

MICHIGAN CODE OF MILITARY JUSTICE OF 1980
Act 523 of 1980

AN ACT to provide a uniform code of military justice for the state military forces; and to repeal certain acts and parts of acts.

History: 1980, Act 523, Eff. Mar. 31, 1981.

The People of the State of Michigan enact:

ARTICLE 1

32.1001 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan code of military justice of 1980".

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1002 Definitions.

Sec. 2. As used in this act:

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

(b) "Active service" means service, active state service, or special duty required by law, regulation, or order of the governor. Active service includes the continuing obligations of active members of the national guard and the defense force by virtue of their commissions, appointments, or enlistments.

(c) "Active state duty" means the actual weekend, annual training, or special call up duty in the state military forces and includes travel to and from the duty site or station.

(d) "Active state service" means military service in support of civil authorities ordered by the governor or as provided by the Michigan military act.

(e) "Apprehension" means the taking of a person into custody.

(f) "Commanding officer" includes only a commissioned officer.

(g) "Confinement" means the physical restraint of a person.

(h) "Controlled substance" means opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, marihuana, any compound or derivative of any such substance, and any other substance that is listed in schedules I through V of section 202 of the controlled substances act, 21 USC 812, including any subsequent amendments thereto.

(i) "Correctional custody" means the physical restraint of a person during duty or nonduty while on active state duty and includes extra duty, fatigue duty, or hard labor.

(j) "Enlisted member" means a person in an enlisted grade.

(k) "Federal service" means military duty in the armed forces of the United States, including, without limitation, the army national guard of the United States and the air national guard of the United States, while subject to the uniform code of military justice, 10 USC, 801 to 946.

(l) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or rule.

(m) "Judge advocate" means an officer who is designated as a judge advocate by the state judge advocate general.

(n) "Military" includes each armed force of the United States and each component of the state military establishment.

(o) "Military court" means a court-martial, a court of inquiry, or the military appeals tribunal.

(p) "Military judge" means a judge advocate designated as a military judge by the state judge advocate general or an official of a general or special court-martial appointed pursuant to section 26.

(q) "Minor offense" means an offense under a punitive section of this act that a commanding officer considers minor.

(r) "Officer" means a commissioned or warrant officer.

(s) "Staff judge advocate" means the commissioned officer responsible for supervising the administration of military justice within a command.

(t) "State judge advocate general" means the commissioned officer responsible for supervising the administration of the military justice in the state military forces.

(u) "State military forces" means the national guard of the state, as defined in 32 USC 101(3), and any other military force organized under the laws of the state.

(v) "Summary court officer" means an official appointed pursuant to section 16(c) who is authorized to serve warrants.

(w) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(x) "Unit" means a regularly organized body of the military that is not larger than a company or squadron.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1003 Applicability; convening and holding courts-martial and courts of inquiry out of state; offenses committed out of state; trial and punishment.

Sec. 3. (1) This code applies to all members of the state military forces when not in federal service, and to all other persons lawfully called, ordered, drafted, transferred or inducted into, or ordered to duty in or with the state military forces, from the date they are required by the terms of the call, order, or other directive. Persons subject to this code shall include all persons serving in the state military forces pursuant to title 32 of the United States Code and all persons of the state military forces in active service.

(2) This code applies to a person subject to this code while serving out of state and while going to and returning from the service out of state to the same extent as a person serving within the state.

(3) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while serving out of state with the same jurisdiction and powers as if held within the state. Offenses committed out of state may be tried and punished either out of state or within the state.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1004 Relieving person from trial by court-martial; limitation; trial by court-martial of person charged with fraudulently obtaining discharge; effect of conviction.

Sec. 4. (1) Subject to the limitation of actions under section 43, a person who is subject to this code and charged with an offense under this code is not relieved from a trial by court-martial because his or her military service is terminated.

(2) Each person discharged from the state military forces who is later charged with having fraudulently obtained his or her discharge, except as provided in section 43, is subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in the custody of the military for that trial. Upon conviction of fraudulently obtaining a discharge, the person is subject to trial by court-martial for an offense under this code committed before the fraudulent discharge.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1005 Application by dismissed officer for trial by court-martial; convening general court-martial; jurisdiction; waiver of right to plead statute of limitations; affirming dismissal; substituting discharge authorized for administrative issuance; reappointment of officer.

Sec. 5. (1) If an officer, dismissed by order of the governor by reason of an alleged violation of this code, makes written application for trial by court-martial to the governor, setting forth, under oath, that he or she has been wrongfully dismissed, the governor within 6 months shall convene a general court-martial to try the officer on the charge on which the officer was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on the charge. The officer shall be held to have waived the right to plead any statute of limitations applicable to an offense with which the officer is charged. The court-martial, as a part of its sentence, may affirm the dismissal. However, if the court-martial acquits the accused or if the sentence, 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 issuance.

(2) If the governor fails to convene a general court-martial within 6 months after 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 issuance.

(3) If a discharge is substituted for a dismissal under the authority of this section, the governor may reappoint the officer to the commissioned rank and precedence as in the opinion of the governor the former officer would have attained had the officer not been dismissed. The reappointment of the former officer may be made if a position vacancy is available under applicable tables of organization. The time between the dismissal and the reappointment shall be considered as service for all state purposes.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1006 State judge advocate general and assistants or legal officers; appointment; eligibility; inspections; communications; person acting in court-martial case prohibited from acting as staff judge advocate or legal officer to, or as a member of, reviewing

authority or military appeals tribunal on same case.

Sec. 6. (1) The governor, on the recommendation of the adjutant general, shall appoint an officer of the state military forces as state judge advocate general. To be eligible for appointment, an officer shall be licensed to practice law in this state, and have practiced law in this state for at least 5 years, and shall be a commissioned officer of the rank of lieutenant colonel or higher in the judge advocate general's corps.

(2) The adjutant general may appoint as many state judge advocate general's assistants or legal officers as the adjutant general considers necessary. To be eligible for appointment, the person shall be licensed to practice law in this state and otherwise meet the eligibility requirements of the judge advocate general's corps.

(3) The state judge advocate general or the state judge advocate general's assistants shall make frequent inspections in the field in the supervision of the administration of military justice.

(4) Each convening authority shall communicate directly with its staff judge advocate or legal officer in matters relating to the administration of military justice. The staff judge advocate or legal officer of a 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 general.

(5) A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in a court-martial case shall not act later as staff judge advocate or legal officer to a reviewing authority or to the military appeals tribunal or be a member of a reviewing authority or a member of the military appeals tribunal on the same case.

History: 1980, Act 523, Eff. Mar. 31, 1981.

ARTICLE 2

32.1007 Persons authorized to apprehend persons subject to code; fees or charges.

Sec. 7.

(1) A person authorized under the rules issued pursuant to this code to apprehend a person subject to this code, a marshal of a court-martial appointed pursuant to this code, or a law enforcement officer of this state or a political subdivision of this state may apprehend a person subject to this code upon reasonable belief that an offense under this code has been committed and that the person apprehended committed the offense.

(2) Each commissioned officer, warrant officer, and noncommissioned officer is authorized to quell quarrels, frays, or disorders among persons subject to this code and to apprehend persons subject to this code who take part in a quarrel, fray, or disorder.

(3) Except as otherwise specifically provided in this code, a civil law enforcement officer or marshal of a court-martial shall not demand or require payment of a fee or charge of any nature for apprehending or placing in confinement a person subject to this code.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

Administrative rules: R 32.101 et seq. of the Michigan Administrative Code.

32.1008 Apprehension of person charged with violation by civil law enforcement officer.

Sec. 8. A civil law enforcement officer of this state may apprehend a person charged with the violation of section 85 and deliver the person into the custody of the state military forces.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1009 "Arrest" defined; arrest by military superior; probable cause; authority to secure custody of alleged offender not limited.

Sec. 9. (1) As used in this section, "arrest" means the restraint of a person by an order not imposed as a punishment for an offense, directing the person to remain within certain specified limits.

(2) An officer or enlisted member of the state military forces accused of an offense in violation of this code may be placed in arrest by his or her military superior.

(3) A person shall not be ordered into arrest or confinement except upon probable cause.

(4) This section does not limit the authority of a person authorized to apprehend an offender of this code to secure the custody of an alleged offender until the proper authority is notified.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1010 Arrest or confinement; warrant of arrest; service; place of confinement.

Sec. 10. (1) A person subject to this code and charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require. If the person is charged only with an offense normally tried by a summary court-martial, the person shall not ordinarily be placed in confinement.

(2) An arrest or confinement of a person who fails or refuses to report to his or her appointed place of duty

shall be executed pursuant to a warrant issued by the convening authority in a form approved by the adjutant general.

(3) A warrant of arrest shall be served by a person authorized to serve a warrant of arrest in this state or by military personnel designated for that purpose by the commanding officer.

(4) A person confined pursuant to this code shall be confined in a place of confinement under the control of the state military forces or in a jail in the county in which the accused resides or in which the person's unit is located.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1011 Refusal to receive or keep prisoner committed; statement; report to commanding officer of prisoner; taking prisoner from pretrial custody of person other than state military forces; informing prisoner of charges and right to counsel.

Sec. 11. (1) A provost marshal, commander of a guard, warden, keeper, or officer of a place of confinement described in section 10, shall not refuse to receive or keep a prisoner committed to his or her charge when the committing person furnishes a statement, signed by that person, of the offense charged against the prisoner.

(2) Each commander of a guard, warden, keeper, or officer of a place of confinement described in section 10(4), to whose charge a prisoner is committed, not later than 24 hours after that commitment or as soon as he or she is relieved from guard, shall report to the commanding officer of the prisoner, the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

(3) If a prisoner is in pretrial custody of a person other than the state military forces, the commanding officer of the prisoner or his or her duly authorized representative, not later than 24 hours after receipt of notice of the confinement, shall take the prisoner from the custody and inform the prisoner of the charges and of the prisoner's right to counsel.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1013 Bail.

Sec. 13. (1) Except as provided in section 15 of article I of the state constitution of 1963, a person charged with a violation under this code is entitled to bail.

(2) Before trial, a person is entitled to bail in an amount determined by the military judge.

(3) The amount of bail shall not be excessive, and the military judge shall consider all of the following:

- (a) The nature of the offense charged.
- (b) The past conduct of the accused.
- (c) The financial ability of the accused.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1014 Trial by court-martial limited to certain violations; delivery of person subject to code to civil authority for trial; conviction in civil tribunal; return to military custody for completion of sentence of court-martial.

