

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1442 Session of  
2012

INTRODUCED BY M. WHITE, BAKER, PIPPY, GREENLEAF, FONTANA, STACK,  
ARGALL, SOLOBAY, ERICKSON, WAUGH, MENSCH, BRUBAKER AND EARLL,  
MARCH 16, 2012

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
SEPTEMBER 24, 2012

## AN ACT

1 Amending Title 51 (Military Affairs) of the Pennsylvania  
2 Consolidated Statutes, repealing and adding sections related  
3 to military justice; and establishing the State Military  
4 Justice Fund.

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

7 Section 1. Chapter 51 heading, sections 5100, 5101, 5102,  
8 5103, 5104, 5105 and 5106, Chapter 52 heading, sections 5201,  
9 5202, 5203, 5204, 5205, 5206, 5207 and 5208, Chapter 53 heading,  
10 section 5301, Chapter 54 heading, sections 5401, 5402, 5403,  
11 5404, 5405, 5406, 5407 and 5408, Chapter 55 heading, sections  
12 5501, 5502, 5503, 5504, 5505, 5506, 5507 and 5508, Chapter 56  
13 heading, sections 5601, 5602, 5603, 5604, 5605 and 5606, Chapter  
14 57 heading, sections 5701, 5702, 5703, 5704, 5705, 5706, 5707,  
15 5708, 5709, 5710, 5711, 5712, 5713, 5714, 5715, 5716, 5717, 5718  
16 and 5719, Chapter 58 heading, sections 5801, 5802, 5803 and  
17 5804, Chapter 59 heading, sections 5901, 5902, 5903, 5904, 5905,  
18 5906, 5907, 5908, 5909, 5910, 5911, 5912, 5913, 5914, 5915 and

1 5916, Chapter 60 heading, sections 6001, 6002, 6003, 6004, 6005,  
2 6006, 6007, 6008, 6009, 6010, 6011, 6012, 6013, 6014, 6015,  
3 6016, 6017, 6018, 6019, 6020, 6021, 6022, 6023, 6024, 6025,  
4 6026, 6027, 6028, 6029, 6030, 6031, 6032, 6033, 6034, 6035,  
5 6036, 6037, 6038, 6039, 6040, 6041, 6042, 6043, 6044, 6045, 6046  
6 and 6047, Chapter 61 heading and sections 6101, 6102, 6103,  
7 6104, 6105, 6106, 6107, 6108, 6109, 6110, 6111 and 6112 of Title  
8 51 of the Pennsylvania Consolidated Statutes are repealed:

9 [CHAPTER 51

10 GENERAL PROVISIONS

11 § 5100. Short title of part.

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

14 § 5101. Definitions.

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

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

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

26 "Adjutant General." The Adjutant General of the Commonwealth  
27 of Pennsylvania.

28 "Convening authority." Includes, in addition to the person  
29 who convened the court, a commissioned officer commanding for  
30 the time being, or a successor in command.

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

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

10 "Enlisted person." A person in an enlisted grade.

11 "Federal service." Periods of active duty other than active  
12 State duty, but excludes active duty for training, active duty  
13 for periods of less than 30 days, and active duty for the  
14 purpose of attending service schools.

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

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

21 "Military." Any or all of the armed forces.

22 "Military court." A court-martial, a court of inquiry, or a  
23 provost court.

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

27 "Officer." Commissioned or warrant officer.

28 "Rank." The order of precedence among members of the State  
29 military forces.

30 "State Judge Advocate." The commissioned officer responsible

1 for supervising the administration of the military justice in  
2 the State military forces. He shall be the military staff judge  
3 advocate to the Governor.

4 "Superior commissioned officer." A commissioned officer  
5 superior in rank and command.

6 § 5102. Persons subject to part.

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

9 § 5103. Jurisdiction to try certain personnel.

10 (a) Discharge obtained fraudulently.--Each person subject to  
11 this part discharged from the State military forces who is later  
12 charged with having fraudulently obtained his discharge shall  
13 be, subject to section 5708 (relating to statute of  
14 limitations), subject to trial by court-martial on said charge  
15 and shall after apprehension be subject to this part while in  
16 the custody of the military for such trial. Upon conviction of  
17 said charge he shall be subject to trial by court-martial for  
18 all offenses under this part committed before the fraudulent  
19 discharge.

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

24 § 5104. Dismissal of commissioned officer.

25 (a) Court-martial proceedings.--Any commissioned officer,  
26 subject to this part dismissed by order of the Governor, may  
27 make a written application for trial by court-martial, setting  
28 forth, under oath, that he has been wrongfully dismissed. In  
29 such event, the Governor, as soon as practicable, shall convene  
30 a general court-martial to try such officer on the charges on

1 which he was dismissed. A court-martial so convened shall have  
2 jurisdiction to try the dismissed officer on such charge, and he  
3 shall be considered to have waived the right to plead any  
4 statute of limitations applicable to any offense with which he  
5 is charged. The court-martial may, as part of its sentence,  
6 adjudge the affirmance of the dismissal, but if the court-  
7 martial acquits the accused or if the sentence adjudged, as  
8 finally approved or affirmed, does not include dismissal, the  
9 Adjutant General shall substitute for the dismissal ordered by  
10 the Governor a form of discharge authorized for administrative  
11 issue.

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

18 § 5105. Territorial applicability.

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

25 (b) Location of proceedings.--Courts-martial and courts of  
26 inquiry may be convened and held in units of the State military  
27 forces while those units are serving outside this Commonwealth  
28 with the same jurisdiction and powers as to persons subject to  
29 this part as if the proceedings were held inside this  
30 Commonwealth, and persons subject to this part accused of

1 committing offenses outside this Commonwealth shall be subject  
2 to trial and punishment either inside or outside this  
3 Commonwealth.

4 § 5106. Judge advocates and legal officers.

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

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

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

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

27 (e) Disqualification in case.--No person who has acted as  
28 member, military judge, trial counsel, assistant trial counsel,  
29 defense counsel, assistant defense counsel, or investigating  
30 officer, or who has been a witness for either the prosecution or

1 defense, in any case may later act as staff judge advocate or  
2 legal officer to any reviewing authority upon the same case.

## 3 CHAPTER 52

### 4 APPREHENSION AND RESTRAINT

5 § 5201. Apprehension.

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

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

13 (c) Authority of officers.--Commissioned officers, warrant  
14 officers, petty officers and noncommissioned officers have  
15 authority to quell quarrels, frays, and disorders among persons  
16 subject to this part and to apprehend persons subject to this  
17 part who take part therein.

18 § 5202. Apprehension of persons absent without leave.

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

27 § 5203. Imposition of restraint.

28 (a) Definitions.--Arrest is the restraint of a person  
29 subject to this part by an order, not imposed as a punishment  
30 for an offense, directing him to remain within certain specified

limits. Confinement is the physical restraint of a person subject to this part.

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

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

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

(e) Construction of section.--This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

§ 5204. Restraint of persons charged with offenses.

(a) General rule.--Any person subject to this part charged with an offense under this part may be ordered into arrest or confinement. When any person subject to this part is placed in arrest or confinement prior to trial, immediate steps shall be

1 taken to inform him of the specific wrong of which he is  
2 accused, to try him, or to dismiss the charges and release him.

3 (b) Issuing warrants to peace officers.--The convening  
4 authority of any court-martial shall have the power to issue  
5 warrants of apprehension directed to the sheriff or any  
6 constable or peace officer within the proper county to apprehend  
7 persons subject to this part charged with an offense under this  
8 part and to deliver such persons into the custody of the State  
9 military forces.

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

17 § 5205. Confinement in jails.

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

22 § 5206. Reports and receiving of prisoners.

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

29 (b) Report of commitment.--Every commander of a guard,  
30 warden, keeper, or officer of a municipal, county, or State

1 place of confinement to whose charge a prisoner subject to this  
2 part, is committed shall, within 24 hours after that commitment  
3 report to the commanding officer of the prisoner, the name of  
4 the prisoner, the offense charged against him, and the name of  
5 the person who ordered or authorized the commitment.

6 § 5207. Punishment prohibited before trial.

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

15 § 5208. Delivery of offenders to civil authorities.

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

21 (b) Effect on sentence of court-martial.--When delivery  
22 under this section is made to any civil authority of a person  
23 undergoing sentence of a court-martial, the delivery, if  
24 followed by conviction in a civil tribunal, interrupts the  
25 execution of the sentence of the court-martial. The offender  
26 after having answered to the civil authorities for his offense,  
27 shall, upon the request of competent military authority, be  
28 returned to military custody for the completion of such sentence  
29 of the court-martial.

## 30 CHAPTER 53

NONJUDICIAL PUNISHMENT

§ 5301. Commanding officer's nonjudicial punishment.

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

(1) Upon an officer of his command:

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

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

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

(2) Upon other military personnel of his command:

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

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

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

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

(v) if imposed by an officer exercising special

1 court-martial jurisdiction over the offender, a fine or  
2 forfeiture of pay and allowances of not more than \$10.

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

8 (c) Appeal from punishment.--A person punished under this  
9 section who considers his punishment unjust or disproportionate  
10 to the offense may, through the proper channel, appeal to the  
11 next superior authority. The appeal shall be promptly forwarded  
12 and decided. The officer who imposes the punishment, his  
13 successor in command, and superior authority may suspend, set  
14 aside, or remit any part or amount of the punishment and restore  
15 all rights, privileges and property affected.

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

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

30 (f) Court-martial in lieu of punishment.--Punishment may not

1 be imposed upon any member of the State military forces under  
2 this chapter if the member has, before the imposition of such  
3 punishment, demanded trial by court-martial in lieu of such  
4 punishment.

## 5 CHAPTER 54

### 6 COURTS-MARTIAL JURISDICTION

7 § 5401. Courts-martial classified.

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

10 (1) General courts-martial, consisting of:

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

12 or

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

18 (2) Special courts-martial, consisting of:

19 (i) not less than three members;

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

22 (iii) only a military judge, if one has been  
23 detailed to the court, and the accused under the same  
24 conditions as those prescribed in paragraph (1)(ii) so  
25 requests.

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

28 § 5402. Jurisdiction of courts-martial in general.

29 Each force of the State military forces has court-martial  
30 jurisdiction over all persons subject to this part. The exercise

1 of jurisdiction by one force over personnel of another force  
2 shall be in accordance with regulations prescribed by the  
3 Governor.

4 § 5403. Jurisdiction of general courts-martial.

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

10 (1) A fine of not more than \$200.

11 (2) Forfeiture of pay and allowances for a period not  
12 exceeding six months.

13 (3) A reprimand.

14 (4) Dismissal, dishonorable discharge or bad conduct  
15 discharge.

16 (5) Reduction of a noncommissioned officer to any lower  
17 enlisted grade.

18 (6) Any combination of these punishments.

19 § 5404. Jurisdiction of special courts-martial.

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

26 (1) A fine of not more than \$100.

27 (2) Forfeiture of pay and allowances for a period not  
28 exceeding three months.

29 (3) A reprimand.

30 (4) Reduction of a noncommissioned officer to any lower

enlisted grade.

(5) A bad conduct discharge.

(6) Any combination of these punishments.

§ 5405. Jurisdiction of summary courts-martial.

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

(1) A fine of not more than \$25 for a single offense.

(2) Forfeiture of pay and allowances for a period not exceeding one month.

(3) Reduction to the next lower grade.

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

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

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

§ 5407. Record of bad conduct discharge proceedings.

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

§ 5408. Confinement instead of fine.

