a) At any time after charges have been signed, as provided in section 601, 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 if 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.

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Section 716. Voting and Rulings.—(a) 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 [, *on the findings, and on the sentence*] shall be by secret written ballot. The junior member of the court shall [in each case] 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) The [law officer of a general court-martial and the president of a special court-martial] *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 [, *other than challenge,*] arising during the proceedings. Any such ruling made by the [law officer of a general court-martial upon any interlocutory question] *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, [or the question of accused's sanity, shall be] *is* final and constitutes the ruling of the court [, but the law officer]. *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 717, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the [law officer of a general court-martial and the] *military judge or the* president of a [special] 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 [the court] *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) 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.

Section 717. Number of Votes Required.—(a) No person subject to this act shall be convicted of any offense, except *as provided in section 710 (b) of this act*, or by the concurrence of two-thirds of the members present at the time the vote is taken.

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

(c) 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 [shall disqualify] *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 [shall be] *is* a determination against the accused. A tie vote on any other question [shall be] *is* a determination in favor of the accused.

Section 719. Record of Trial.—(a) Each general court-martial shall keep a separate record of the proceedings [of the trial of] *in* each case brought before it, and [such] *the* record shall be authenticated by the signatures of the [president and the law officer. In case] *military judge. If* the record cannot be authenticated by [either the president or the law

officer,] *the military judge* by reason of [the] *his* death, disability or absence [of such officer], it shall be [signed by a member in lieu of him. If both the president and the law officer are unavailable for such reasons, the record shall be authenticated by two members. A record of the proceedings of a trial in which the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial shall contain a verbatim account of the proceedings and testimony before the court. All other records of trial shall contain such matter and be authenticated in such manner as the Governor may by regulation prescribe.] *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.*

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Section 1102. Authority to Administer Oaths.—* * *

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

(1) The president, [law officer] *military judge*, trial counsel, and assistant trial counsel for all general and special courts-martial;

* * *

Section 2. This act shall take effect immediately.

APPROVED—The 24th day of March, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 85.


Secretary of the Commonwealth.