Sec. 14. (1) It is the intent of the legislature that trial by court-martial be limited to the violations defined in article 10.

(2) A person subject to this code who is on active state duty and who is accused of a criminal offense against civil authority shall be delivered, upon request, to the civil authority for trial.

(3) If delivery is made to a civil authority of a person undergoing sentence of a court-martial and 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 the offense and upon the request of competent military authority, shall be returned to military custody for the completion of his or her sentence.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

ARTICLE 3

32.1015 Disciplinary punishment for minor offense; combination; serving correctional custody; imposition of punishment upon enlisted member by officer in charge; suspension, remission, or mitigation of punishment; appeal; disciplinary punishment not bar to trial by court-martial; records of proceedings; right to demand trial by court-martial; applicability of forfeiture to pay and allowances.

Sec. 15.

(1) Under regulations issued pursuant to this act, a commanding officer, in addition to or instead of an admonition or reprimand, may impose disciplinary punishment for a minor offense on an officer under his or her command without the intervention of a court-martial with 1 of the following:

(a) Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive active state duty days.

(b) If imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command:

(i) Arrest in quarters for not more than 15 consecutive active state duty days.

(ii) Forfeiture of not more than 1/2 of 1 month's pay per month for 2 months.

(iii) Restrictions to certain specified limits with or without suspension from duty, for not more than 15 consecutive duty days.

(c) Upon other military personnel under his or her command, 1 or more of the following:

(i) Correctional custody for not more than 7 consecutive duty days.

(ii) Forfeiture of not more than 7 duty days' pay.

(iii) Reduction to the next inferior pay grade, if the grade from which the person is demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the officer who imposes the reduction.

(iv) Extra duties, including fatigue or other duties for not more than 15 consecutive duty days and not more than 2 hours per day.

(v) Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty days.

(d) If imposed by an officer of the grade of major or above upon other military personnel under his or her command:

(i) Correctional custody for not more than 15 consecutive duty days.

(ii) Forfeiture of not more than 15 duty days' pay.

(iii) Reduction to the lowest or an intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or the officer imposing the reduction is a brigade, wing, base, or post commander, except that an enlisted member in a pay grade above E4 may not be reduced more than 2 pay grades.

(iv) Extra duties, including fatigue or other duties, for not more than 15 consecutive duty days.

(v) Restrictions to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty days.

(2) Two or more disciplinary punishments of arrest in quarters, correctional custody, extra duties, and restriction shall not be combined to run consecutively in the maximum amount imposed for each. If any of those punishments are combined to run consecutively, the commanding officer shall apportion the punishment.

(3) If practicable, correctional custody shall not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(4) An officer in charge may impose upon an enlisted member assigned to the unit of which the officer is in charge a punishment authorized under subsection (1)(c) as the adjutant general concerned may specifically prescribe by rule.

(5) The officer who imposes the punishment authorized in subsection (4), or the officer's successor in command, may suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (4), whether or not executed. In addition, the officer may remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer also may mitigate reduction in grade to forfeiture or detention of pay.

(6) When mitigating arrest in quarters to restriction, correctional custody to extra duties or restriction, or both, or extra duties to restrictions, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture.

(7) A person punished under this section who considers the punishment received as unjust or disproportionate to the offense, through the proper channel, may appeal to the next superior authority. The appeal shall be made not later than 45 days after the punishment is adjudged. The appeal shall be promptly forwarded and decided, and the person punished shall not be required to undergo the punishment adjudged before a decision on the appeal is rendered. The officer who imposes the punishment, the officer's successor in command, or superior authority is authorized to suspend, set aside, or remit any part or amount of the

punishment and to restore all rights, privileges, and property affected. The authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice before acting upon the appeal.

(8) The imposition and enforcement of disciplinary punishment under this section for an 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 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.

(9) The adjutant general, by regulation, may prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

(10) Before being informed of the disciplinary action to be taken under this section, the person to be punished has the right to demand trial by court-martial for the offense.

(11) If a punishment of forfeiture of pay and allowance is imposed as provided in this section, the forfeiture may apply to pay or allowances becoming due on or after the date of the punishment but shall not apply to pay and allowances accrued before the date.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

Administrative rules: R 32.101 et seq. and R 32.171 et seq. of the Michigan Administrative Code.

ARTICLE 4

32.1016 Kinds of courts-martial.

Sec. 16. The 3 kinds of courts-martial in the state military forces are:

(a) General courts-martial, consisting of a military judge and not less than 5 members; or 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 the military judge and the military judge approves.

(b) Special courts-martial consisting of a military judge and not less than 3 members; or only a military judge, if the accused under the same conditions as those prescribed in subdivision (a), requests a court composed only of the military judge.

(c) Summary courts-martial, consisting of 1 commissioned officer of field grade rank or above who is certified for that duty by the state judge advocate general and who is not a member of the accused's unit.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 1990, Act 300, Imd. Eff. Dec. 14, 1990;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1017 Attachment of court-martial jurisdiction and trial of accused during period of active state duty.

Sec. 17. (1) Court-martial jurisdiction over a person accused of an offense against this code attaches during a duly authorized period of active state duty.

(2) An accused will normally be tried for an offense during a duly authorized period of active state duty.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1018 General court-martial; jurisdiction; powers of punishment.

Sec. 18. A general court-martial has jurisdiction to try persons subject to this code for an offense made punishable by this code and may adjudge any of the following punishments:

(a) A fine of not more than \$200.00 for a single offense.

(b) Forfeiture of pay and allowances of not more than \$200.00 for a single offense.

(c) A reprimand.

(d) Dismissal or dishonorable discharge.

(e) Reduction of a noncommissioned officer to an inferior grade.

(f) A combination of the punishments under subdivisions (a) to (e).

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1019 Special court-martial; jurisdiction; powers of punishment.

Sec. 19. A special court-martial has jurisdiction to try a person subject to this code, except an officer, for an offense for which the person may be punished under this code. A special court-martial has the same powers of punishment as a general court-martial except that the fine or forfeiture of pay and allowances imposed by a special court-martial may not be more than \$100.00 for a single offense.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1020 Summary court-martial; jurisdiction; objection by accused; sentences.

Sec. 20. (1) A summary court-martial has jurisdiction to try a person subject to this code, except an officer, for an offense made punishable by this code.

(2) A person shall not be tried by a summary court-martial if, before trial, the person objects to a summary court-martial. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as appropriate.

(3) A summary court-martial may sentence a person to a fine of not more than \$25.00 for a single offense, to forfeiture of pay and allowances of not more than \$25.00 for a single offense, to reduction of an enlisted member to an inferior grade, or to a combination of these punishments.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1021 Court-martial; sentencing person to confinement instead of imposing fine.

Sec. 21. A court-martial, instead of imposing fine, may sentence a person to confinement for not more than 1 day for each dollar of the authorized fine.

History: 1980, Act 523, Eff. Mar. 31, 1981.

ARTICLE 5

32.1022 General court-martial; convening by order of governor or state adjutant general.

Sec. 22. A general court-martial may be convened by order of the governor or the state adjutant general.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1023 Special court-martial; convening authority.

Sec. 23. The commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene a special court-martial. A special court-martial may also be convened by superior competent authority. If the commanding officer is an accuser, the court shall be convened by superior competent authority.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1024 Summary court-martial; convening authority.

Sec. 24. The commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of 1 commissioned officer who meets the qualifications of section 16(c).

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1025 Members for courts-martial; selection; eligibility; qualifications.

Sec. 25. (1) Members for all courts-martial shall be selected at random pursuant to regulations issued by the state adjutant general not inconsistent with this section.

(2) A commissioned officer on duty with the state military forces is eligible to serve on all courts-martial for the trial of a person who may lawfully be brought before the court-martial for trial.

(3) A warrant officer on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of a person, other than a commissioned officer, who may lawfully be brought before the court-martial for trial.

(4) An enlisted member 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 member who may lawfully be brought before the court-martial for trial, but the enlisted member shall serve as a member of a court only if, before the convening of the court, the accused personally requested in writing that enlisted members serve on the court-martial. After the request, the accused may not be tried by a general or special courts-martial the membership of which does not include enlisted members in a number comprising at least 1/3 of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If the 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 enlisted members could not be obtained.

(5) Unless unavoidable, a person subject to this code shall not be tried by a court-martial which has a member junior to the person in rank or grade. When convening a court-martial, the convening authority shall detail as a member of the court-martial a person who is best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. A person is not eligible to serve as a member of a general or special court-martial if the person is the accuser or a witness for the prosecution or

has acted as investigating officer or as counsel in the same case.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1026 General or special court-martial; military judge.

Sec. 26. (1) The person convening a general or special court-martial shall request the state judge advocate general to appoint a military judge to the general or special court-martial.

(2) The state judge advocate general may appoint an assistant judge advocate to serve as a military judge who is a commissioned officer, who is licensed to practice law in this state, and who is certified for that duty by the state judge advocate.

(3) The military judge shall not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor shall the military judge vote with the members of the court.

(4) The military judge shall rule finally on all matters of law, rule finally on all motions, and except as otherwise provided, decide all other questions raised at the trial of the accused.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1027 General and special court-martial; trial counsel and defense counsel; assistants.

Sec. 27. (1) For each general and special court-martial, the authority convening the court shall request the state judge advocate to detail trial counsel and defense counsel, and those assistants as the convening authority considers appropriate. A person who has acted as investigating officer, military judge, or court member in any case shall not act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. A person who has acted for the prosecution shall not act later in the same case for the defense, nor shall a person who has acted for the defense act later in the same case for the prosecution.

(2) Military trial counsel or military defense counsel for a general or special courts-martial shall be licensed to practice law in this state and certified as competent to perform those duties by the state judge advocate general.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1028 General or special court-martial; court reporters; interpreters.

Sec. 28. (1) The convening authority of a general or special courts-martial shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before the court-martial.

(2) The convening authority of a military court may detail or employ interpreters who shall interpret for the court-martial.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1029 General or special court-martial; members not to be absent or excused after arraignment; exceptions; reduction of membership below specified number; procedure.

Sec. 29. (1) A member of a general or special courts-martial shall not be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(2) If a general court-martial is reduced below 5 members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than 5 members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court-martial in the presence of the military judge, the accused, and counsel.