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

#### 4 CHAPTER 55

#### 5 APPOINTMENT AND COMPOSITION OF

#### 6 COURTS-MARTIAL

7 § 5501. Who may convene general courts-martial.

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

10 (1) The Governor.

11 (2) The Adjutant General.

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

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

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

20 § 5502. Who may convene special courts-martial.

21 In the State military forces any person authorized to convene  
22 a general court-martial, the commanding officer of a garrison,  
23 fort, post, camp, station, air base, auxiliary air base, or  
24 other place where troops are on duty, or of a brigade, regiment,  
25 wing, group, separate battalion, separate squadron, or other  
26 detached command, may convene special courts-martial. When any  
27 such officer is an accuser, the court shall be convened by  
28 superior competent authority and may, in any case, be convened  
29 by such authority when deemed advisable by him.

30 § 5503. Who may convene summary courts-martial.

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

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

15 § 5504. Who may serve on courts-martial.

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

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

25 (c) Enlisted person.--

26 (1) Any enlisted person of the State military forces who  
27 is not a member of the same unit as the accused is eligible  
28 to serve on general and special courts-martial for the trial  
29 of any enlisted person who may lawfully be brought before  
30 such courts for trial. He shall serve as a member of a court

1     only if, before the convening of the court, the accused  
2     personally has requested in writing that enlisted members  
3     serve on it. After such a request, the accused may not be  
4     tried by a general or special court-martial, the membership  
5     of which does not include enlisted persons in a number  
6     comprising at least one-third of the total membership of the  
7     court, unless eligible members cannot be obtained on account  
8     of physical conditions or military exigencies. If such  
9     members cannot be obtained, the court may be convened and the  
10    trial held without them, but the convening authority shall  
11    make a detailed written statement, to be appended to the  
12    record, stating why they could not be obtained.

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

16    (d) Ineligible persons.--

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

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

28    § 5505. Military judge of a general or special court-martial.

29       (a) Appointment and eligibility.--The authority convening a  
30    general or special court-martial shall appoint as military judge

1 thereof a commissioned officer who is a member of the bar of the  
2 Supreme Court of the Commonwealth of Pennsylvania, and who is  
3 certified as qualified for such duty by the State Judge  
4 Advocate. No person shall be eligible to act as military judge  
5 in a case when he is the accuser or a witness for the  
6 prosecution or has acted as investigating officer or as counsel  
7 in the same case.

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

14 § 5506. Appointment of trial counsel and defense counsel.

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

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

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

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

3   § 5507. Appointment or employment of reporters and  
4               interpreters.

5       Under such regulations as the Governor may prescribe, the  
6 convening authority of a general or special court-martial or  
7 court of inquiry shall appoint or employ qualified court  
8 reporters, who shall record the proceedings of and testimony  
9 taken before that court. Under like regulations the convening  
10 authority of a military court may appoint or employ interpreters  
11 who shall interpret for the court.

12   § 5508. Absent and additional members.

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

18       (b) New members of general court-martial.--Whenever a  
19 general court-martial is reduced below five members, the trial  
20 shall not proceed unless the convening authority appoints new  
21 members sufficient in number to provide not less than five  
22 members. When such new members have been sworn, the trial may  
23 proceed after the recorded evidence previously introduced before  
24 the members of the court has been read to the court in the  
25 presence of the military judge, the accused, and counsel for  
26 both sides.

27       (c) New members of special court-martial.--Whenever a  
28 special court-martial is reduced below three members, the trial  
29 shall not proceed unless the convening authority appoints new  
30 members sufficient in number to provide not less than three

1 members. When such new members have been sworn, the trial shall  
2 proceed with the new members present as if no evidence has  
3 previously been introduced at the trial, unless a verbatim  
4 record of the evidence previously introduced before the members  
5 of the court or a stipulation thereof is read to the court in  
6 the presence of the military judge, if any, the accused, and  
7 counsel for both sides.

## 8 CHAPTER 56

### 9 PRETRIAL PROCEDURE

10 § 5601. Charges and specifications.

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

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

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

19 (b) Disposition.--Upon the preferring of charges, the proper  
20 authority shall take immediate steps to determine what  
21 disposition should be made thereof in the interest of justice  
22 and discipline. The person accused shall be informed of the  
23 charges against him as soon as practicable.

24 § 5602. Compulsory self-incrimination prohibited.

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

28 (b) Advising accused of his rights.--No person subject to  
29 this part shall interrogate, or request any statement from an  
30 accused or a person suspected of an offense without first

1 informing him of the nature of the accusation and fully advising  
2 him of his right to be represented by counsel, that he does not  
3 have to make any statement regarding the offense of which he is  
4 accused or suspected, and that any statement made by him can and  
5 will be used as evidence against him in a trial by court-  
6 martial, as well as other constitutional safeguards provided for  
7 an accused or a person suspected of an offense.

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

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

18 § 5603. Investigation.

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

27 (b) Rights of accused.--The accused shall be advised of the  
28 charges against him and of his right to be represented at that  
29 investigation by counsel. Upon his own request he shall be  
30 represented by civilian counsel if provided by him, or military

1 counsel of his own selection if such counsel is reasonably  
2 available, or by counsel appointed by the person exercising  
3 general court-martial jurisdiction over the command. At such  
4 investigation full opportunity shall be given to the accused to  
5 cross-examine witnesses against him if they are available and to  
6 present anything he may desire in his own behalf, either in  
7 defense or mitigation, and the investigating officer shall  
8 examine available witnesses requested by the accused. If the  
9 charges are forwarded after such investigation, they shall be  
10 accompanied by a statement of the substance of the testimony  
11 taken on both sides and a copy thereof shall be given to the  
12 accused.

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

24 (d) Requirements mandatory.--The requirements of this  
25 section are binding on all persons administering this part. take  
26 immediate steps to determine what disposition should be made  
27 thereof in the interest of justice and discipline. The person  
28 accused shall be informed of the charges against him as soon as  
29 practicable.

30 § 5604. Forwarding of charges.

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

8 § 5605. Advice of staff judge advocate and reference for trial.

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

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

22 § 5606. Service of charges.

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

1 special court-martial within a period of three days after the  
2 service of the charges upon him.

3 CHAPTER 57

4 TRIAL PROCEDURE

5 § 5701. Governor may prescribe rules.

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

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

16 § 5702. Unlawfully influencing action of court.

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

30 (b) Performance reports on members and counsel.--In the

1 preparation of an effectiveness, fitness or efficiency report or  
2 any other report or document used in whole or in part for the  
3 purpose of determining whether a member of the State military  
4 forces is qualified to be advanced, in grade, or in determining  
5 the assignment or transfer of a member of the State military  
6 forces, no person subject to this part may, in preparing any  
7 such report:

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

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

14 § 5703. Duties of trial counsel and defense counsel.

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

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

30       (c) Brief by defense counsel.--In every court-martial

1 proceeding, the defense counsel may, in the event of conviction,  
2 forward for attachment to the record of proceedings a brief of  
3 such matters he feels should be considered in behalf of the  
4 accused on review, including any objection to the contents of  
5 the record which he considers appropriate.

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

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

19 § 5704. Sessions.

20 (a) Proceedings in absence of members.--At any time after  
21 the service of charges which have been referred for trial to a  
22 court-martial composed of a military judge and members, the  
23 military judge may, subject to section 5606 (relating to service  
24 of charges) call the court into session without the presence of  
25 the members for the purpose of:

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

29 (2) hearing and ruling upon any matter which may be  
30 ruled upon by the military judge under this section, whether

1 or not the matter is appropriate for later consideration or  
2 decision by the members of the court;

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

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

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

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

20 § 5705. Continuances.

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

24 § 5706. Challenges.

25 (a) Challenges for cause.--The military judge and members of  
26 a general or special court-martial may be challenged by the  
27 accused or the trial counsel for cause stated to the court. The  
28 military judge, or if none, the court shall determine the  
29 relevancy and validity of challenges for cause, and shall not  
30 receive a challenge to more than one person at a time.

Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

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

§ 5707. Oaths.

(a) General rule.--Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be in accordance with regulations prescribed by the Governor. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate, or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person is detailed to that duty.

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

§ 5708. Statute of limitations.

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

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

9 (c) Two-year limitation.--Except as otherwise provided in  
10 this section, a person subject to this part charged with any  
11 offense is not liable to be tried by court-martial or punished  
12 under section 5301 (relating to commanding officer's nonjudicial  
13 punishment) if the offense was committed more than two years  
14 before the receipt of sworn charges and specifications by an  
15 officer exercising summary court-martial jurisdiction over the  
16 command or before the imposition of punishment under section  
17 5301.

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

23 § 5709. Former jeopardy.

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

30 (b) Definition of trial.--No proceeding in which an accused

1 has been found guilty by a court-martial upon any charge or  
2 specification is a trial in the sense of this section until the  
3 finding of guilty has become final after review of the case has  
4 been fully completed. However, a proceeding which, after the  
5 introduction of evidence but before a finding, is dismissed or  
6 terminated by the convening authority, or on motion of the  
7 prosecution for failure of available evidence or witnesses  
8 without any fault of the accused, is a trial in the sense of  
9 this section.

10 § 5710. Pleas of the accused.

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

15 (1) an accused makes an irregular pleading;

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

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

21 (4) an accused fails or refuses to plead.

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

1 § 5711. Opportunity to obtain witnesses and other evidence.

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

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

13 § 5712. Refusal to appear or testify.

14 Any person not subject to this part who has been duly  
15 subpoenaed to appear as a witness or to produce books and  
16 records before a military court or before any military or civil  
17 officer designated to take a deposition to be read in evidence  
18 before such a court and who willfully neglects or refuses to  
19 appear, or refuses to qualify as a witness or to testify or to  
20 produce any evidence which that person may have been legally  
21 subpoenaed to produce is guilty of an offense against the  
22 Commonwealth and a military court may punish him in the same  
23 manner as the civil courts of this Commonwealth.

24 § 5713. Contempts.

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

30 § 5714. Depositions.

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

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

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

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

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

29 (2) that the witness by reason of death, age, sickness,  
30 bodily infirmity, imprisonment, military necessity, non-

1 amenability to process, or other reasonable cause, is unable  
2 or refuses to appear and testify in person at the place of  
3 trial or hearing; or

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

6 § 5715. Admissibility of records of courts of inquiry.

7 (a) Court-martial.--In any case not extending to dismissal  
8 or dishonorable discharge, the sworn testimony, contained in the  
9 duly authenticated record of proceedings of a court of inquiry,  
10 of a person whose oral testimony cannot be obtained, may, if  
11 otherwise admissible under the rules of evidence, be read in  
12 evidence by any party before a court-martial if the accused was  
13 a party before the court of inquiry and if the same issue was  
14 involved or if the accused consents to the introduction of such  
15 evidence.

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

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

22 § 5716. Voting and rulings.

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

30 (b) Questions of law and interlocutory questions.--The

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

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

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

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

29 (3) that, if there is a reasonable doubt as to the  
30 degree of guilt, the finding must be in a lower degree as to

1       which there is no reasonable doubt; and

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

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

15   § 5717.   Number of votes required.

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

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

23       (c)   Other questions.--All other questions to be decided by  
24   the members of a general or special court-martial shall be  
25   determined by a majority vote but a determination to reconsider  
26   a finding of guilty or to reconsider a sentence, with a view  
27   toward decreasing it, may be made by any lesser vote which  
28   indicates that the reconsideration is not opposed by the number  
29   of votes required for that finding or sentence. A tie vote on a  
30   challenge disqualifies the member challenged. A tie vote on a

1 motion for a finding of not guilty or on a motion relating to  
2 the question of the accused's sanity is a determination against  
3 the accused. A tie vote on any other question is a determination  
4 in favor of the accused.

5 § 5718. Court to announce action.

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

8 § 5719. Record of trial.

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

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

29 (c) Furnishing record to accused.--A copy of the record of  
30 the proceedings of each general and special court-martial shall

1 be given to the accused as soon as authenticated. If a verbatim  
2 record of trial by general court-martial is not required by  
3 subsection (a), but has been made, the accused may buy such a  
4 record under such regulations as the Governor may prescribe.

## 5 CHAPTER 58

### 6 SENTENCES

7 § 5801. Cruel and unusual punishments prohibited.

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

13 § 5802. Maximum limits.

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

17 § 5803. Effective date of sentences.

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

25 (b) Confinement.--Any period of confinement included in a  
26 sentence of a court-martial begins to run from the date the  
27 sentence is adjudged by the court-martial but periods during  
28 which the sentence to confinement is suspended shall be excluded  
29 in computing the service of the term of confinement. Regulations  
30 prescribed by the Governor may provide that sentences of

1 confinement may not be executed until approved by designated  
2 officers.

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

5 § 5804. Execution of confinement.

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

17 (b) Authority to require hard labor.--The omission of the  
18 words "hard labor" from any sentence or punishment of a court-  
19 martial adjudging confinement does not deprive the authority  
20 executing that sentence or punishment of the power to require  
21 hard labor as a part of the punishment.

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

29 CHAPTER 59

30 REVIEW OF COURTS-MARTIAL

1 § 5901. Error of law; lesser included offense.

2 (a) Error of law.--A finding or sentence of court-martial  
3 shall not be held incorrect on the ground of an error of law  
4 unless the error materially prejudices the substantial rights of  
5 the accused.

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

10 § 5902. Initial action on the record.

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

17 § 5903. Action on general court-martial records.

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

27 § 5904. Reconsideration and revision.

28 (a) Reconsideration of motion dismissing specification.--If  
29 a specification before a court-martial has been dismissed on  
30 motion and the ruling does not amount to a finding of not

1 guilty, the convening authority may return the record to the  
2 court for reconsideration of the ruling and any further  
3 appropriate action.

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

12 (1) for reconsideration of a finding of not guilty of  
13 any specification or a ruling which amounts to a finding of  
14 not guilty;

15 (2) for reconsideration of a finding of not guilty of  
16 any charge, unless the record shows a finding of guilty under  
17 a specification laid under that charge, which sufficiently  
18 alleges a violation of some section of this part; or

19 (3) for increasing the severity of the sentence unless  
20 the sentence prescribed for the offense is mandatory.

21 § 5905. Rehearings.

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

29 (b) Rehearing body composition and authority.--Every  
30 rehearing shall take place before a court-martial composed of

1 members not members of the court-martial which first heard the  
2 case. Upon such rehearing the accused shall not be tried for any  
3 offense of which he was found not guilty by the first court-  
4 martial, and no sentence in excess of or more severe than the  
5 original sentence may be imposed, unless the sentence is based  
6 upon a finding of guilty of an offense not considered upon the  
7 merits in the original proceedings, or unless the sentence  
8 prescribed for the offense is mandatory.

9 § 5906. Approval by the convening authority.

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

17 § 5907. Disposition of records after review by the convening  
18 authority.

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

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

28 (c) Bad conduct discharge.--Where the sentence of a special  
29 court-martial as approved by the convening authority includes a  
30 bad-conduct discharge, whether or not suspended, the record

1 shall be forwarded to the officer exercising general court-  
2 martial jurisdiction over the command to be reviewed in the same  
3 manner as a record of trial by a general court-martial. If the  
4 sentence as approved by an officer exercising general court-  
5 martial jurisdiction includes a bad-conduct discharge, whether  
6 or not suspended, the record shall be forwarded to the State  
7 Judge Advocate.

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

13 § 5908. Review in the office of the State Judge Advocate.

14 Every record of trial by general court-martial in which there  
15 has been a finding of guilty and a sentence, and every record of  
16 trial by special court-martial in which the sentence as approved  
17 by an officer exercising general court-martial jurisdiction  
18 includes a bad-conduct discharge, shall be examined in the  
19 office of the State Judge Advocate. If the State Judge Advocate  
20 so directs, the record shall be reviewed by a board of review in  
21 accordance with section 5909 (relating to review by a board of  
22 review).

23 § 5909. Review by a board of review.

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

30 (b) Affirming findings and sentence.--In a case referred to

1 it, the board of review may act only with respect to the  
2 findings and sentence as approved by the convening authority. It  
3 may affirm only such findings of guilty, and the sentence or  
4 such part or amount of the sentence, as it finds correct in law  
5 and fact and determines, on the basis of the entire record,  
6 should be approved. In considering the record it shall have  
7 authority to weigh the evidence, judge the credibility of  
8 witnesses, and determine controverted questions of fact,  
9 recognizing that the trial court saw and heard the witnesses.

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

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

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

27 § 5910. Appellate counsel.

28 Upon review of the record of trial by general court-martial  
29 in which there has been a finding of guilty and a sentence and  
30 upon review of the record of trial by special court-martial in

1 which the sentence as approved by an officer exercising general  
2 court-martial jurisdiction includes a bad-conduct discharge, the  
3 accused shall have the right to be represented before the State  
4 Judge Advocate or the board of review, as the case may be, by  
5 military counsel if requested by him or by civilian counsel if  
6 provided by him. Appellate military counsel shall be a  
7 commissioned officer of the State military forces and shall be a  
8 member of the bar of the Supreme Court of Pennsylvania.

9 § 5911. Execution of sentence; suspension of sentence.

10 (a) Approval of certain sentences by Governor.--No sentence  
11 extending to the dismissal of a commissioned officer or  
12 dishonorable discharge or bad-conduct discharge shall be  
13 executed until approved by the Governor. He shall approve the  
14 sentence or such part, amount, or commuted form of the sentence  
15 as he sees fit, and may suspend the execution of the sentence or  
16 any part of the sentence, as approved by him.

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

21 § 5912. Vacation of suspension.

22 (a) Bad-conduct discharges and general court-martial  
23 sentences.--Prior to the vacation of the suspension of a special  
24 court-martial sentence which as approved includes a bad-conduct  
25 discharge, or of any general court-martial sentence, the officer  
26 having special court-martial jurisdiction over the probationer  
27 shall hold a hearing on the alleged violation of probation. The  
28 probationer shall be represented at the hearing by counsel if he  
29 so desires.

30 (b) Hearing record, recommendation and action.--The record

1 of the hearing and the recommendation of the officer having  
2 special court-martial jurisdiction shall be forwarded for action  
3 to the officer exercising general court-martial jurisdiction. If  
4 he vacates the suspension, any unexecuted part of the sentence  
5 except a dismissal shall be executed.

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

10 § 5913. Petition for a new trial.

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

16 § 5914. Remission and suspension.

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

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

25 § 5915. Restoration.

26 (a) General rule.--Under such regulations as the Governor  
27 may prescribe, all rights, privileges, and property affected by  
28 an executed portion of a court-martial sentence which has been  
29 set aside or disapproved, except an executed dismissal or  
30 discharge, shall be restored unless a new trial or rehearing is

ordered and such executed portion is included in a sentence imposed upon a new trial or rehearing.

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

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

§ 5916. Finality of proceedings, findings and sentences.

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

## CHAPTER 60

### PUNITIVE SECTIONS

§ 6001. Principals.

Any person subject to this part who:

1           (1) commits an offense punishable by this part, or aids,  
2       abets, counsels, commands, or procures its commission; or

3           (2) causes an act to be done which if directly performed  
4       by him would be punishable by this part;

5       is a principal.

6   § 6002. Accessory after the fact.

7 Any person subject to this part who, knowing that an offense  
8 punishable by this part has been committed, receives, comforts,  
9 or assists the offender in order to hinder or prevent his  
10 apprehension, trial, or punishment shall be punished as a court-  
11 martial may direct.

12 § 6003. Conviction of lesser included offense.

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

17 § 6004. Attempts.

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

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

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

30 § 6005. Conspiracy.

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

5 § 6006. Solicitation.

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

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

24 § 6007. Fraudulent enlistment, appointment or separation.

25 Any person who:

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

1           (2) procures his own separation from the State military  
2 forces by knowingly false representation or deliberate  
3 concealment as to his eligibility for that separation;  
4 shall be punished as a court-martial may direct.

5 § 6008. Unlawful enlistment, appointment, or separation.

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

12 § 6009. Desertion.

13 (a) Offense defined.--Any member of the State military  
14 forces who:

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

18           (2) quits his unit, organization or place of duty with  
19 intent to avoid hazardous duty or to shirk important service;  
20 or

21           (3) without being regularly separated from one of the  
22 State military forces enlists or accepts an appointment in  
23 the same or another one of the State military forces, or in  
24 one of the armed forces of the United States, without fully  
25 disclosing the fact that he has not been regularly separated;  
26 is guilty of desertion.

27 (b) Commissioned officer tendering resignation.--Any  
28 commissioned officer of the State military forces who, after  
29 tender of his resignation and before notice of its acceptance,  
30 quits his post or proper duties without leave and with intent to

1 remain away therefrom permanently is guilty of desertion.

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

5 § 6010. Absence without leave.

6 (a) Offense defined.--Any person subject to this part who,  
7 without authority:

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

10 (2) goes from that place; or

11 (3) absents himself or remains absent from his unit,  
12 organization or place of duty at which he is required to be  
13 at the time prescribed;

14 is absent without leave and shall be punished as a court-martial  
15 directs, be subject to nonjudicial punishment or be charged with  
16 a summary offense.

17 (b) Military offense.--Absence without leave is a military  
18 offense subject to punishment as a court-martial may direct or  
19 by nonjudicial punishment under this part.

20 (c) Summary offense.--Absence without leave as defined in  
21 subsection (a) is a summary offense.

22 (d) Fines.--A person convicted of the summary offense of  
23 absence without leave shall be sentenced to pay a fine of not  
24 less than \$50 nor more than \$200 for the first offense and a  
25 fine of not less than \$300 nor more than \$1,000 for a second or  
26 subsequent offense.

27 (e) Costs.--Any person convicted of a summary offense of  
28 absence without leave shall, in addition to the fine imposed, be  
29 sentenced to pay costs as provided or prescribed by or pursuant  
30 to 42 Pa.C.S. Ch. 17 (relating to governance of the system).

1 (f) Institution of proceedings.--A person subject to this  
2 part authorized by the Adjutant General or his designee may  
3 institute summary proceedings for violation of this section by  
4 filing a complaint with an issuing authority as provided in the  
5 Pennsylvania Rules of Criminal Procedure. The alleged offense  
6 shall be deemed to have occurred in the magisterial district  
7 where the unit to which the member is assigned is located.

8 (g) Withdrawal of complaint.--The person instituting summary  
9 proceedings for a violation of this section or his or her  
10 superior commissioned officer may withdraw the complaint if the  
11 accused executes a military service participation agreement and  
12 pays all costs as described in subsection (e).

13 (h) Military counsel.--Military counsel shall not be  
14 assigned to represent the Commonwealth or the accused in summary  
15 proceedings brought under this section.

16 (i) Prima facie evidence.--An extract from official military  
17 records showing that the accused person was absent without leave  
18 as defined in subsection (a) shall constitute prima facie  
19 evidence of a violation of this section.