(3) If a special court-martial is reduced below 3 members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than 3 members. When the new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation of that testimony is read to the court-martial in the presence of the accused and counsel.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

ARTICLE 6

32.1030 Preferring charges and specifications; signature; oath; disposition; informing accused of charges.

Sec. 30. (1) Any person subject to this code may prefer charges.

(2) A person preferring charges and specifications shall sign the charges under oath before a person authorized by this code to administer oaths and shall state all of the following:

(a) That the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications.

(b) That the charges and specifications are true in fact to the best of the signer's knowledge and belief.

(3) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made of the charges in the interest of justice and discipline, and the person accused shall be informed of the charges against him or her as soon as practicable.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1031 Self-incrimination; interrogation of accused or suspect; compelling statement or evidence not material to issue and tending to degrade person; statements obtained from person not to be received in evidence; persons bound by requirements of section; duties of interrogator.

Sec. 31. (1) A person subject to this code shall not compel another person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate the person.

(2) A person subject to this code may not interrogate, or request any statement from, an accused or a person suspected of an offense without first informing the person of the nature of the accusation and advising the person that he or she does not have to make any statement regarding the offense of which the person is accused or suspected, that any statement made by the person may be used as evidence against the person in a trial, military or civil, that the person has a right to consult with a lawyer, that the person has a right to have a lawyer present during questioning, that the person has a right to request a lawyer and that upon request a lawyer will be provided without cost, or, if the person prefers, that the person may retain counsel of the person's choice at the person's own expense.

(3) A person subject to this code shall not compel another person to make a statement or produce evidence before a military court if the statement or evidence is not material to the issue and may tend to degrade the person.

(4) A statement obtained from a person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement shall not be received in evidence against the person in a trial by court-martial.

(5) The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction.

(6) A person shall not interrogate or request a statement from another person subject to this code, regarding an offense of which the latter is accused or suspected until the interrogator does all of the following:

(a) Reads subsections (1) to (4) to the accused or suspect.

(b) Explains the provisions of subsections (1) to (4) to the person, including all of the following:

(i) The nature of the accusation.

(ii) That the accused or suspect does not have to make any statement regarding the offense.

(iii) That any statement made by the accused or suspect may be used against the person in a trial, military or civil.

(c) Explains to the accused or suspect that the accused or suspect has the right to consult with a lawyer before any questioning and that the lawyer may be a civilian lawyer of the person's choice retained at the person's own expense or may be a military lawyer appointed to act without cost to the person.

(d) Explains that the accused or suspect has a right to have a civilian or appointed military lawyer present during the interview.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1032 Investigation of matters set forth in charge or specification; conduct; formal report; contents; informing accused of rights and other matters; opportunity for cross-examination and for presentation; demand for further investigation.

Sec. 32. (1) A charge or specification shall not be referred to a general courtmartial for trial until a thorough and impartial investigation of all matters set forth in the charge or specification has been made. The conduct of this investigation is the responsibility of the officer exercising special court-martial jurisdiction over the accused and 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. The investigating officer shall submit a formal report to the convening authority, the state judge advocate, and the accused. This report shall include the following:

(a) A statement of the name, organization, or address of counsel and information as to the presence or absence of counsel throughout the proceedings if counsel has been requested by the accused.

(b) A summarized statement of all relevant testimony including the names and units, if applicable, of the

persons giving testimony.

(c) A statement indicating all sources of information considered by that officer in reaching conclusions or making recommendations.

(d) A statement of the names and units of all witnesses essential to the defense or prosecution of the case.

(2) Before an investigation initiated pursuant to this code, the accused shall be informed of the accused's rights under section 31, including the right to counsel, in the manner provided in that section, and, in addition, shall be informed of the following:

(a) The offense of which the accused is suspected, accused, or charged.

(b) The name of the accuser and the witnesses against the accused which are known by the investigating officer.

(c) The fact that charges are about to be investigated.

(d) The accused's right to cross-examine witnesses and to present anything by way of statement or otherwise the accused may desire in the accused's own behalf, either in defense, extenuation, or mitigation.

(3) At an investigation, full opportunity shall be given to the accused to cross-examine witnesses if they are available, and to present anything the accused may desire in the accused's own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses requested by the accused.

(4) 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 subsections (2) and (3), further investigation of that charge is not necessary under this section unless it is demanded by the accused after the accused is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer new evidence in the accused's own behalf.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1033 Officer exercising special court-martial jurisdiction over accused to forward charges to governor; report.

Sec. 33. If a person is held for trial by a general court-martial, the officer exercising special court-martial jurisdiction over the accused shall, within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, through military channels to the governor, or if that is not practicable, the officer shall report in writing the reasons for the delay.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1034 Convening authority to refer charge to state judge advocate for consideration and advice before trial; referring charge to general court-martial for trial; formal corrections and changes in charges and specifications.

Sec. 34. (1) Before directing the trial of a charge by a general court-martial, the convening authority shall refer the charge to the state judge advocate for consideration and advice. The convening authority shall not refer a charge to a general court-martial for trial unless the convening authority has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

(2) 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 the changes in the charges and specifications as are needed to make them conform to the evidence may be made.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1035 Service of charges upon accused; person not to be brought to trial within specified time period.

Sec. 35. 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, a person, against the person's objection, shall not be brought to trial before a general court-martial within a period of 5 days after the service of the charges upon the person, or before a special court-martial within a period of 3 days after the service of the charges upon the person.

History: 1980, Act 523, Eff. Mar. 31, 1981.

ARTICLE 7

32.1036 Procedure to conform with code, rules, and manual for courts-martial United States, 1969; rules of evidence.

Sec. 36. (1) All procedure shall be in conformity with this code, with rules which may be promulgated by

the adjutant general, and where not inconsistent, with the manual for courts-martial United States, 1969.

(2) The rules of evidence generally recognized in this state as applied to criminal cases shall apply in cases before military courts.

History: 1980, Act 523, Eff. Mar. 31, 1981.

Administrative rules: R 32.101 et seq. and R 32.171 et seq. of the Michigan Administrative Code.

32.1037 Convening authority or commanding officer; censuring, reprimanding, or admonishing court; coercing or influencing by unauthorized means; action of court-martial or member of court-martial; applicability; preparing report or making determination concerning advancement, assignment, transfer, or retention of member of state military forces.

Sec. 37. (1) An authority convening a general, special, or summary court-martial, or any other commanding officer or officer serving on the staff of the commanding officer shall not censure, reprimand, or admonish the court or a member, military judge, or counsel of the court, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of the court's functions in the conduct of the proceedings. A person subject to this code shall not attempt to coerce or, by any unauthorized means, influence the action of a court-martial, or any member of the court-martial, in reaching the findings or sentence in a case, or the action of a convening, approving, or reviewing authority with respect to judicial acts. These provisions shall not apply to the following:

(a) General instructional or informational courses in military justice, if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial.

(b) Statements and instructions given in open court by the military judge or trial or defense counsel.

(2) 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 or whether a member of the state military forces should be retained on duty, a person subject to this code in preparing the report or making the determination shall not do any of the following:

(a) Consider or evaluate the performance of duty of the member as a member, military judge, trial counsel, or defense counsel of a court-martial.

(b) Give a less favorable rating or evaluation of the member of the state military forces because of the zeal with which the member, as counsel, represented an accused before a court-martial.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1038 Duties of trial counsel; right of accused to representation by civilian counsel, military counsel, or defense counsel; associate counsel; conviction; brief; assistant trial counsel and assistant defense counsel; performance of duties.

Sec. 38. (1) The trial counsel of a general or special court-martial shall prosecute in the name of the state, and, under the direction of the court-martial, shall prepare the record of the proceedings.

(2) The accused has the right to be represented before a general or special court-martial by civilian counsel if provided by the accused, at the accused's own expense, or by military counsel of the accused's own selection if reasonably available, or by the defense counsel appointed under section 27. If the accused has counsel of his or her own selection, the defense counsel, and assistant defense counsel, if any, who were appointed, if the accused so desires, shall act as associate counsel. Otherwise, the appointed counsel shall be excused by the military judge or by the president of a court-martial without a military judge.

(3) In each court-martial proceeding resulting in a conviction the defense counsel may forward for attachment to the record of proceedings a brief of those matters the defense counsel feels should be considered in behalf of the accused on review, including an objection to the contents of the record which the defense counsel considers appropriate.

(4) An assistant trial counsel of a general court-martial, under the direction of the trial counsel or if the assistant trial counsel is qualified to be a trial counsel as required by section 27, may perform any duty imposed by law, rule, 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.

(5) An assistant defense counsel of a general or special court-martial, under the direction of the defense counsel or if the assistant defense counsel is qualified to be the defense counsel as required by section 27, may perform any duty imposed by law, rule, or the custom of the service upon counsel for the accused.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1039 Military judge; calling court into session without presence of members; purposes;

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proceedings to be made part of record and conducted in presence of certain persons.

Sec. 39. (1) 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 call the court into session without the presence of the members for the purpose of any of the following:

(a) Hearing and determining motions raising a defense or objections which are capable of determination without trial of the issues raised by a plea of not guilty.

(b) Hearing and ruling on a matter which may be ruled upon by the military judge, whether or not the matter is appropriate for later consideration or decision by the members of the court.

(c) Holding the arraignment and receiving the plea of the accused.

(d) Performing any other procedural function which may be performed by the military judge under section 26 which does not require the presence of the members of the court.

(2) The proceedings under subsection (1) 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.

(3) 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 members 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 the military judge.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1040 Continuances.

Sec. 40. The military judge or a court-martial without a military judge, for reasonable cause, may grant a continuance to any party for a period, and as often, as appears to be just.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1041 Challenges for cause and peremptory challenges.

Sec. 41. (1) 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 shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than 1 person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Each accused and trial counsel is entitled to 1 peremptory challenge, but the military judge may not be challenged except for cause.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1042 Persons required to take oath or affirmation in presence of accused; examination of witnesses on oath or affirmation.

Sec. 42. (1) Before performing their respective duties, interpreters and, in general and special courts-martial, members, military judges, 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.

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

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1043 Trial and punishment; limitations; computation of time period.

Sec. 43. (1) A person charged with desertion or absence without leave when the governor, by proclamation has declared a grave state of emergency, or with aiding the enemy, or mutiny, shall be tried and punished at any time without limitation.

(2) A person charged with an offense under this code is not liable to be tried by court-martial or punished under section 15 if the offense was committed more than 2 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 15.