20 (j) Limitations on proceedings.--No action may be commenced  
21 for a violation of this section more than 12 months after the  
22 last date on which the person is alleged to have been absent  
23 without leave. No court-martial or nonjudicial punishment  
24 proceedings for absence without leave under this part may be  
25 instituted against a person who has been charged with the  
26 summary offense of absence without leave for the same time  
27 period. No summary offense proceedings for absence without leave  
28 under this section may be instituted against a person who has  
29 been the subject of court-martial or nonjudicial punishment for  
30 absence without leave under this part for the same time period.

1 § 6011. Missing movement.

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

6 § 6012. Contempt towards officials.

7 Any person subject to this part who uses contemptuous words  
8 against the President of the United States, Vice-President of  
9 the United States, Congress, Secretary of Defense, or a  
10 secretary of a department, the Governor of the Commonwealth of  
11 Pennsylvania, the General Assembly of the Commonwealth of  
12 Pennsylvania or the Adjutant General of the Commonwealth of  
13 Pennsylvania, the Governor or the legislature of any state,  
14 territory or other possession of the United States in which he  
15 is on duty or present shall be punished as a court-martial may  
16 direct.

17 § 6013. Disrespect towards superior commissioned officer.

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

21 § 6014. Assaulting or willfully disobeying superior  
22 commissioned officer.

23 Any person subject to this part who:

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

27 (2) willfully disobeys a lawful command of his superior  
28 commissioned officer;

29 shall be punished as a court-martial may direct.

30 § 6015. Insubordinate conduct toward warrant officer,

1 noncommissioned officer.

2 Any warrant officer or enlisted member who:

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

6 (2) willfully disobeys the lawful order of a warrant  
7 officer, noncommissioned officer; or

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

12 shall be punished as a court-martial may direct.

13 § 6016. Failure to obey order or regulation.

14 Any person subject to this part who:

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

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

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

21 shall be punished as a court-martial may direct.

22 § 6017. Cruelty and maltreatment.

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

26 § 6018. Mutiny or sedition.

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

28 (1) with intent to usurp or override lawful military  
29 authority refuses, in concert with any other person, to obey  
30 orders or otherwise to do his duty or creates any violence or

disturbance is guilty of mutiny;

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

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

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

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

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

§ 6020. Releasing prisoner without proper authority.

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

§ 6021. Unlawful detention of another.

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

1 § 6022. Noncompliance with procedural rules.

2 Any person subject to this part who:

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

6 (2) knowingly and intentionally fails to enforce or  
7 comply with any provision of this part regulating the  
8 proceedings before, during, or after trial of an accused;  
9 shall be punished as a court-martial may direct.

10 § 6023. Misbehavior before the enemy.

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

13 (1) runs away;

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

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

20 (4) casts away his arms or ammunition;

21 (5) is guilty of cowardly conduct;

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

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

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

30 (9) does not afford all practicable relief and

1 assistance to any troops, combatants, vessels, or aircraft of  
2 the armed forces belonging to the United States or their  
3 allies, to the State when engaged in battle or in suppressing  
4 civil disorders;

5 shall be punished as a court-martial may direct.

6 § 6024. Subordinate compelling surrender.

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

13 § 6025. Improper use of countersign.

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

20 § 6026. Forcing a safeguard.

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

23 § 6027. Captured or abandoned property.

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

30 (b) Offenses defined and punishment.--Any person subject to

1 this part who:

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

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

9 (3) engages in looting or pillaging;

10 shall be punished as a court-martial may direct.

11 § 6028. Aiding the enemy.

12 Any person subject to this part who:

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

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

19 shall be punished as a court-martial may direct.

20 § 6029. Misconduct of a prisoner.

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

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

28 (2) while in a position of authority over such persons  
29 maltreats them without justifiable cause;  
30 shall be punished as a court-martial may direct.

1 § 6030. False official statements.

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

7 § 6031. Loss, damage, destruction or wrongful disposition of  
8 military property.

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

11 (1) sells or otherwise disposes of;

12 (2) willfully or through neglect damages, destroys, or  
13 loses; or

14 (3) willfully or through neglect suffers to be lost,  
15 damaged, destroyed, sold, or wrongfully disposed of;  
16 any military property of the United States or of the State  
17 shall be punished as a court-martial may direct.

18 § 6032. Waste, spoilage, or destruction of nonmilitary  
19 property.

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

25 § 6033. Improper hazarding of vessel.

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

30 (b) Negligent conduct.--Any person subject to this part who

1 negligently hazards or suffers to be hazarded any vessel of the  
2 armed forces of the United States or of the State military  
3 forces shall be punished as a court-martial may direct.

4 § 6034. Drunken or reckless driving.

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

8 § 6035. Drunk on duty, sleeping on post and leaving post before  
9 relief.

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

14 § 6036. Dueling.

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

20 § 6037. Malingering.

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

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

25 (2) intentionally inflicts self-injury;  
26 shall be punished as a court-martial may direct.

27 § 6038. Riot or breach of peace.

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

1 § 6039. Provoking speeches or gestures.

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

6 § 6040. Perjury.

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

13 § 6041. Frauds against the government.

14 Any person subject to this part:

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

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

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

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

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

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

29 (iii) forges or counterfeits any signature upon any  
30 writing or other paper, or uses any such signature

1 knowing the same to be forged or counterfeited; or

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

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

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

19 § 6042. Larceny and wrongful appropriation.

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

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

30 (2) with intent temporarily to deprive or defraud

1 another person of the use and benefit of property or to  
2 appropriate the same to his own use or the use of any person  
3 other than the true owner, is guilty of wrongful  
4 appropriation.

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

8 § 6043. Assault.

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

14 § 6044. Conduct unbecoming an officer and a gentleman.

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

18 § 6045. General article.

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

29 § 6046. Embezzlement.

30 Any person subject to this part who shall embezzle, misapply

1 or convert to his own use, without authority, any moneys  
2 received by or entrusted to him for disbursement or articles of  
3 military equipment shall be punished as a court-martial may  
4 direct.

5 § 6047. Purchasing and receiving military property in pawn.

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

## 11 CHAPTER 61

### 12 MISCELLANEOUS PROVISIONS

13 § 6101. Courts of inquiry.

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

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

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

30 (d) Challenging members.--Members of a court of inquiry may

1 be challenged by a party, but only for cause stated to the  
2 court.

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

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

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

13 (h) Record.--Each court of inquiry shall keep a record of  
14 its proceedings, which shall be authenticated by the signatures  
15 of the president and counsel for the court and forwarded to the  
16 convening authority. In case the record cannot be authenticated  
17 by the president, it shall be signed by a member in lieu of the  
18 president. In case the record cannot be authenticated by the  
19 counsel for the court, it shall be signed by a member in lieu of  
20 the counsel.

21 § 6102. Authority to administer oaths.

22 (a) Military administration and justice.--The following  
23 members of the State military forces may administer oaths for  
24 the purposes of military administration, including military  
25 justice:

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

28 (2) All law specialists.

29 (3) All summary courts-martial.

30 (4) All adjutants, assistant adjutants, acting

adjutants, and personnel adjutants.

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

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

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

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

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

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

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

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

§ 6103. Text of part to be available.

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

§ 6104. Complaints of wrongs.

Any member of the State military forces who believes himself wronged by his commanding officer, and who, upon due application to such commander, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction

1 over the officer against whom it is made. That officer shall  
2 examine into said complaint and take proper measures for  
3 redressing the wrong.

4 § 6105. Redress of injuries to property.

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

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

28 § 6106. Execution of process and sentence.

29 In the State military forces, the processes and sentences of  
30 its courts-martial shall be executed by the civil officers

1 prescribed by the laws of this Commonwealth or by the officers  
2 of the State military forces as the circumstances may require.  
3 Fees for serving processes provided for in this part shall be  
4 the same as prescribed by law for similar processes of a civil  
5 nature, and shall upon proper vouchers being filed, be paid by  
6 the Adjutant General in the usual manner.

7 § 6107. Disposition of fines and penalties.

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

15 § 6108. Liability of public officers for nonexecution of  
16 process.

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

24 § 6109. Compensation of court.

25 Military judges, military counsel and members of courts-  
26 martial and courts of inquiry shall be allowed transportation  
27 and per diem pay as per military grade for time actually  
28 employed in the duties assigned them. Transportation shall be  
29 furnished to all prosecutors, prisoners, witnesses, sheriffs,  
30 peace officers and constables to and from the place or places

1 designated for the meetings of said courts. The per diem pay for  
2 military and civilian witnesses shall be the same as in civil  
3 courts of law. The fees of sheriffs, peace officers and  
4 constables for serving the processes provided for in this part  
5 shall be the same as prescribed by law for similar processes of  
6 a civil nature and shall, upon proper vouchers being filed, be  
7 paid by the Adjutant General in the usual manner.

8 § 6110. Immunity for action of military courts.

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

16 § 6111. Delegation of authority by the Governor.

17 The Governor may delegate any authority vested in him under  
18 this part, and may provide for the subdelegation of any such  
19 authority, except the power given him by section 5406 (relating  
20 to sentences of dismissal, dishonorable discharge or bad conduct  
21 to be approved by the Governor) and section 5501 (relating to  
22 who may convene general courts-martial).

23 § 6112. Uniformity of interpretation.

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

29 Section 2. Title 51 is amended by adding chapters to read:

30 CHAPTER 51

1 GENERAL PROVISIONS

2 Sec.

3 5101. Short title of part.

4 5102. Definitions.

5 5103. Persons subject to part.

6 5104. Subject matter jurisdiction.

7 5105. Jurisdiction to try certain personnel.

8 5106. Dismissal of commissioned officer.

9 5107. Territorial applicability.

10 5108. Judge advocates and legal officers.

11 § 5101. Short title of part.

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

14 § 5102. Definitions.

15 Subject to additional definitions contained in subsequent  
16 provisions of this part which are applicable to specific  
17 provisions of this part, the following words and phrases when  
18 used in this part shall have the meanings given to them in this  
19 section unless the context clearly indicates otherwise:

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

24 "Adjutant General." The Adjutant General of the Commonwealth  
25 of Pennsylvania.

26 "Cadet," "candidate" or "midshipman." A person who is  
27 enrolled in or attending a State military academy, a regional  
28 training institute or any other formal education program for the  
29 purpose of becoming a commissioned or warrant officer in the  
30 State military forces.

1 "Classified information." Any of the following:

2 (1) Information or material that has been determined by  
3 an official of the United States or any state pursuant to  
4 law, an executive order or regulation to require protection  
5 against unauthorized disclosure for reasons of national or  
6 State security.

7 (2) Restricted data, as defined in section 11(y) of the  
8 Atomic Energy Act of 1954 (68 Stat. 921, 42 U.S.C. §  
9 2014(y)).

10 "Commanding officer" or "commander." The Adjutant General  
11 and other commissioned officers of the State military forces  
12 when exercising command over a unit or element. The term  
13 includes officers in charge only when administering nonjudicial  
14 punishment under section 5301 (relating to commanding officer's  
15 nonjudicial punishment).

16 "Convening authority." Includes, in addition to the person  
17 who convened the court, a commissioned officer commanding for  
18 the time being or a successor in command.

19 "Day" or "calendar day." Any punishment authorized by this  
20 part which is measured in terms of days shall, when served in a  
21 status other than annual field training, be construed to mean  
22 succeeding duty days. The term is not synonymous with the term  
23 "unit training assembly."

24 "Department." The Department of Military and Veterans  
25 Affairs of the Commonwealth.

26 "Duty status other than State active duty." Any other type  
27 of duty under an order issued by authority of law not in Federal  
28 service and not full-time duty in the active service of the  
29 State. The term includes travel to and from the duty.

30 "Enemy." An organization, entity or individual who engages

1 in combat or hostilities against the State military forces or  
2 attacks or threatens to attack the United States or this  
3 Commonwealth.

4 "Enlisted member." A person in an enlisted grade.

5 "Fatigue duties." Duties, including, but not limited to,  
6 cleaning real property and facilities, kitchen duties and  
7 disposal of refuse duties which are not within the day-to-day  
8 duties of a member of the State military forces.

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

12 "Judge advocate." A commissioned officer of the State  
13 military forces who is a member in good standing of the bar of  
14 the Supreme Court and is:

15 (1) certified or designated as a judge advocate in the  
16 Judge Advocate General's Corps of the Army, Air Force, Navy,  
17 or the Marine Corps or designated as a law specialist as an  
18 officer of the Coast Guard or a reserve component of one of  
19 these; or

20 (2) certified as an nonfederally recognized judge  
21 advocate, under regulations promulgated under this provision,  
22 by the State Judge Advocate, as competent to perform such  
23 military justice duties required by this part. If the State  
24 Judge Advocate is not available, the certification may be  
25 made by the senior judge advocate or the commander of another  
26 force in the State military forces, as the convening  
27 authority directs.

28 "May." Is used in a permissive sense. The phrase "no person  
29 may....." means that no person is required, authorized  
30 or permitted to do the act prescribed.

1 "Military court." A court-martial or a court of inquiry.

2 "Military judge." An official of a general or special court-  
3 martial detailed in accordance with section 5505 (relating to  
4 military judge of a general or special court-martial).

5 "Military offenses." Those offenses described under Chapter  
6 60 (relating to punitive sections) which are military in nature  
7 and for which there are no analogous criminal offenses described  
8 in any other law of this Commonwealth.

9 "National security." The national defense and foreign  
10 relations of the United States.

11 "Nonmilitary offenses." Those offenses described under  
12 Chapter 60 (relating to punitive sections) for which there are  
13 one or more analogous criminal offenses described in any other  
14 law of this Commonwealth.

15 "Record." When used in connection with the proceedings of a  
16 court-martial, any of the following:

17 (1) An official written transcript, written summary or  
18 other writing relating to the proceedings.

19 (2) An official audiotape, videotape, digital image or  
20 file or similar material from which sound, or sound and  
21 visual images, depicting the proceedings may be reproduced.

22 "Shall." Is used in an imperative sense.

23 "State." One of the several states, the District of  
24 Columbia, the Commonwealth of Puerto Rico, Guam or the Virgin  
25 Islands.

26 "State active duty." Full-time duty in the State military  
27 forces under an order of the Governor or otherwise issued by  
28 authority of law and paid by State funds. The term includes  
29 travel to and from such duty for an emergency ordered under  
30 section 508 (relating to active duty for emergency) and special

1 State duty ordered under section 1415 of the act of April 29,  
2 1929 (P.L.177, No.175), known as The Administrative Code of  
3 1929.

4 "State Judge Advocate." The judge advocate designated as  
5 responsible for supervising the administration of the military  
6 justice in the State military forces. He shall be the military  
7 staff judge advocate to the Governor and the Adjutant General.

8 "State military forces." Any military force of the  
9 Commonwealth not in a status subjecting it to the exclusive  
10 jurisdiction of the United States. The term shall include  
11 militia when ordered into actual service for emergency under  
12 section 507 (relating to draft from militia for emergency) and  
13 the Pennsylvania National Guard.

14 "Superior commissioned officer." A commissioned officer  
15 superior in rank and command.

16 "Senior force commander." The commander of the same force of  
17 the State military forces as the accused.

18 "War." A period of armed conflict declared a war by the  
19 Congress of the United States or recognized by the Adjutant  
20 General as a war by virtue of a declaration of national  
21 emergency and authorization by Congress.

22 § 5103. Persons subject to part.

23 This part applies to all members of the State military forces  
24 who are not in a Federal status under which they are subject to  
25 the Uniform Code of Military Justice (64 Stat. 109, 10 U.S.C. §  
26 801 et seq.).

27 § 5104. Subject matter jurisdiction.

28 (a) General rule.--Subject matter jurisdiction is  
29 established if a nexus exists between an offense and the State  
30 military forces.

1     (b) Military offenses.--Courts-martial have primary  
2 jurisdiction of military offenses as defined in this part.

3     (c) Nonmilitary offenses.--A civilian court has primary  
4 jurisdiction of a nonmilitary offense when an act or omission  
5 violates both this part and criminal law. In such a case, a  
6 court-martial may be initiated only after the civilian authority  
7 has declined to prosecute or has dismissed the charge, provided  
8 jeopardy has not attached.

9     (d) Inchoate offenses.--Jurisdiction over inchoate offenses  
10 including the offenses of attempt, conspiracy and solicitation  
11 is given to the entity which has jurisdiction of the underlying  
12 offense.

13 § 5105. Jurisdiction to try certain personnel.

14     (a) Discharge obtained fraudulently.--Each person subject to  
15 this part discharged from the State military forces who is later  
16 charged with having fraudulently obtained a discharge shall be,  
17 subject to section 5708 (relating to statute of limitations),  
18 subject to trial by court-martial on said charge and shall after  
19 apprehension be subject to this part while in custody under the  
20 direction of the State military forces for that trial. Upon  
21 conviction of said charge the person shall be subject to trial  
22 by court-martial for all offenses under this part committed  
23 before the fraudulent discharge.

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

28 § 5106. Dismissal of commissioned officer.

29     (a) Court-martial proceedings.--Any commissioned officer,  
30 subject to this part dismissed by order of the Governor, may

1 make a written application for trial by court-martial, setting  
2 forth, under oath, that the officer has been wrongfully  
3 dismissed. In such event, the Governor, as soon as practicable,  
4 shall convene a general court-martial to try such officer on the  
5 charges on which the officer was dismissed. A court-martial so  
6 convened shall have jurisdiction to try the dismissed officer on  
7 such charge, and the officer shall be considered to have waived  
8 the right to plead any statute of limitations applicable to any  
9 offense with which the officer is charged. The court-martial  
10 may, as part of its sentence, adjudge the affirmance of the  
11 dismissal, but if the court-martial acquits the accused or if  
12 the sentence adjudged, as finally approved or affirmed, does not  
13 include dismissal, the Adjutant General shall substitute for the  
14 dismissal ordered by the Governor a form of discharge authorized  
15 for administrative issue.

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

22 § 5107. Territorial applicability.

23 (a) General rule.--This part has applicability at all times  
24 and in all places, provided that the person accused is subject  
25 to this part and subject matter jurisdiction is established  
26 under section 5104 (relating to subject matter jurisdiction).

27 (b) Location of proceedings.--Courts-martial and courts of  
28 inquiry may be convened and held in units of the State military  
29 forces while those units are serving outside this Commonwealth  
30 with the same jurisdiction and powers as to persons subject to

this part as if the proceedings were held inside this  
Commonwealth, and persons subject to this part accused of  
committing offenses outside this Commonwealth shall be subject  
to trial and punishment either inside or outside this  
Commonwealth.

§ 5108. Judge advocates and legal officers.

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

(b) Field inspections.--The State Judge Advocate and the  
judge advocates of the State military forces or their delegates  
shall make frequent inspections in the field in supervision of  
the administration of military justice.

(c) Direct communication.--Convening authorities shall at  
all times communicate directly with their judge advocates in  
matters relating to the administration of military justice. The  
judge advocate of any command is entitled to communicate  
directly with the judge advocate of a superior or subordinate  
command, or with the State Judge Advocate.

(d) Disqualification in case.--No person who has acted as a  
member, military judge, trial counsel, defense counsel or  
investigating officer, or who has been a witness, in any case  
may later act as a judge advocate to any reviewing authority  
upon the same case.

## CHAPTER 52

### APPREHENSION AND RESTRAINT

Sec.

1 5201. Apprehension.  
2 5202. Apprehension of persons absent without leave.  
3 5203. Imposition of restraint.  
4 5204. Restraint of persons charged with offenses.  
5 5205. Place of confinement.  
6 5206. Reports and receiving of prisoners.  
7 5207. Punishment prohibited before trial.  
8 5208. Delivery of offenders to civil authorities.  
9 5209. Confinement with enemy prisoners prohibited.

10 § 5201. Apprehension.

11 (a) Persons authorized to apprehend.--Any person authorized  
12 by this part, by 10 U.S.C. Ch. 47 (relating to Uniform Code of  
13 Military Justice), or by regulations issued under:

14 (1) any marshal of a court-martial appointed under the  
15 provisions of this part; or

16 (2) any peace officer or civil officer authorized by law,  
17 may apprehend persons subject to this part upon probable cause  
18 that an offense under this part has been committed and that the  
19 person apprehended committed it.

20 (b) Authority of officers.--Commissioned officers, warrant  
21 officers, petty officers and noncommissioned officers have  
22 authority to quell quarrels, frays and disorders among persons  
23 subject to this part and to apprehend persons subject to this  
24 part who take part therein.

25 (c) Apprehension outside Commonwealth.--If a person subject  
26 to this part is apprehended outside this Commonwealth, the  
27 person's return to this Commonwealth must be in accordance with  
28 normal extradition procedures or by reciprocal agreement.

29 (d) Payment prohibited.--No person authorized by this  
30 section to apprehend persons subject to this part, or place

1 where such offender is confined, restrained, held or otherwise  
2 housed may require payment of any fee or charge for receiving,  
3 apprehending, confining, restraining, holding or otherwise  
4 housing a person except as otherwise provided by law.

5 (e) Warrant authority.--The convening authority of any  
6 court-martial shall have the power to issue warrants of  
7 apprehension directed to the sheriff or any constable or peace  
8 officer of a county to apprehend persons subject to this part  
9 charged with an offense under this part and to deliver such  
10 persons into the custody of the State military forces.

11 (f) Definition.--As used in this section, the following  
12 words and phrases shall have the meanings given to them in this  
13 subsection unless the context clearly indicates otherwise:

14 "Apprehension." The taking of a person subject to this part  
15 into custody.

16 § 5202. Apprehension of persons absent without leave.

17 Any civil officer having authority to apprehend offenders  
18 under the laws of the United States or of this Commonwealth, or  
19 any military officer subject to this part who has been  
20 authorized by the Governor by regulation, may summarily  
21 apprehend any person subject to this part absent without leave  
22 from the State military forces and deliver him into the custody  
23 of the State military forces.

24 § 5203. Imposition of restraint.

25 (a) Enlisted personnel.--An enlisted person subject to this  
26 part may be ordered into arrest or confinement by any  
27 commissioned officer by an order, oral or written, delivered in  
28 person or through other persons subject to this part or through  
29 any person authorized by this part to apprehend persons. A  
30 commanding officer may authorize warrant officers, petty

officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

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

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

(d) Construction of section.--This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Arrest." The restraint of a person subject to this part by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits.

"Confinement." The physical restraint of a person subject to this part.

§ 5204. Restraint of persons charged with offenses.

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

1 person is accused and diligent steps shall be taken to try the  
2 person or to dismiss the charges and release the person.

3 (b) Admission to bail.--The accused, if apprehended or  
4 ordered into confinement prior to or during trial by a military  
5 court, may be admitted to bail by the officer exercising special  
6 court-martial jurisdiction over the accused, by a superior  
7 commanding officer or by the Adjutant General.