(3) Periods in which the accused was outside of the state, in the custody of civil authorities, or in the hands of the enemy shall be excluded in computing the period of limitations prescribed in this section.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1044 Trial of accused twice for same offense prohibited.

Sec. 44. (1) A person subject to this code shall not be tried a second time by a civil court or a military court of the state for the same offense.

(2) A proceeding in which an accused is found guilty by a court-martial upon a charge or specification is

not a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) 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 fault of the accused is a trial in the sense of this section.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1045 Entering plea of not guilty in record; entering finding of guilty where plea of guilty made and accepted; withdrawal of guilty plea.

Sec. 45. (1) If an accused, after arraignment, makes an irregular pleading, or after a plea of guilty sets up a matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused 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.

(2) With respect to any other 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 before the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1046 Obtaining witnesses and other evidence; equal opportunity; powers of military judge or summary court officer; process issued in court-martial to run to any part of state.

Sec. 46. (1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence.

(2) The military judge or a summary court officer may do any of the following:

(a) Issue a warrant for the arrest of a person who disobeys a written order by the convening authority to appear before the court.

(b) Issue subpoenas duces tecum and other subpoenas.

(c) Enforce by attachment the attendance of witnesses and the production of books and papers.

(3) Process issued in a court-martial to compel a witness to appear and testify and to compel the production of other evidence shall run to any part of the state.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1047 Offenses against state; compliance with subpoena; attendance, qualification, and testifying as witness; production of evidence; trial; jurisdiction; punishment.

Sec. 47. (1) A person is guilty of an offense against the state and may be punished in the same manner as provided in actions or proceedings in the circuit courts of this state if that person does any of the following:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial, military commission, court of inquiry, or efficiency board, or before a military or civil officer designated to take a deposition to be read in evidence before the court-martial, military commission, court of inquiry, or efficiency board and fails to comply with the subpoena.

(b) Has been duly paid or tendered the fees and mileage of a witness at rates allowed to witnesses attending circuit courts of this state, and does not attend.

(c) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce evidence which the person has been subpoenaed to produce.

(2) A person who commits an offense named in subsection (1) shall be tried in a court of original criminal jurisdiction of this state and jurisdiction is conferred on those courts for the purpose of trying that offense. Upon conviction, the person shall be punished by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1048 Military court; contempt power; punishment.

Sec. 48. A military court may punish for contempt a person subject to this code who wilfully and unlawfully refuses to be sworn or to affirm as a witness or who refuses to answer a legal or proper question or who uses a menacing word, sign, or gesture in the court's presence, or who disturbs the court proceedings by riot or disorder. The punishment for contempt in a summary court-martial proceeding shall be imprisonment for not more than 25 days, or a fine of not more than \$25.00, or both. The punishment for contempt in any

other military court shall be imprisonment for not more than 100 days, or a fine of not more than \$100.00, or both.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1049 Depositions.

Sec. 49. (1) At any time after charges have been signed as provided in section 30, a party may take an oral or written deposition unless the military judge or a court-martial without a military judge hearing the case, or if the case is not being heard, the convening authority forbids the deposition for good cause. If a deposition is to be taken before charges are referred for trial, the authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(2) The party at whose insistence a deposition is to be taken shall give to each of the other parties reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by a military or civil officer authorized by the laws of the state, or by the laws of the place where the deposition is taken, to administer oaths.

(4) An 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 a court-martial or in a proceeding before the court of inquiry, if 1 of the following appears:

(a) A witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing.

(b) The witness, by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing.

(c) The present location of the witness is unknown.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1050 Reading in evidence sworn testimony of person whose oral testimony not obtainable; conditions.

Sec. 50. (1) If not extending to the dismissal of an officer, 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, if otherwise admissible under the rules of evidence, may be read in evidence by any party before a court-martial, if the accused was a party before the court of inquiry, if the same issue was involved or if the accused consents to the introduction of the evidence, and if the accused was physically present when the testimony was taken.

(2) The testimony shall be read in evidence only by the defense in cases extending to the dismissal of an officer.

(3) The testimony also may be read in evidence before a court of inquiry or a military board.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1050a Lack of mental responsibility as affirmative defense.

Sec. 50a. (1) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts and therefore lacked mental responsibility. Mental disease or defect does not otherwise constitute a defense.

(2) The accused has the burden, under subsection (1), of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and shall charge them to find the accused 1 of the following:

(a) Guilty.

(b) Not guilty.

(c) Not guilty only by reason of lack of mental responsibility.

(4) Notwithstanding section 52, the accused shall be found not guilty only by reason of lack of mental responsibility if a majority of the members of the court-martial present at the time the vote is taken determine that the defense of lack of mental responsibility had been established or, in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

History: Add. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1051 Voting by members of court-martial on findings and on sentence; rulings by military judge upon questions of law or interlocutory questions; finality; instructing court as to elements of offense and charge; court-martial composed of military judge only; procedure.

Sec. 51. (1) Voting by members of a general or special court-martial on the findings and on the sentence 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 announce the results of the ballot to the members of the court.

(2) The military judge shall rule upon questions of law and interlocutory questions arising during the proceedings. A ruling made by the military judge upon a question of law or an interlocutory question other than the factual issue of mental responsibility of the accused, and upon a 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 may change a ruling made by the military judge at any time during the trial.

(3) Before a vote is taken on the findings, the military judge, in the presence of the accused and counsel, shall instruct the court as to the elements of the offense and charge the court as follows:

(a) The accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond a reasonable doubt.

(b) If there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted.

(c) If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree to which there is no reasonable doubt.

(d) The burden of proof to establish the guilt of the accused beyond a reasonable doubt rests upon this state.

(4) Subsections (1) and (2) do not apply to a court-martial composed of a military judge only. The military judge of that court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, set an appropriate sentence. The military judge of that court-martial shall make a general finding and, on request, shall find the facts specially. If an opinion or memorandum of decision is filed, the opinion or memorandum shall be sufficient if the findings of fact appear in the opinion or memorandum.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1052 Conviction and sentence; concurrence of 2/3 of members present required; determination of questions by majority vote or lesser vote; tie vote.

Sec. 52. (1) A person shall not be convicted of an offense, except by the concurrence of 2/3 of the members present at the time the vote is taken.

(2) Each sentence shall be determined by the concurrence of 2/3 of the members present at the time that the vote is taken.

(3) Any other question to be decided by the members of a general or special court-martial shall be determined by a majority vote, but the determination to reconsider a finding of guilty or reconsider a sentence, to decrease or lessen the sentence, may be made by a 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 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.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1053 Announcement by court-martial of findings and sentence.

Sec. 53. A court-martial shall announce its findings and sentence to the parties as soon as determined by the court.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1054 Record of proceedings; authentication; contents; filing original and copies of trial record.

Sec. 54. (1) Each general and special court-martial shall keep a separate record of the proceedings in each case. The record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, the record shall be authenticated by the trial counsel. If both the military judge and the trial counsel are unavailable for the reasons set forth in this subsection, the record shall be authenticated by 2 members.

(2) Each summary court-martial shall keep a separate record of the proceedings in each case. The record

shall reflect the pleas of the accused to the charges and specifications, the findings and sentence, and the action by the convening authority.

(3) After final action by the convening authority, the original record of trial of each court-martial shall be filed in the office of the state judge advocate general, 1 copy shall be filed in the office of the staff judge advocate of the command concerned, 1 copy shall be filed in the headquarters of the special court-martial convening authority over the accused, and 1 copy shall be given to the accused.

History: 1980, Act 523, Eff. Mar. 31, 1981.

ARTICLE 8

32.1055 Cruel or unusual punishment prohibited; use of irons prohibited; exception.

Sec. 55. Punishment by flogging, branding, marking, or tattooing the body or any other cruel or unusual punishment, shall not be issued by a court-martial or inflicted upon a person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1056 Punishment and sentence; limits.

Sec. 56. The punishment which a court-martial may direct for an offense shall not exceed the limits prescribed by this code. If a sentence exceeds the limits prescribed by this code, the part of the sentence in excess of the limits shall have no force and effect and the sentence shall automatically be reduced to the limits prescribed by this code and shall not be changed as to form of punishment.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1057 Sentence; forfeiture of pay or allowances; confinement; effective date; deferring service of sentence to confinement by governor; termination and rescission of deferment.

Sec. 57. (1) If a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. A forfeiture shall not extend to pay or allowances accrued before the date of sentence.

(2) A period of confinement included in the sentence of a court-martial begins to run from the date the accused is confined pursuant to the sentence. If a person has been confined before the sentence because the person was unable to furnish a bond for the offense, the court-martial shall specifically grant a credit against the sentence for the amount of time confined before sentencing. A period during which the sentence to confinement is suspended shall not be computed as service of the term of confinement and shall not affect the power of the convening authority to vacate the suspension during the current enlistment of the accused.

(3) Each sentence of a court-martial is effective on the date the sentence is ordered executed.

(4) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under the convening authority's jurisdiction, the governor may defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted the deferment or, if the accused is no longer under the officer's jurisdiction, by the governor.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1058 Sentence of confinement; execution; discipline and treatment to which imprisoned person subject; omission of words "hard labor" from sentence; duty of keeper or officer in charge of county jail to receive or confine prisoner; form of writ; fine; commitment of accused upon failure to pay fine; form; proceeds of fines; costs of prosecution.

Sec. 58. (1) A sentence of confinement issued by a court-martial may be carried into execution by confinement in a place allowed by section 10 as designated by the convening authority. A person confined is subject to the same discipline and treatment as a person imprisoned by a civil court of the state.

(2) The omission of the words, "hard labor", from a sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(3) The keeper or officer in charge of a county jail shall receive a person ordered into confinement before trial by the convening authority and a person sentenced to confinement by a military court and shall confine the persons according to law. A keeper or officer in charge shall not require payment of a fee or compensation for receiving or confining the prisoner.

(4) If a sentence of confinement is imposed, the convening authority shall issue a writ in the following or similar form:

STATE OF MICHIGAN)

COUNTY OF _____)

To duly authorized law officers of _____ county, state of Michigan:

WHEREAS, _____ of _____ in the county
(name of accused) (unit designation)
of _____, a member of the Michigan national guard,
was on the ____ day of _____, 19____, tried by a court-martial
and found guilty of _____

(offense)
in violation of the Michigan code of military justice of 1979
and was sentenced to serve _____ days' imprisonment; and
WHEREAS, as the sentence was approved and ordered executed by the
convening authority on the ____ day of _____, 19____.
THEREFORE, you are commanded to take _____ and

(name of accused)
commit him or her to the keeper of the jail, who is commanded to
receive _____ and keep him or her safely

(name of accused)
for the term of ____ days, after which he or she shall be
released.

This writ shall be returned to the convening authority not later
than 60 days after the issuance of the writ.

Dated at _____ in the county of _____ this _____
day of _____, 19____.

(name, rank, branch, organization, and
designation as convening authority)

(5) A fine imposed as a sentence of a court-martial shall be paid at the time of approval of the sentence by the convening authority. Upon failure to pay the fine, the convening authority shall order the accused committed to a location designated pursuant to section 10 until the fine is paid or until 1 day is served for each \$1.00 of the fine imposed.

(6) The commitment to the appropriate location will be in the following or similar form:

STATE OF MICHIGAN)

COUNTY OF _____)

To the sheriff of _____ county, state of Michigan.

WHEREAS _____ of _____ in the
(name of accused) (unit designation)
county of _____, a member of the Michigan national
guard, was on the ____ day of _____, 19____ tried by a
court-martial and found guilty of _____ in

(offense)
violation of the Michigan code of military justice of 1979 and was
sentenced to pay a fine of _____ dollars; and

WHEREAS, the fine has not been paid;

NOW, THEREFORE, by authority of the state of Michigan, you are
commanded to take _____

(name of accused)
and commit him or her to the keeper of the jail in the county of
_____, who is commanded to receive _____

(name of accused)
and keep him or her safely until he or she pays the sum above
mentioned, or shall have served 1 day for each \$1.00 of the fine
imposed, after which time he or she shall be released.

This writ shall be returned to the convening authority not later
than 60 days after the issuance of the writ.

Dated at _____ in the county of _____ this _____
day of _____, 19____.

(name, rank, branch, organization, and designation as convening authority)

(7) The proceeds of all fines in summary, special, and general courts-martial cases shall be paid to the general fund of this state. The costs of prosecution shall be paid out of the funds appropriated to the office of the adjutant general.

History: 1980, Act 523, Eff. Mar. 31, 1981.

ARTICLE 9

32.1060 Forwarding record to convening authority as reviewing authority; exception; action on record.

Sec. 60. Except as provided in section 71, after a trial by a court-martial, the record shall be forwarded to the convening authority as reviewing authority. Action on the record may be taken by the person who convened the court, a commanding officer, or a successor in command.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1061 Referring record to state judge advocate; review and opinion.

Sec. 61. Except as provided in section 71 and before taking action in a general court-martial, the convening authority shall refer the record of each general court-martial to the state judge advocate who shall review the record and submit a written opinion on the record to the convening authority. The review shall include a summary of the evidence in the case, an opinion as to the adequacy and weight of the evidence, the effect of any error or irregularity reflecting the proceedings, and a specific recommendation as to the action to be taken by the convening authority. If the final action of the court resulted in an acquittal of the charges and specifications, the opinion shall be limited to questions of jurisdiction.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1062 Returning record to court for action; reasons.

Sec. 62. (1) 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.

(2) If an apparent error or omission is in the record or if the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which cannot be rectified without material prejudice to the substantial rights of the accused, the convening authority shall return the record to the court for appropriate action. However, the record shall not be returned for any of the following reasons:

(a) Reconsideration of a finding of not guilty of a specification or ruling which amounts to a finding of not guilty.

(b) Reconsideration of a finding of not guilty of a charge, unless the record shows a finding of guilty under a specification laid under that charge which sufficiently alleges a violation of a section of this code.

(c) Increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory and the mandatory sentence is more severe than the sentence imposed by the court.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1063 Disapproval by convening authority of findings and sentence; reasons; rehearing; dismissal of charges; sentence.

Sec. 63. (1) If the convening authority disapproves the findings and sentence of a court-martial, the convening authority, except where there is lack of sufficient evidence in the record to support the findings, may order a rehearing. The convening authority shall state the reasons for disapproval. If the convening authority disapproves the findings and sentence and does not order a rehearing, the convening authority shall dismiss the charges.

(2) Each rehearing shall take place before a court-martial whose composition shall not include a member or military judge of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for an offense of which the accused was found not guilty by the first court-martial. A sentence in excess of or more severe than the original sentence shall not 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.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1064 Approval by convening authority of findings of guilty and sentence; approval of

sentence as approval of findings.

Sec. 64. In acting on the findings and sentence of a court-martial, the convening authority may approve only those findings of guilty and the sentence or part or amount of the sentence as the convening authority finds correct in law and fact and as the convening authority in the authority's discretion approves. Unless the convening authority indicates otherwise, approval of the sentence is approval of the findings.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1065 Finality of action on review of trial record where governor is convening authority; review of trial record by state judge advocate general; opinion; final action; authority of governor or state judge advocate general in reviewable cases; instructing convening authority to take action pursuant to state judge advocate general's decision or review; exception; dismissal of charges upon finding rehearing impracticable; boards of review; composition; authority and powers; effect of error of law on finding or sentence; approving or affirming so much of finding of guilty which includes lesser included offense.

Sec. 65. (1) If the convening authority is the governor, the action on the review of a record of trial shall be final.

(2) In all other cases:

(a) If the convening authority has taken final action in a general court-martial case, the convening authority shall forward the entire record including the action on the case and the opinion of the staff judge advocate or legal officer to the state judge advocate general for review.

(b) If 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 entire record including the officer's action on the sentence and the opinion of the staff judge advocate, shall be forwarded to the state judge advocate general for review.

(c) All other special and summary courts-martial records shall be forwarded to a judge advocate and shall be acted upon, transmitted, and disposed of as prescribed by rules promulgated pursuant to section 147.

(3) The state judge advocate general shall review the record of trial in each case forwarded for review as provided in this section. If the sentence as approved affects a general officer or extends to the dismissal of an officer, the state judge advocate general shall submit a written opinion on the sentence to the governor. If the final action of the court-martial in a case forwarded to the state judge advocate general results in an acquittal of the charges and specifications, the opinion of the state judge advocate general shall be limited to questions of jurisdiction.

(4) In each case reviewable by the state judge advocate general which does not affect a general officer or extend to the dismissal of an officer, the state judge advocate general shall take final action.

(5) In a case reviewable by the governor in which the governor is not the convening authority and in a case reviewable by the state judge advocate general, the governor or the state judge advocate general shall have authority to do any of the following:

(a) Act only with respect to the findings and sentence as approved by the convening authority.

(b) Affirm only those findings of guilty, and the sentence or that part or amount of the sentence as the governor or the state judge advocate general finds correct in law and fact and determines on the basis of the entire record should be approved.

(c) Weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) Order a rehearing if the governor or the state judge advocate general sets aside the findings and sentence, except if the setting aside is based on lack of sufficient evidence to support the findings.

(e) Order that the charges be dismissed if the governor or the state judge advocate general sets aside the findings and sentence and does not order a rehearing.

(6) Unless the governor is to take further action, the state judge advocate general shall instruct the convening authority to take action pursuant to the state judge advocate's decision on a review. If a rehearing has been ordered, but the convening authority finds a rehearing impracticable, the state judge advocate general may dismiss the charges.

(7) The state judge advocate general may constitute 1 or more boards of review each composed of not fewer than 3 officers of the organized militia or retired list, each of whom shall be a member of the bar of this state, which board of review shall review the record of a trial by court-martial referred to it by the state judge

advocate general. The board of review shall have the same authority and powers on the review of a record as the state judge advocate general has under this section.

(8) A finding or sentence of a 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.

(9) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding which includes a lesser included offense.

History: 1980, Act 523, Eff. Mar. 31, 1981.

Administrative rules: R 32.171 et seq. of the Michigan Administrative Code.

32.1066 Final military review of sentence of general court-martial or of sentence to dishonorable discharge by special court-martial; right to counsel; appointment by convening authority; representation by civilian counsel.

Sec. 66. (1) Upon the final military review of a sentence of a general court-martial or of a sentence to a dishonorable discharge by a special court-martial, the accused has the right to be represented by counsel before the reviewing authority.

(2) Upon the request of an accused entitled to be represented, the convening authority shall appoint a commissioned officer who is a member of the bar of this state to represent the accused before the reviewing authority or before the staff judge advocate, and before the state judge advocate general, in the review of cases specified in subsection (1).

(3) An accused entitled to be represented may be represented by civilian counsel if provided by the accused before the reviewing authority, the staff judge advocate, or legal officer and before the state judge advocate general.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1067 Military appeals tribunal; establishment; location; appointment, reappointment, and terms of members; eligibility; appointment and duties of chairperson; quorum; concurrence necessary for decision; removal of member; legal, technical, and secretarial assistance; compensation and expenses; appellate jurisdiction; petition for review; action by tribunal; granting stay or deferring service of sentence; setting aside findings and sentence; ordering rehearing or dismissing charges; returning record to state judge advocate general; further action.

Sec. 67. (1) A military appeals tribunal is established and located for administrative purposes only in the department of military affairs. The tribunal shall consist of 5 members appointed by the governor, by and with the advice and consent of the senate, for a term of 4 years. Initial appointments to the military appeals tribunal shall be 1 member for a 2-year term, 2 members for a 3-year term, and 2 members for a 4-year term. The term of office of all successor members shall be for a 4-year period. A member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the unexpired term of the predecessor. A member may be reappointed and a vacancy shall be filled for an unexpired term in the same manner as an appointment is made for a full term. A person is eligible for appointment to the military appeals tribunal if the person is a commissioned officer or a civilian and licensed to practice law in this state.

(2) The governor shall appoint the chairperson of the tribunal. The chairperson shall have general supervisory control of and be in charge of the assignment of the work of the tribunal.

(3) A majority of the tribunal shall constitute a quorum. The military appeals tribunal shall sit as a panel of 3 members. The concurrence of 2 members shall be necessary for a decision of the tribunal.

(4) A member of the military appeals tribunal may be removed by the governor, upon notice and hearing, for neglect of duty, or malfeasance in office, or for mental or physical disability.

(5) Subject to appropriations by the legislature, the military appeals tribunal shall have the legal, technical, and secretarial assistance as the chairperson considers necessary.