8 § 5205. Place of confinement.

9 Persons subject to this part confined before, during, or  
10 after trial by a military court, shall be confined in a civilian  
11 or military confinement facility.

12 § 5206. Reports and receiving of prisoners.

13 (a) Duty to receive prisoner.--Unless otherwise authorized  
14 by law, no facility authorized to receive prisoners under  
15 section 5205 (relating to place of confinement) may refuse to  
16 receive or keep any prisoner subject to this part and committed  
17 to the facility's charge by a commissioned officer of the State  
18 military forces when the officer furnishes a statement, signed  
19 by the officer, of the offense charged against the prisoner.

20 (b) Report of commitment.--Every facility authorized to  
21 receive prisoners under section 5205 to whose charge a prisoner  
22 subject to this part is committed shall, within 24 hours after  
23 that commitment, report to the commanding officer of the  
24 prisoner the name of the prisoner, the offense charged against  
25 the prisoner and the name of the person who ordered or  
26 authorized the commitment. If the facility receiving and holding  
27 a prisoner is unable to contact the prisoner's commanding  
28 officer, the facility shall make the report to the office of  
29 Adjutant General at the Joint Force Headquarters.

30 § 5207. Punishment prohibited before trial.

1 Subject to section 5804 (relating to effective date of  
2 sentences), no person subject to this part, while being held for  
3 trial or the result of trial, may be subjected to punishment or  
4 penalty other than arrest or confinement upon the charges  
5 pending against the person, nor shall the arrest or confinement  
6 imposed upon the person be any more rigorous than the  
7 circumstances required to insure the person's presence. The  
8 person may be subjected to minor punishment during that period  
9 for infractions of discipline.

10 § 5208. Delivery of offenders to civil authorities.

11 (a) General rule.--Under such regulations as may be  
12 prescribed under this part, a person subject to this part  
13 accused of an offense against civil authority may be delivered,  
14 upon request, to the civil authority for trial or confinement.

15 (b) Effect on sentence of court-martial.--When delivery  
16 under this section is made to any civil authority of a person  
17 undergoing sentence of a court-martial, the delivery, if  
18 followed by conviction in a civil tribunal, interrupts the  
19 execution of the sentence of the court-martial. The offender,  
20 after having answered to the civil authorities for his offense  
21 shall, upon the request of competent military authority, be  
22 returned to the place of original custody for the completion of  
23 such sentence of the court-martial.

24 § 5209. Confinement with enemy prisoners prohibited.

25 No member of the State military forces may be placed in  
26 confinement in immediate association with enemy prisoners or  
27 other foreign nationals who are not members of the armed forces.

## 28 CHAPTER 53

### 29 NONJUDICIAL PUNISHMENT

30 Sec.

1 5301. Commanding officer's nonjudicial punishment.

2 § 5301. Commanding officer's nonjudicial punishment.

3 (a) General rule.--Under such regulations as the Governor  
4 may prescribe, any commanding officer or officer-in-charge may  
5 impose disciplinary punishments for minor offenses without the  
6 intervention of a court-martial. The Governor, the Adjutant  
7 General or a general officer or colonel in command may delegate  
8 the powers under this section to a principal assistant who is a  
9 member of the State military forces.

10 (b) Punishments by any commanding officer.--Any commanding  
11 officer may impose upon enlisted members of the officer's  
12 command any of the following disciplinary punishments:

13 (1) An admonition.

14 (2) A reprimand.

15 (3) The withholding of privileges for not more than six  
16 months which need not be consecutive.

17 (4) The forfeiture of pay of not more than seven days'  
18 pay.

19 (5) A fine of not more than seven days' pay or \$200,  
20 whichever is less.

21 (6) A reduction to the next inferior pay grade if the  
22 grade from which the enlisted member is demoted is within the  
23 promotion authority of the officer imposing the reduction or  
24 any officer subordinate to the officer imposing the  
25 reduction.

26 (7) Extra duties, including fatigue or other duties, for  
27 not more than 14 days, which need not be consecutive.

28 (8) Restriction to certain specified limits, with or  
29 without suspension from duty, for not more than 14 days,  
30 which need not be consecutive.

1 (c) Punishments by major or lieutenant commander and other  
2 officers.--Any commanding officer of the rank of major or  
3 lieutenant commander or above may impose upon enlisted members  
4 of the officer's command any of the following disciplinary  
5 punishments:

6 (1) Any punishment authorized in subsection (b)(1), (2)  
7 and (3).

8 (2) The forfeiture of not more than one-half of one  
9 month's pay per month for two months.

10 (3) A fine of not more than one month's pay or \$500,  
11 whichever is less.

12 (4) A reduction to the lowest or any intermediate pay  
13 grade, if the grade from which the enlisted member is demoted  
14 is within the promotion authority of the officer imposing the  
15 reduction or any officer subordinate to the officer imposing  
16 the reduction. An enlisted member in a pay grade above E-4  
17 may not be reduced more than two pay grades.

18 (5) Extra duties, including fatigue or other duties, for  
19 not more than 45 days which need not be consecutive.

20 (6) Restriction to certain specified limits, with or  
21 without suspension from duty, for not more than 60 days which  
22 need not be consecutive.

23 (d) Punishments by the Governor, Adjutant General and high  
24 officers.--The Governor, the Adjutant General, an officer  
25 exercising general court-martial convening authority or an  
26 officer of a general or flag rank in command may impose any of  
27 the following disciplinary punishments:

28 (1) Upon officers:

29 (i) Any punishment authorized in subsection (c)(1),

30 (2), (3) and (6).

1           (ii) Arrest in quarters for not more than 30 days  
2           which need not be consecutive.

3           (2) Upon enlisted members, any punishment authorized in  
4           subsection (c).

5           (e) Limits for consecutive punishments.--Whenever any  
6           punishments authorized under this section are combined to run  
7           consecutively, the total length of the combined punishment shall  
8           not exceed the authorized duration of the highest punishment the  
9           Governor, Adjutant General or officer may impose. Punishments  
10           must be apportioned so that no single punishment exceeds its  
11           authorized length under this section.

12           (f) Preliminary requirements.--Prior to the offer of  
13           nonjudicial punishment, the commanding officer shall determine  
14           whether arrest in quarters or restriction shall be considered as  
15           punishments. Should the commanding officer determine that the  
16           punishment options may include arrest in quarters or  
17           restriction, the accused shall be notified of the right to  
18           demand trial by court-martial. Should the commanding officer  
19           determine that the punishment options will not include arrest in  
20           quarters or restriction, the accused shall be notified that  
21           there is no right to trial by court-martial in lieu of  
22           nonjudicial punishment.

23           (g) Reduction of penalty.--The officer who imposes the  
24           punishment, or the successor in command, may at any time  
25           suspend, set aside, mitigate or remit any part or amount of the  
26           punishment and restore all rights, privileges and property  
27           affected. The mitigated punishment shall not be for a greater  
28           period than the punishment mitigated. When mitigating reduction  
29           in grade to forfeiture of pay, the amount of the forfeiture  
30           shall not be greater than the amount that could have been

1 imposed initially under this section by the officer who imposed  
2 the mitigated punishment. The officer also may:

3 (1) Mitigate reduction in grade to forfeiture of pay.

4 (2) Mitigate arrest in quarters to restriction.

5 (3) Mitigate extra duties to restriction.

6 (h) Appeal from punishment.--A person punished under this  
7 section who considers the punishment unjust or disproportionate  
8 to the offense may, through the proper channel, appeal to the  
9 next superior authority within 15 days after the punishment is  
10 announced or sent to the person. The appeal shall be promptly  
11 forwarded and decided. While awaiting a decision, the person  
12 appealing the punishment may be required to begin to serve the  
13 punishment adjudged. The superior authority may exercise the  
14 same powers with respect to the punishment imposed as may be  
15 exercised under subsection (g) by the officer who imposed the  
16 punishment. Before acting on an appeal of a punishment, the  
17 superior authority may refer the case to a judge advocate for  
18 consideration and advice.

19 (i) Additional proceedings.--The imposition and enforcement  
20 of disciplinary punishment under this section for any act or  
21 omission is not a bar to trial by court-martial or a civilian  
22 court of competent jurisdiction for a serious crime or offense  
23 growing out of the same act or omission, and not properly  
24 punishable under this section. The fact that a disciplinary  
25 punishment has been enforced may be shown by the accused upon  
26 trial, and when so shown shall be considered in determining the  
27 measure of punishment to be adjudged in the event of a finding  
28 of guilty.

29 (j) Application of forfeiture.--Whenever a punishment of  
30 forfeiture of pay is imposed under this section, the forfeiture

1 may apply to pay accruing before, on or after the date that  
2 punishment is imposed.

3 (k) Records of proceedings.--The form of records to be kept  
4 of proceedings under this section may be prescribed by  
5 regulations adopted by the department. The regulations may  
6 prescribe that certain categories of the proceedings be in  
7 writing.

8 (l) Restrictions.--When punishment has been imposed under  
9 this section for an offense, nonjudicial punishment may not  
10 again be imposed for the same offense. Once nonjudicial  
11 punishment has been imposed, it may not be increased, upon  
12 appeal or otherwise. When a commander determines that  
13 nonjudicial punishment is appropriate for a particular service  
14 member, all known offenses determined to be appropriate for  
15 disposition by nonjudicial punishment and ready to be considered  
16 at that time, including all offenses arising from a single  
17 incident or course of conduct, will ordinarily be considered  
18 together and not made the basis for multiple punishments. This  
19 subsection does not restrict the commander's right to prefer  
20 court-martial charges for a nonminor offense previously punished  
21 under the provisions of this section.

## 22 CHAPTER 54

### 23 COURTS-MARTIAL JURISDICTION

24 Sec.

25 5401. Courts-martial classified.

26 5402. Jurisdiction of courts-martial in general.

27 5403. Jurisdiction of general courts-martial.

28 5404. Jurisdiction of special courts-martial.

29 5405. Jurisdiction of summary courts-martial.

30 5406. Sentences of dismissal, dishonorable discharge or

1 bad-conduct to be approved by Governor.

2 5407. Record of proceedings.

3 § 5401. Courts-martial classified.

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

6 (1) General courts-martial, consisting of:

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

8 or

9 (ii) only a military judge if, before the court is

10 assembled, the accused, knowing the identity of the

11 military judge and after consultation with defense

12 counsel, requests orally on the record or in writing a

13 court composed only of a military judge and the military

14 judge approves.

15 (2) Special courts-martial, consisting of:

16 (i) a military judge and not less than three

17 members; or

18 (ii) only a military judge, if one has been detailed

19 to the court, and the accused under the same conditions

20 as those prescribed in paragraph (1)(ii) so requests.

21 (3) Summary courts-martial, consisting of one

22 commissioned officer.

23 § 5402. Jurisdiction of courts-martial in general.

24 Each force of the State military forces has court-martial  
25 jurisdiction over all members of the force who are subject to  
26 this part. The Pennsylvania NATIONAL Guard has court-martial  
27 jurisdiction over all members subject to this part.

28 § 5403. Jurisdiction of general courts-martial.

29 Subject to section 5402 (relating to jurisdiction of courts-  
30 martial in general), general courts-martial have jurisdiction to

1 try persons subject to this part for any offense made punishable  
2 by this part and may, under such limitations as the Governor may  
3 prescribe, adjudge any punishment not prohibited by this part  
4 including any of the following punishments:

5 (1) A fine of not more than \$10,000.