(6) The members of the military appeals tribunal while actually sitting in review of a matter submitted to their jurisdiction by this code, and while traveling to and from the session, shall be paid daily compensation equal to 1/250 of the state salary paid to circuit court judges together with the actual cost of their meals, lodging, and actual travel expenses or the amount set by the existing appropriation if private transportation is utilized.

(7) The military appeals tribunal shall have appellate jurisdiction, upon the petition of an accused, to hear and review the record in all decisions of a court-martial after the review provided in this article has been completed.

(8) The accused has not more than 60 calendar days, from the time of the receipt of actual notice of the final action on the accused's case, under this code to petition the military appeals tribunal for review. The tribunal shall act upon the petition not more than 60 calendar days after the receipt of the petition. The military appeals tribunal may grant a stay or defer service of the sentence of confinement or any other punishment under this code until the tribunal's final decision in the case.

(9) In a case reviewable under subsection (6), the military appeals tribunal shall act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority.

(10) If the military appeals tribunal 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 the tribunal sets aside the findings and sentence and does not order a rehearing, the tribunal shall order that the charges be dismissed. After the military appeals tribunal acts on the case, the record shall be returned to the state judge advocate general, who shall notify the convening authority of the tribunal's decision. If further action is required, the state judge advocate general shall instruct the convening authority to take action pursuant to that decision. If the tribunal has ordered a rehearing, but the convening authority finds a rehearing impracticable, the state judge advocate general shall dismiss the charges.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1068 Appeal from final decision of military appeals tribunal.

Sec. 68. An appeal may be taken to the state court of appeals from any final decision of the military appeals tribunal.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1070 Trial counsel and defense counsel to serve as appellate counsel; right to civilian counsel; disability of defense or trial counsel.

Sec. 70. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel upon an appeal authorized under this code. The accused has the additional right to be represented by civilian counsel at his or her own expense. If the defense or trial counsel becomes unable to perform his or her duties because of illness or other disability, the convening authority shall appoint a qualified trial or defense counsel to continue the proceedings.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1071 Execution of sentence; approval; suspension.

Sec. 71. (1) A court-martial sentence involving a general officer or extending to the dismissal of an officer other than a general officer shall not be executed until approved by the governor. The governor may approve the sentence or a part, amount, or commuted form of the sentence and may suspend the execution of the sentence or any part of the sentence.

(2) A sentence which includes an unsuspended, dishonorable, or bad conduct discharge shall not be executed until approved by an officer exercising general court-martial jurisdiction. That officer may approve the sentence or a part, amount, or commuted form of the sentence and may suspend the execution of the sentence or any part of the sentence.

(3) Any other court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by the convening authority. The convening authority may approve the sentence or a part, amount, or commuted form of sentence, and may suspend the execution of the sentence or any part of the sentence.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1072 Violation of probation; hearing; representation by counsel; sending record of hearing and recommendation for action to governor or commanding officer of force; vacating suspension of sentence.

Sec. 72. (1) Before the vacation of the suspension of a special court-martial sentence which, as approved, includes a dishonorable or bad conduct discharge, or of a 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 the probationer desires.

(2) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subsection (1). If the governor or commanding officer vacates the suspension, the unexecuted part of the sentence shall be executed.

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

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1073 Petition for new trial; grounds; time limitation.

Sec. 73. Not later than 1 year after approval of a court-martial sentence, pursuant to section 71, which extends to dismissal or dishonorable discharge, the accused may petition the governor for a new trial on the grounds of newly discovered evidence or fraud.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1074 Remitting or suspending part or amount of unexecuted sentence; substituting administrative form of discharge for dishonorable discharge or dismissal.

Sec. 74. (1) A convening authority may remit or suspend any part or amount of the unexecuted part of a sentence, including all uncollected forfeitures.

(2) The governor, for good cause, may substitute an administrative form of discharge for a dishonorable discharge or dismissal executed pursuant to a sentence of a court-martial.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1075 Restoration of rights, privileges, and property affected by executed part of court-martial sentence that is set aside or disapproved; exception; substituting administrative form of discharge where previously executed sentence of dishonorable discharge or dismissal not imposed on new trial; exception; reappointment of dismissed officer.

Sec. 75. (1) Each right, privilege, and property affected by an executed part 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 the executed part is included in a sentence imposed upon the new trial or rehearing.

(2) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issuance, unless the accused is to serve out the remainder of his or her enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor to the commissioned grade and with the rank, in the opinion of the governor, that the former officer would have attained had the former officer not been dismissed. The reappointment of the former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service.

History: 1980, Act 523, Eff. Mar. 31, 1981.

ARTICLE 10

32.1077 Person subject to code as principal.

Sec. 77. A person subject to this code is a principal if the person commits 1 of the following acts:

(a) An offense punishable by this code or aids, abets, counsels, commands, or procures the commission of the offense.

(b) Causes an act to be done which if directly performed by the person would be punishable by the code.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1078 Receiving, comforting, or assisting offender; punishment.

Sec. 78. A person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent the offender's apprehension, trial, or punishment shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1079 Finding accused guilty of offense necessarily included in offense charged or of attempt to commit offense charged or offense necessarily included in offense charged.

Sec. 79. 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 in the offense charged.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1080 Attempt to commit offense; punishment; conviction of attempt where offense completed.

Sec. 80. (1) An act, done with the specific intent to commit an offense under this code, amounting to more than mere preparation, even though failing to effect its commission, is an attempt to commit that offense.

(2) A person subject to this code who attempts to commit an offense punishable by this code shall be punished as a court-martial directs, unless otherwise specifically prescribed.

(3) A person subject to this code may be convicted of an attempt to commit an offense even if it appears on the trial from evidence presented at the trial or from a guilty plea that the offense was complete.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1081 Conspiracy; punishment.

Sec. 81. A person subject to this code who conspires with any other person to commit an offense under this code, if 1 or more of the conspirators does an act to effect the object of the conspiracy, shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1082 Soliciting or advising another to desert, mutiny, or commit act of misbehavior before enemy or sedition; punishment.

Sec. 82. (1) A person subject to this code who solicits or advises another to desert in violation of section 85 or mutiny in violation of section 94, if the offense solicited or advised is attempted or committed, shall be punished as provided for in the commission of the offense. If the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial directs.

(2) A person subject to this code who solicits or advises another to commit an act of misbehavior before the enemy in violation of section 99 or sedition in violation of section 94, if the offense solicited or advised is committed, shall be punished as provided for in the commission of the offense. If the offense solicited or advised is not committed, the person shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1083 Procuring enlistment or appointment by means of knowingly false representations or deliberate concealment as to qualifications; receiving pay or allowances; procuring separation by means of knowingly false representations or deliberate concealment as to eligibility.

Sec. 83. A person shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Procures his or her own enlistment or appointment in the state military forces by means of knowingly false representations or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances under the enlistment.

(b) Procures his or her own separation from the state military forces by means of knowingly false representations or deliberate concealment as to his or her eligibility for the separation.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1084 Effecting enlistment, appointment, or separation of person known to be ineligible; punishment.

Sec. 84. A person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of a person who is known to that person to be ineligible for the enlistment, appointment, or separation because it is prohibited by law, rule, regulation, or order shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1085 Desertion; member of state military forces not prohibited from accepting employment in another state or leaving state in pursuance of vocation, education, or profession; informing commanding officer of absence; waiver; punishment.

Sec. 85. (1) A member of the state military forces is guilty of desertion if the member commits 1 of the following acts:

(a) Without proper authority goes or remains absent from his or her unit, organization, or place of duty with intent to remain away permanently.

(b) Quits his or her unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service.

(c) Without being regularly separated from 1 of the forces of the state military forces, enlists or accepts an appointment in the same or another state military force without fully disclosing the fact that he or she has not been regularly separated.

(2) Notwithstanding subsection (1), a member of the state military forces shall not be, in time of peace or order, prohibited from accepting bona fide employment in another state or leaving the boundaries of this state in pursuance of a vocation, education, or profession if before so doing the member fully informs the member's commanding officer of the absence from the state and the reasons for the absence. However, the commanding officer may waive this requirement.

(3) An officer of the state military forces who, having tendered his or her resignation and before due notice of the acceptance of the resignation, quits his or her post or proper duties without leave and with intent to remain away permanently is guilty of desertion.

(4) A person found guilty of desertion shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1086 Failure to go to, or going or remaining absent from, place of duty; punishment.

Sec. 86. A person subject to this code who, without proper authority, fails to go to his or her appointed place of duty at the time prescribed, goes from that place, absents himself or herself or remains absent from the person's unit, organization, or other place of duty at which the person is required to be at the time prescribed shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1087 Missing movement of ship, train, bus, motor convoy, vehicle, airplane, or unit; punishment.

Sec. 87. A person subject to this code who through neglect or design misses the movement of a ship, train, bus, motor convoy, vehicle, airplane, or unit with which the person is required in the course of duty to move shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1088 Use of contemptuous words; prohibition; violation.

Sec. 88. (1) A person subject to this act shall not use contemptuous words against the president, vice president, congress, secretary of defense, a secretary of a military department, the director of the Michigan department of military and veterans affairs, or the governor or the legislature of this state while he or she is on duty, or against the governor or the legislature of any other state, territory, commonwealth, or possession while he or she is on duty and present in that state, territory, commonwealth, or possession.

(2) A person who violates this section is guilty of an offense punishable as a court-martial may direct, subject to all recognized common law or constitutional immunities within this state.

History: Add. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1089 Disrespect toward superior commissioned officer; punishment.

Sec. 89. A person subject to this code who behaves with disrespect toward a superior commissioned officer shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1090 Striking, drawing or lifting up weapon, or offering violence against superior commissioned officer; wilful disobedience of lawful command; punishment.

Sec. 90. A person subject to this code shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Strikes a superior commissioned officer, draws or lifts up a weapon, or offers violence against the officer while the officer is in the execution of the officer's duty.

(b) Wilfully disobeys a lawful command of a superior commissioned officer.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1091 Prohibited acts by warrant officer or enlisted person; punishment.

Sec. 91. A warrant officer or enlisted person who commits 1 of the following acts shall be punished as a court-martial directs:

(a) Strikes or assaults a warrant officer or noncommissioned officer when the officer is in the execution of the officer's duty.

(b) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer.

(c) Treats with contempt or disrespect, in language or deportment, a warrant officer or noncommissioned

officer, while the officer is in the execution of the officer's duty.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1092 Violating or failing to obey lawful order, rule, or regulation; dereliction in performance of duties; punishment.

Sec. 92. A person subject to this code shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Violates or fails to obey a lawful general order, rule, or regulation.

(b) Having knowledge of a lawful order issued by a member of the armed forces which it is the person's duty to obey, fails to obey that order.

(c) Is derelict in the performance of duties.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1093 Cruelty toward or oppression or maltreatment of person subject to person's orders; punishment.

Sec. 93. A person subject to this code who is guilty of cruelty toward or oppression or maltreatment of a person subject to the person's orders shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1094 Mutiny, sedition, or failure to suppress or report mutiny or sedition; punishment.

Sec. 94. (1) A person subject to this code:

(a) Who, with the intent to usurp or override a lawful military authority, refuses, in concert with another person, to obey an order or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny.

(b) Who, with the intent to cause the overthrow or destruction of a lawful civil authority, creates, in concert with another person, revolt, violence, or other disturbance against that authority is guilty of sedition.

(c) Who fails to do the utmost to prevent and suppress an offense of mutiny or sedition being committed in the person's presence or fails to take all reasonable means to inform a superior officer or commanding officer of an offense of mutiny or sedition which the person knows of or has reason to believe is taking place is guilty of a failure to suppress or report a mutiny or sedition.

(2) 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 directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1095 Resisting apprehension, breaking arrest, or escaping from custody or confinement; punishment.

Sec. 95. A person subject to this code who resists apprehension, breaks arrest, or escapes from custody or confinement shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1096 Releasing prisoner or permitting prisoner to escape; punishment.

Sec. 96. A person subject to this code who, without proper authority, releases a prisoner committed to the person's charge, or who through neglect or design permits the prisoner to escape, shall be punished as a court-martial directs, whether or not the prisoner was committed in strict compliance with law.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1097 Wrongful apprehension, arrest, or confinement of person; punishment.

Sec. 97. Except as provided by law, a person subject to this code, who wrongfully apprehends, arrests, or confines a person shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1098 Unnecessary delay in disposition of accused person's case; failure to enforce or comply with code provision regulating proceedings before, during, or after trial; punishment.

Sec. 98. A person subject to this code shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Is responsible for unnecessary delay in the disposition of a case of a person accused of an offense under this code.

(b) Knowingly and intentionally fails to enforce or comply with a provision of this code regulating the proceedings before, during, or after trial of an accused.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1099 Prohibited acts committed before or in presence of enemy, in peacetime emergency, or civil disturbance; punishment.

Sec. 99. A person subject to this code who before or in the presence of the enemy or during the performance of duty in a peacetime emergency or civil disturbance operation commits 1 of the following acts shall be punished as a court-martial directs:

(a) Runs away.

(b) Abandons, surrenders, or delivers up a command, unit, place, or military property which it is the person's duty to defend.

(c) Through disobedience, neglect, or intentional misconduct endangers the safety of a command, unit, place, or military property.

(d) Casts away arms or ammunition.

(e) Is guilty of cowardly conduct.

(f) Quits a place of duty to plunder or pillage.

(g) Causes false alarms in a command, unit, or place under the control of the armed forces of the United States, the state military forces, or the military forces of any other state or territory.

(h) Willfully fails to do the person's utmost to encounter, engage, capture, or destroy enemy troops, combatants, vessels, aircraft, or any other thing which it is the person's duty to encounter, engage, capture, or destroy.

(i) Does not afford all practicable relief and assistance to troops, combatants, vessels, or aircraft of the armed forces belonging to the United States, to their allies, or to any other state or to the state military forces if engaged in battle.

(j) Willfully fails to do his or her utmost to suppress civil disturbance while engaged in an emergency response operation.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1100 Compelling or attempting to compel commander to abandon or give up to enemy place, vessel, aircraft, or property; striking colors or flag to enemy without authority; punishment.

Sec. 100. A person subject to this code who compels or attempts to compel the commander of a place, vessel, aircraft, or of other military property or of a body of members of the armed forces of the United States or of any other state or territory or of the state military forces to give the place, vessel, aircraft, or property 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 directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1101 Disclosure of countersign or giving different countersign during declared state of emergency; punishment.

Sec. 101. A person subject to this code who in time of declared state emergency discloses the countersign to a person not entitled to receive the countersign, or who gives to another who is entitled to receive and use the countersign a different countersign from that which, to his or her knowledge, the person was authorized and required to give, shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1102 Forcing a safeguard; punishment.

Sec. 102. A person subject to this code who forces a safeguard shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1103 Securing public property taken in performance of duty; giving notice and turning over to proper authority captured or abandoned property; prohibited acts; punishment.

Sec. 103. (1) A person subject to this code shall secure all public property taken in the performance of his or her duty and shall give notice and turn over to the proper authority without delay all captured or abandoned property in the person's possession, custody, or control.

(2) A person subject to this code shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Fails to carry out the duties prescribed in subsection (1).

(b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, from which the person receives or expects a profit, benefit, or advantage to the person or another directly or indirectly connected with the person.

(c) Engages in looting or pillaging.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1104 Aiding or attempting to aid enemy; harboring, protecting, or giving intelligence to, or communicating, corresponding, or holding intercourse with, enemy; punishment.

Sec. 104. A person subject to this code shall be punished as a court-martial directs if the person commits 1 of the following acts:

(a) Aids or attempts to aid the enemy with arms, ammunition, supplies, money or any other thing.

(b) Without proper authority, knowingly harbors, protects, or gives intelligence to, or communicates or corresponds with, or holds any intercourse with, the enemy, either directly or indirectly.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1105 Prohibited acts committed while in hands of captor during declared state of emergency or civil disturbance; punishment.

Sec. 105. (1) A person subject to this code who, while in the hands of a captor in time of declared state emergency, or civil disturbance emergency shall not do any of the following:

(a) To secure favorable treatment by the person's captors, act without proper authority in a manner contrary to law, custom, rule, or regulation to the detriment of others.

(b) While in a position of authority over those persons, maltreat them without justifiable cause.

(2) A person who violates this section shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1107 Signing or making false document or false official statement; punishment.

Sec. 107. A person subject to this code who, with the intent to deceive, signs a false record, return, rule, order, or other official document, knowing the document to be false, or makes any other false official statement knowing the statement to be false shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1108 Loss, damage, destruction, or unauthorized sale or disposal of military property; punishment.

Sec. 108. (1) A person subject to this code shall not, without proper authority, do any of the following:

(a) Sell or otherwise dispose of military property of the United States or this state.

(b) Willfully or negligently damage, destroy, or lose military property of the United States or this state.

(c) Willfully or negligently allow damage, destruction, or loss of military property of the United States or this state.

(2) A person who violates this section shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1109 Wasting, spoiling, or destroying property; punishment.

Sec. 109. (1) A person subject to this code, while on duty or in the course of duty, shall not willfully or recklessly waste, spoil, or destroy any property that is not property of the United States or of this state.

(2) A person who violates this section shall be punished as a court-martial directs.

History: Add. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1111 Operation of military vehicle or aircraft while under influence of intoxicating liquor in reckless or wanton manner or without authority; punishment.

Sec. 111. A person subject to this code who operates a military vehicle or aircraft while under the influence of intoxicating liquor or in a reckless or wanton manner or without authority shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1112 Person found under influence of intoxicating liquor or controlled substance while in uniform or on state military property; punishment.

Sec. 112. (1) A person subject to this code who is not a sentinel or a lookout as described in section 113

shall not be either of the following:

(a) Under the influence of intoxicating liquor or a controlled substance while in uniform and on military property.

(b) Under the influence of intoxicating liquor or a controlled substance while on duty.

(2) A person who violates this section shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1113 Sentinel or guard found under influence of intoxicating liquor or controlled substance or sleeping upon post; leaving post before being relieved; punishment.

Sec. 113. A sentinel or guard subject to this code who is found under the influence of intoxicating liquor or a controlled substance or sleeping upon his or her post or who leaves a post before being relieved shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1114 Dueling; failure to report challenge; punishment.

Sec. 114. A person subject to this code who fights, 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 directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1115 Feigning illness, physical disablement, mental lapse, or derangement, or intentionally inflicting self-injury to avoid work, duty, or service; punishment.

Sec. 115. A person subject to this code who for the purpose of avoiding work, duty, or service feigns illness, physical disablement, mental lapse, or derangement, or intentionally inflicts self-injury, shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1116 Causing or participating in riot or breach of peace; punishment.

Sec. 116. A person subject to this code who causes or participates in a riot or breach of the peace shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1117 Using provoking or reproachful words or gestures while in duty status; punishment.

Sec. 117. A person subject to this code who while in a duty status uses provoking or reproachful words or gestures toward another person subject to this code shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1121 Depriving owner of property or money; larceny; punishment.

Sec. 121. (1) A person subject to this code who unlawfully takes, obtains, or withholds from the United States, this state, or any other state, any property, money, or article of any kind with the intent to permanently deprive the owner of the property, money, or article of any kind, is guilty of larceny.

(2) A person who violates this section is punishable as a court-martial directs.

History: Add. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1131 Giving false testimony in a proceeding as perjury; punishment.

Sec. 131. A person subject to this code who in a proceeding under this code wilfully and corruptly gives, upon a lawful oath or in a form allowed by law to be substituted for an oath, a false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1132 Making false claims; prohibited acts; punishment.

Sec. 132. (1) A person subject to this code shall not commit any of the following acts:

(a) Knowing the claim to be false or fraudulent, make a claim against the United States, this state, or an officer of the United States or this state.

(b) Knowing the claim to be false or fraudulent, present to a person in the civil or military service of the United States or this state for approval or payment a claim against the United States, this state, or an officer of the United States or this state.

(c) For the purpose of obtaining the approval, allowance, or payment of a claim against the United States, this state, or any officer of the United States or this state, do any 1 of the following:

(i) Make or use a writing or other paper knowing the writing or paper contains a false or fraudulent statement.

(ii) Make an oath to a fact, writing, or other paper knowing the oath to be false.

(iii) Forge or counterfeit a signature upon a writing or other paper or use a signature knowing the signature to be forged or counterfeited.

(d) Having charge, possession, custody, or control of money or other property of the United States or this state, furnished or intended for the armed forces of the United States or this state, knowingly deliver to a person having authority to receive the money or property, an amount less than that for which the person receives a certificate or receipt.