6 (2) Confinement for not more than five years.

7 (3) Forfeiture of all pay and allowances for a period  
8 not exceeding five years.

9 (4) Dismissal, dishonorable discharge or bad-conduct  
10 discharge.

11 (5) Reduction of an enlisted member to any lower  
12 enlisted grade.

13 (6) A reprimand.

14 (7) Any combination of these punishments.

15 § 5404. Jurisdiction of special courts-martial.

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

22 (1) A fine of not more than \$2,500.

23 (2) Confinement for not more than one year.

24 (3) Forfeiture of all pay and allowances for a period  
25 not exceeding one year.

26 (4) A bad-conduct discharge.

27 (5) Reduction of an enlisted member to any lower  
28 enlisted grade.

29 (6) A reprimand.

30 (7) Any combination of these punishments.

1 § 5405. Jurisdiction of summary courts-martial.

2 (a) General rule.--Subject to section 5402 (relating to  
3 jurisdiction of courts-martial in general), summary courts-  
4 martial shall have jurisdiction to try all persons subject to  
5 this part, except officers, cadets, candidates and midshipmen,  
6 for any offense made punishable by this part and may, under such  
7 limitations as the Governor may prescribe, adjudge any of the  
8 following punishments:

9 (1) A fine of not more than \$500.

10 (2) Confinement for not more than ten days.

11 (3) Restriction to specified limits for no more than two  
12 months.

13 (4) Forfeiture of not more than two-thirds of pay for a  
14 period not exceeding one month.

15 (5) Reduction to the next lower grade.

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

22 § 5406. Sentences of dismissal, dishonorable discharge or  
23 bad-conduct to be approved by Governor.

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

27 § 5407. Record of proceedings.

28 A complete written record of proceedings and testimony shall  
29 be made for any general court-martial under this part. A  
30 bad-conduct discharge may not be adjudged by any special court-

martial unless a complete written record of the proceedings and  
testimony before the court has been made.

## CHAPTER 55

### APPOINTMENT AND COMPOSITION

#### OF COURTS-MARTIAL

Sec.

5501. Who may convene general courts-martial.

5502. Who may convene special courts-martial.

5503. Who may convene summary courts-martial.

5504. Who may serve on courts-martial.

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

5506. Appointment of trial counsel and defense counsel.

5507. Detail or employment of reporters and interpreters.

5508. Absent and additional members.

§ 5501. Who may convene general courts-martial.

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

(1) The Governor.

(2) The Adjutant General.

(3) A deputy adjutant general authorized by a regulation  
of the Governor.

(4) The commanding general of a division.

(5) The general officer in command of a wing.

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

§ 5502. Who may convene special courts-martial.

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

1       (1) Any person who may convene a general court-martial.

2       (2) The commanding officer of a garrison, fort, post,  
3       camp, station, Pennsylvania NATIONAL Guard base or station.

4       (3) The commanding officer of a brigade, regiment or  
5       corresponding unit of the Army.

6       (4) The commanding officer of a group or corresponding  
7       unit of the Air Force.

8       (5) The commanding officer or officer in charge of any  
9       other command when authorized by the Adjutant General.

10   § 5503. Who may convene summary courts-martial.

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

13       (1) Any person who may convene a general or special  
14       court-martial.

15       (2) The commanding officer of a company, a detached  
16       company or other detachment or corresponding unit of the  
17       Army.

18       (3) The commanding officer of a squadron, a detached  
19       squadron or other detachment or corresponding unit of the Air  
20       Force.

21       (4) The commanding officer or officer in charge of any  
22       other command when authorized by the Adjutant General.

23   (b) Commissioned officer or superior authority.--When only  
24   one commissioned officer is present with a command or  
25   detachment, that officer shall preside over the summary court-  
26   martial of that command or detachment and shall hear and  
27   determine all summary court-martial cases brought before him,  
28   provided that the officer is not the accuser or a witness.  
29   Summary courts-martial may, however, be convened in any case by  
30   superior competent authority when considered desirable by such

1 authority.

2 § 5504. Who may serve on courts-martial.

3 (a) Commissioned officer.--Any commissioned officer of the  
4 State military forces who is not a member of the same unit as  
5 the accused is eligible to serve on all courts-martial for the  
6 trial of any person who may lawfully be brought before such  
7 courts for trial.

8 (b) Warrant officer.--Any warrant officer of the State  
9 military forces who is not a member of the same unit as the  
10 accused is eligible to serve on general and special courts-  
11 martial for the trial of any person, other than a commissioned  
12 officer, who may lawfully be brought before such courts for  
13 trial.

14 (c) Enlisted member.--Any enlisted member of the State  
15 military forces who is not a member of the same unit as the  
16 accused is eligible to serve on general and special courts-  
17 martial for the trial of any enlisted member who may lawfully be  
18 brought before such courts for trial. The member shall serve as  
19 a member of a court only if, prior to the conclusion of a  
20 session called by the military judge under section 5704  
21 (relating to sessions), or prior to trial, or in the absence of  
22 such a session, before the court is assembled for the trial of  
23 the accused, the accused has requested orally on the record or  
24 in writing that enlisted members serve on it. After such a  
25 request, the accused may not be tried by a general or special  
26 court-martial, the membership of which does not include enlisted  
27 members in a number comprising at least one-third of the total  
28 membership of the court, unless eligible members cannot be  
29 obtained on account of physical conditions or military  
30 exigencies. If such members cannot be obtained, the court may be

1 assembled and the trial held without them, but the convening  
2 authority shall make a detailed written statement, to be  
3 appended to the record, stating why they could not be obtained.

4 (d) Ineligible persons.--

5 (1) Except in exigent circumstances, no person subject  
6 to this part may be tried by a court-martial any member of  
7 which is junior to him in rank or grade.

8 (2) When convening a court-martial, the convening  
9 authority shall detail as members thereof such members of the  
10 State military forces as, in his opinion, are best qualified  
11 for the duty by reason of age, education, training,  
12 experience, length of service and judicial temperament. No  
13 member of the State military forces is eligible to serve as a  
14 member of a general or special court-martial when that member  
15 is the accuser or a witness or has acted as investigating  
16 officer or as counsel in the same case.

17 (f) Excuse.--Before a court-martial is assembled for the  
18 trial of a case, the convening authority may excuse a member of  
19 the court from participating in the case. The convening  
20 authority may delegate the authority under this subsection to a  
21 judge advocate or to any other principal assistant.

22 (g) Definition.--As used in this section, the following  
23 words and phrases shall have the meanings given to them in this  
24 subsection unless the context clearly indicates otherwise:

25 "Unit." Any regularly organized body of the State military  
26 forces not larger than a company or a squadron or a body  
27 corresponding to one of them.

28 § 5505. Military judge of a general or special court-martial.

29 (a) General rule.--A military judge shall be detailed to  
30 each general and special court-martial. The military judge shall

1 preside over each open session of the court-martial to which the  
2 military judge has been detailed.

3 (b) Eligibility.--A military judge shall be:

4 (1) a judge advocate in the grade of lieutenant colonel  
5 or above in the State military forces, a federally-recognized  
6 judge advocate of the National Guard of another state, a  
7 judge advocate of the armed forces of the United States or a  
8 retired judge advocate of the State military forces in the  
9 grade of lieutenant colonel or above who retired no more than  
10 ten years prior to the date of trial;

11 (2) a member in good standing of the bar of the Supreme  
12 Court or the highest court of another state or a member of  
13 the bar of a Federal court for at least five years; and

14 (3) certified as qualified for duty as a military judge  
15 by the State Judge Advocate or other appropriate authority  
16 after completion of such training and certification required  
17 for military judges in any of the armed forces of the United  
18 States.

19 (c) Pro hac vice admission.--When a military judge is not a  
20 member of the bar of the Supreme Court, the military judge shall  
21 be deemed admitted pro hac vice, subject to filing a certificate  
22 with the State Judge Advocate setting forth the qualifications  
23 required under subsection (b).

24 (d) Designation.--The military judge of a general or special  
25 court-martial shall be designated by the State Judge Advocate or  
26 a designee for detail in the convening authority. Neither the  
27 convening authority nor any staff member of the convening  
28 authority shall prepare or review any report concerning the  
29 effectiveness, fitness or efficiency of the military judge so  
30 detailed which relates to performance of duty as a military

1 judge.

2 (e) Ineligibility.--No person is eligible to serve as  
3 military judge if the person is the accuser or a witness in the  
4 case or has acted as investigating officer or a counsel in the  
5 case.

6 (f) Limitation on powers.--The military judge may not  
7 consult with the members of the court except in the presence of  
8 the accused, trial counsel and defense counsel. The military  
9 judge shall not vote with the members of the court.

10 § 5506. Appointment of trial counsel and defense counsel.

11 (a) General rule.--For each general and special court-  
12 martial, the convening authority for the court shall detail  
13 trial counsel, defense counsel and such assistants as are  
14 appropriate. No person who has acted as investigating officer,  
15 military judge, witness or court member in any case shall act  
16 subsequently as trial counsel, assistant trial counsel or,  
17 unless expressly requested by the accused, as defense counsel or  
18 assistant or associate defense counsel in the same case. No  
19 person who has acted for the prosecution may act later in the  
20 same case for the defense, nor shall any person who has acted  
21 for the defense act later in the same case for the prosecution.

22 (b) Eligibility.--Any person who is detailed trial counsel  
23 or defense counsel in the case of a general or a special court-  
24 martial shall be a judge advocate as defined in section 5102  
25 (relating to definitions).

26 (c) Pro hac vice admission.--When a defense counsel is not a  
27 member of the bar of the highest court of the State, the defense  
28 counsel shall be deemed admitted pro hac vice, subject to filing  
29 a certificate with the State Judge Advocate setting forth the  
30 qualification required under subsection (b).

1 § 5507. Detail or employment of reporters and interpreters.

2 Under such regulations as the Governor or department may  
3 prescribe, the convening authority of a general or special  
4 court-martial or court of inquiry shall detail or employ  
5 qualified court reporters, who shall record the proceedings of  
6 and testimony taken before that court. Under like regulations,  
7 the convening authority of a military court may detail or employ  
8 interpreters who shall interpret for the court.

9 § 5508. Absent and additional members.

10 (a) Authorized absence.--No member of a general or special  
11 court-martial may be absent or excused after the court has been  
12 assembled for the trial of the accused, except by the military  
13 judge as a result of a challenge, for physical disability or  
14 other good cause or by order of the convening authority for good  
15 cause.

16 (b) New members of general court-martial.--Whenever a  
17 general court-martial, other than a general court-martial  
18 composed of only a military judge, is reduced below five  
19 members, the trial shall not proceed unless the convening  
20 authority details new members sufficient in number to provide  
21 not less than five members. The trial may proceed with the new  
22 members present after the recorded evidence previously  
23 introduced before the members of the court has been read to the  
24 court in the presence of the military judge, the accused and  
25 counsel for both sides.

26 (c) New members of special court-martial.--Whenever a  
27 special court-martial, other than a special court-martial  
28 composed of only a military judge, is reduced below three  
29 members, the trial may not proceed unless the convening  
30 authority details new members sufficient in number to provide

1 not less than three members. The trial shall proceed with the  
2 new members present as if no evidence had been introduced  
3 previously at the trial, unless a verbatim record of the  
4 evidence previously introduced before the members of the court  
5 or a stipulation thereof is read to the court in the presence of  
6 the military judge, the accused and counsel for both sides.