(e) Being authorized to make or deliver a paper certifying the receipt of property of the United States or this state, furnished or intended for the armed forces of the United States or this state, make or deliver to a person the writing without having full knowledge of the truth of the statements contained in the paper and with intent to defraud the United States or this state.

(f) Make a false or fraudulent use of a credit card, telephone, telephone calling card, or other access device issued by the United States or this state.

(2) A person who violates this section shall be punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1133 Conduct unbecoming an officer; conviction; punishment.

Sec. 133. A commissioned officer or warrant officer who is convicted of conduct unbecoming an officer shall be dismissed from the military service of this state or punished as a court-martial directs.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1134 Cognizance by court-martial of a disorder or neglect to prejudice of good order and discipline; punishment.

Sec. 134. (1) A person subject to this code shall not through disorder or neglect to the prejudice of good order and discipline or through conduct bring discredit upon the armed forces of the United States or of this state.

(2) A person who violates subsection (1) shall be punished by a general, special, or summary court-martial as determined by the nature and degree of the violation.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

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32.1135 Court of inquiry; convening authority; membership; appointment of counsel; rights of person having direct interest in subject of inquiry; challenges for cause; oath or affirmation; witnesses; findings of fact; record of proceedings; authentication.

Sec. 135. (1) A court of inquiry to investigate any matter may be convened by a person authorized to convene a general court-martial or by any other person designated by the governor for that purpose, whether or not the person involved has requested the inquiry.

(2) A court of inquiry shall consist of 3 or more commissioned officers. For each court of inquiry the convening authority shall appoint counsel for the court.

(3) A person subject to this code or in the status of a civilian employee of the military forces of this state who has a direct interest in the subject of inquiry shall have the right to be designated as a party, shall be given due notice, and shall have the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(4) A member of a court of inquiry may be challenged by a party but only for cause stated to the court.

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

(6) A witness may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(7) A court of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings which shall be authenticated by the signatures of the senior officer and counsel of the court of inquiry and forwarded to the convening authority. If the record cannot be authenticated by signatures of the senior officer and counsel, the record shall be signed by a member instead of the senior officer, and if the record cannot be authenticated by the counsel for the court, the record shall be signed by a member instead of the counsel.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1136 Officers having power to administer oaths; affidavits; signature and title of office as prima facie evidence of officer's authority.

Sec. 136. (1) The following officers of the state military forces shall have the power to administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for those purposes before the officers:

- (a) Each judge advocate of the Michigan national guard and state troops.
- (b) Each summary court-martial officer.
- (c) Each adjutant, assistant adjutant, acting adjutant, and personnel adjutant, including each warrant officer acting in that capacity.
- (d) Each staff judge advocate and legal officer and acting or assistant judge advocate and legal officer.

(2) The following officers shall have the power to administer oaths necessary in the performance of their duties and affidavits may be taken for those purposes before the officers:

- (a) The president, trial counsel, and assistant trial counsel for all general and special courts-martial.
- (b) The president and counsel for a court of inquiry.
- (c) Each officer designated to take depositions.
- (d) Each officer detailed to conduct investigations.

(3) An officer on the retired list shall not be authorized to administer oaths as provided in this section unless the officer is on actual state duty or on active duty in or with the state military forces under orders of the governor.

(4) The signature without seal of a person described in this section, together with the title of office, shall be prima facie evidence of the officer's authority.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1137 Sections to be explained to enlisted person; availability of code and rules.

Sec. 137. Sections 3, 4, 7, 8, 9, 10, 11, 15, 28, 30, 31, 37, 38, 55, 58, 77 to 134, 137 to 139, and 145 shall be carefully explained to each enlisted person at the time of enlistment or induction into or when ordered to duty in or with the state military forces or not later than 6 days after enlistment or induction. The sections shall be explained again after the enlisted person has completed 6 months' service and again at the time the enlisted person reenlists. A complete text of this code and rules prescribed by the adjutant general under this code shall be made available to a member of the state military forces, upon request, for personal examination.

History: 1980, Act 523, Eff. Mar. 31, 1981.

Administrative rules: R 32.101 et seq. and R 32.171 et seq. of the Michigan Administrative Code.

32.1138 Complaint to superior officer concerning commanding officer; forwarding complaint to officer exercising general court-martial jurisdiction; examination; redress; transmitting true statement of complaint with proceedings, to adjutant general.

Sec. 138. A member of the state military forces who believes that he or she was wronged by the member's commanding officer, or who, upon due application to the commander, is refused redress, may complain to a superior officer who shall forward the complaint, in writing, to the officer exercising general court-martial jurisdiction over the officer against whom the complaint is made. That officer shall examine the complaint and take proper measures for redressing the wrong complained of, and the officer, as soon as possible, shall transmit to the adjutant general a true statement of the complaint, with the proceedings had on the complaint.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1139 Complaint to commanding officer concerning wilful damage to, or wrongful taking of, property of person; convening board to investigate complaint; membership and powers of board; assessment, approval, and payment of damages.

Sec. 139. (1) If a complaint is made to a commanding officer that wilful damage has been done to the property of a person subject to this code or that his or her property has been wrongfully taken by 1 or more members of the state military forces, the commanding officer, subject to the rules as may be prescribed pursuant to this code, may convene a board to investigate the complaint. The board shall consist of from 1 to 3 officers and shall have for the purpose of the investigation power to summon witnesses and examine witnesses 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 the board shall be subject to the approval of the commanding officer and the amount approved by the commanding officer shall be charged against the pay of the offender. The department of military affairs shall make payment to the

injured party of damages assessed and approved.

(2) If the offender cannot be ascertained, but the organization or detachment to which the offender belongs is known, the adjutant general may direct that the amount of damages assessed and approved to be paid to the injured party from the nonappropriated military fund of the unit of the state military forces to which the offender belonged at the time the tort was committed.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1140 Delegation and subdelegation of authority vested in governor.

Sec. 140. The governor is authorized to delegate the authority vested in the governor under this code and to provide for the subdelegation of that authority.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1141 Determining moral character, capacity, and general fitness of officer or warrant officer; efficiency board; unfavorable findings; demanding court of inquiry; adverse finding; discharge; procedural and other rules; right to counsel.

Sec. 141. (1) The moral character, capacity, and general fitness for service of an officer or warrant officer of the state military forces not in the service of the United States may be determined by an efficiency board detailed on orders of the governor of 3 commissioned officers, senior in rank to the officer whose fitness for service is under inquiry. If the findings of the board are unfavorable concerning the officer, and if approved by the governor, the officer shall be discharged. However, the officer ordered to appear before an efficiency board as provided in this section, before the day the efficiency board convenes to consider his or her case, may demand that a court of inquiry, as provided by section 135, be substituted for the efficiency board. If pursuant to the demand a court of inquiry makes a finding adverse to the officer whose moral character, capacity, and general fitness for service are under investigation, and the finding is approved by the governor, the officer against whom the adverse finding is made, shall be discharged.

(2) The procedural and other rules applicable to courts of inquiry equally shall apply to efficiency boards. The officer whose moral character, capacity, and general fitness for service are under investigation shall have a right to counsel in the proceedings provided for in this section.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1142 Action or proceeding not to be prosecuted or maintained against convening authority, member of military court, or officer or person acting under convening authority or reviewing proceedings.

Sec. 142. An action or proceeding shall not be prosecuted or maintained against the convening authority or member of a military court or officer or person acting under the convening authority or reviewing the proceedings on account of the approval, imposition, or execution of a sentence or the imposition or collection of a fine or penalty, or the execution or service of any process or mandate of a military court.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1143 Jurisdiction of military courts and board; presumption; burden of proof.

Sec. 143. The jurisdiction of the military courts and board established by this code shall be presumed and the burden of proof shall rest on a person seeking to remove a court or board of jurisdiction in an action or proceeding.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1144 Appointing and removing person or persons to execute or serve process, mandate, or order.

Sec. 144. Each summary court-martial and the president of any other court-martial and of a court of inquiry may appoint and remove 1 or more persons subject to this code to execute or serve a process, mandate, or order issued under authority of this code by the president or court officer.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1145 Issuance of process, mandates, and subpoenas duces tecum; form; enforcement; person to whom directed; execution or service and return; demanding or requiring payment of fee or charge prohibited.

Sec. 145. (1) A military court is empowered to issue process and mandates necessary and proper to carry into full effect the powers vested in the court. The court shall have the power to issue subpoenas duces tecum and to enforce by attachment attendance of witnesses and production of books and records.

(2) The process and mandates may be issued by a summary court-martial, military judge, trial counsel, and the president of any other military court and may be directed to and executed or served by a person designated in section 144 or a civil law enforcement officer and shall be in a form as may be prescribed by rules promulgated pursuant to this code.

(3) A civil law enforcement officer or a person appointed pursuant to section 144 to whom a process or mandate may be directed shall execute or serve and return the process or mandate pursuant to the requirements of the process or mandate. Except as otherwise specifically provided in this code, the civil law enforcement officer or a person appointed pursuant to section 144 shall not demand or require payment of a fee or charge of any nature for receiving, executing, serving, or returning the process or mandate or for any services in connection with the process or mandate.

History: 1980, Act 523, Eff. Mar. 31, 1981.

Administrative rules: R 32.171 et seq. of the Michigan Administrative Code.

32.1146 Fine; payment; delivery; deduction from pay or allowance due delinquent offender; payment of fine or penalty to state treasurer.

Sec. 146. A fine ordered under this act shall be paid to this state and shall be delivered to the military court or paid to the person appointed by the military court pursuant to section 144 or 145 who executes the court's process. If not paid, the amount of the fine shall be noted upon the state roll or account for pay of the delinquent offender and deducted from pay or allowance due until the fine is liquidated. A fine or penalty imposed by a military court upon an officer or enlisted person shall be paid to the state treasurer by the military court collecting the fine or penalty not later than 30 days after the process for recovery of the fine or penalty is issued.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1147 Rules.

Sec. 147. The adjutant general or the state judge advocate general shall provide for the promulgation of rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to carry out the purposes of this code.

History: 1980, Act 523, Eff. Mar. 31, 1981.

Administrative rules: R 32.101 et seq. and R 32.171 et seq. of the Michigan Administrative Code.

32.1148 Repeal of MCL 32.301 to 32.427.

Sec. 148. Act No. 297 of the Public Acts of 1957, being sections 32.301 to 32.427 of the Compiled Laws of 1970, is repealed.

History: 1980, Act 523, Eff. Mar. 31, 1981.