7 (d) New military judge of court-martial.--If the military  
8 judge of a court-martial composed of only a military judge is  
9 unable to proceed with the trial because of physical disability,  
10 as a result of a challenge, or for other good cause, the trial  
11 shall proceed, subject to any applicable conditions of section  
12 5401 (relating to courts-martial classified), after the detail  
13 of a new military judge as if no evidence had previously been  
14 introduced, unless a verbatim record of the evidence previously  
15 introduced or a stipulation thereof is read in court in the  
16 presence of the new military judge, the accused and counsel for  
17 both sides.

## 18 CHAPTER 56

### 19 PRETRIAL PROCEDURE

20 Sec.

21 5601. Charges and specifications.

22 5602. Compulsory self-incrimination prohibited.

23 5603. Investigation.

24 5604. Forwarding of charges.

25 5605. Advice of judge advocate and reference for trial.

26 5606. Service of charges.

27 § 5601. Charges and specifications.

28 (a) Execution and contents.--Charges and specifications  
29 shall be signed by a person subject to this part under oath  
30 before a commissioned officer authorized by this part to

1 administer oaths and shall state:

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

4 (2) That they are true in fact to the best of the  
5 signer's knowledge and belief.

6 (b) Disposition.--Upon the preferring of charges, the proper  
7 authority shall take immediate steps to determine what  
8 disposition should be made thereof in the interest of justice  
9 and discipline. The person accused shall be informed of the  
10 charges against him as soon as practicable.

11 § 5602. Compulsory self-incrimination prohibited.

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

15 (b) Advising accused of rights.--No person subject to this  
16 part shall interrogate or request any statement from an accused  
17 or a person suspected of an offense without first informing the  
18 person of the nature of the accusation, advising the person that  
19 he does not have to make any statement regarding the offense of  
20 which he is accused or suspected, that the person has a right to  
21 be represented by counsel and that any statement made by the  
22 person may be used as evidence against him in a trial by court-  
23 martial.

24 (c) Immaterial or degrading evidence.--No person subject to  
25 this part shall compel any person to make a statement or produce  
26 evidence before any military court if the statement or evidence  
27 is not material to the issue and may tend to degrade the person.

28 (d) Unlawfully obtained statement inadmissible.--No  
29 statement obtained from any person in violation of this section,  
30 or through the use of coercion, unlawful influence or unlawful

inducement shall be received in evidence against him in a trial  
by court-martial.

§ 5603. Investigation.

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

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

(c) Further investigation.--If an investigation of the

1 subject matter of an offense has been conducted before the  
2 accused is charged with the offense, and if the accused was  
3 present at the investigation and afforded the opportunities for  
4 representation, cross-examination and presentation prescribed in  
5 subsection (b), no further investigation of that charge is  
6 necessary under this section unless it is demanded by the  
7 accused after the accused is informed of the charge. A demand  
8 for further investigation entitles the accused to recall  
9 witnesses for further cross-examination and to offer any new  
10 evidence in the accused's own behalf.

11 (d) Additional offenses.--If evidence adduced in an  
12 investigation indicates that the accused committed an uncharged  
13 offense, the investigating officer may investigate the subject  
14 matter of that offense without the accused having first been  
15 charged with the offense if the accused is:

16 (1) present at the investigation;

17 (2) informed of the nature of each uncharged offense  
18 investigated; and

19 (3) afforded the rights of representation, cross-  
20 examination and presentation prescribed in subsection (b).

21 (e) Requirements mandatory.--The requirements of this  
22 section are binding on all persons administering this part but  
23 failure to follow them does not constitute jurisdictional error.

24 § 5604. Forwarding of charges.

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

1 writing to that person the reasons for delay.

2 § 5605. Advice of judge advocate and reference for trial.

3 (a) General rule.--Before directing the trial of any charge  
4 by general court-martial, the convening authority shall refer it  
5 to a judge advocate for consideration and advice. The convening  
6 authority shall not refer a specification under a charge to a  
7 general court-martial for trial unless the convening authority  
8 has been advised in writing by a judge advocate of all of the  
9 following:

10 (1) The specification alleges an offense under this  
11 part.

12 (2) The specification is warranted by the evidence  
13 indicated in the report of investigation under section 5603  
14 (relating to investigation), if there is such a report.

15 (3) A court-martial would have jurisdiction over the  
16 accused and the offense.

17 (b) Advice of judge advocate.--The advice of the judge  
18 advocate under subsection (a) with respect to a specification  
19 under a charge shall include a written and signed statement by  
20 the judge advocate expressing conclusions with respect to each  
21 matter set forth in subsection (a) and recommending action that  
22 the convening authority take regarding the specification. If the  
23 specification is referred for trial, the recommendation of the  
24 judge advocate shall accompany the specification.

25 (c) Changes in charges and specifications.--If the charges  
26 or specifications are not correct formally or do not conform to  
27 the substance of the evidence contained in the report of the  
28 investigating officer, formal corrections and such changes in  
29 the charges and specifications as are needed to make them  
30 conform to the evidence, may be made by the appointing

1 authority.

2 § 5606. Service of charges.

3 The trial counsel to whom court-martial charges are referred  
4 for trial shall cause to be served upon the accused a copy of  
5 the charges upon which trial is to be had. No person shall,  
6 against the person's objection, be brought to trial in a general  
7 court-martial case within a period of five days after the  
8 service of charges upon the person, or in a special court-  
9 martial within a period of three days after the service of  
10 charges upon the person.

11 CHAPTER 57

12 TRIAL PROCEDURE

13 Sec.

14 5701. Governor and department may prescribe rules.

15 5702. Unlawfully influencing action of court.

16 5703. Duties of trial counsel and defense counsel.

17 5704. Sessions.

18 5705. Continuances.

19 5706. Challenges.

20 5707. Oaths or affirmations.

21 5708. Statute of limitations.

22 5709. Former jeopardy.

23 5710. Pleas of accused.

24 5711. Opportunity to obtain witnesses and other evidence.

25 5712. Refusal to appear or testify.

26 5713. Contempts.

27 5714. Depositions.

28 5715. Admissibility of records of courts of inquiry.

29 5716. Voting and rulings.

30 5717. Number of votes required.

1 5718. Court to announce action.  
2 5719. Record of trial.  
3 5720. Defense of lack of mental responsibility.  
4 5721. Effect of finding of lack of mental capacity on trial  
5 proceedings.

6 5722. Trial finding of lack of mental responsibility.

7 § 5701. Governor and department may prescribe rules.

8 (a) General rule.--Pretrial, trial and posttrial procedures,  
9 including modes of proof, in court-martial cases arising under  
10 this part and for courts of inquiry may be prescribed by the  
11 Governor or the department as delegated by the Governor, by  
12 regulations, which shall apply the principles of law and the  
13 rules of evidence generally recognized in military criminal  
14 cases in courts-martial of the armed forces but which shall not  
15 be contrary to or inconsistent with this part.

16 (b) Uniformity.--All rules and regulations made pursuant to  
17 the provisions of this section shall be uniform insofar as  
18 practicable among the State military forces.

19 § 5702. Unlawfully influencing action of court.

20 (a) General rule.--No authority convening a general, special  
21 or summary court-martial, nor any other commanding officer or  
22 officer serving on the staff thereof, shall censure, reprimand  
23 or admonish the court or any member, military judge or counsel  
24 thereof, with respect to the findings or sentence adjudged by  
25 the court or with respect to any other exercise of its or his  
26 functions in the conduct of the proceedings. No person subject  
27 to this part may attempt to coerce or, by any unauthorized  
28 means, influence the action of a court-martial or court of  
29 inquiry or any member thereof in reaching the findings or  
30 sentence in any case, or the action of any convening, approving

1 or reviewing authority with respect to his judicial acts.

2 (b) Exceptions.--Subsection (a) shall not apply with respect  
3 to any of the following:

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

8 (2) Statements and instructions given in open court by  
9 the military judge, summary court-martial officer or counsel.

10 (c) Performance reports on members and counsel.--In the  
11 preparation of an effectiveness, fitness or efficiency report or  
12 any other report or document used in whole or in part for the  
13 purpose of determining whether a member of the State military  
14 forces is qualified to be advanced in grade, in determining the  
15 assignment or transfer of a member of the State military forces  
16 or in determining whether a member of the State military forces  
17 should be retained on active status, no person subject to this  
18 part may, in preparing any such report:

19 (1) consider or evaluate the performance of duty of any  
20 such member as a member of a court-martial or witness  
21 therein; or

22 (2) give a less favorable rating or evaluation of any  
23 counsel because of the zeal with which counsel represented  
24 the accused before a court-martial.

25 § 5703. Duties of trial counsel and defense counsel.

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

30 (b) Defense counsel.--

1       (1) The accused has the right to be represented in his  
2 defense before a general or special court-martial or at an  
3 investigation under section 5603 (relating to investigation).  
4 The accused may be represented by civilian counsel at the  
5 provision and expense of the accused or may be represented by  
6 military counsel of his own selection if reasonably available  
7 or by the defense counsel appointed under section 5506  
8 (relating to appointment of trial counsel and defense  
9 counsel).

10       (2) Should the accused have civilian counsel of his own  
11 selection, the defense counsel and assistant defense counsel,  
12 if any, who were detailed shall act as associate counsel  
13 unless excused at the request of the accused.

14       (3) Except as provided under paragraph (4), should the  
15 accused have military counsel of his own selection, the  
16 defense counsel and assistant defense counsel, if any, who  
17 were detailed may be excused by the military judge.

18       (4) The accused is not entitled to be represented by  
19 more than one military counsel. However, the person  
20 authorized under regulations prescribed under section 5701  
21 (relating to Governor and department may prescribe rules),  
22 may prescribe rules to detail counsel and may do any of the  
23 following:

24           (i) Detail additional military counsel as assistant  
25 defense counsel.

26           (ii) If the accused is represented by military  
27 counsel of the accused's own selection, approve a request  
28 from the accused that military counsel detailed to the  
29 accused act as associate defense counsel.

30       (5) The State Judge Advocate of the same force of which

1 the accused is a member shall determine whether the military  
2 counsel selected by an accused is reasonably available.

3 (c) Brief by defense counsel.--In any court-martial  
4 proceeding resulting in a conviction, the defense counsel may  
5 forward for attachment to the record of proceedings a brief of  
6 such matters he determines should be considered in behalf of the  
7 accused on review, including any objection to the contents of  
8 the record which counsel considers appropriate.

9 (d) Assistant trial counsel.--An assistant trial counsel of  
10 a general court-martial may, under the direction of the trial  
11 counsel or if he is qualified to be a trial counsel under  
12 section 5506, perform any duty imposed by law, regulation or the  
13 custom of the service upon the trial counsel of the court. An  
14 assistant trial counsel of a special court-martial may perform  
15 any duty of the trial counsel.

16 (e) Assistant defense counsel.--An assistant defense counsel  
17 of a general or special court-martial may, under the direction  
18 of the defense counsel or if he is qualified to be the defense  
19 counsel under section 5506, perform any duty imposed by law,  
20 regulation or the custom of the service upon counsel for the  
21 accused.

22 § 5704. Sessions.

23 (a) Proceedings in absence of members.--At any time after  
24 the service of charges which have been referred for trial to a  
25 court-martial composed of a military judge and members, the  
26 military judge may, subject to section 5606 (relating to service  
27 of charges), call the court into session without the presence of  
28 the members for the purpose of:

29 (1) hearing and determining motions raising defenses or  
30 objections which are capable of determination without trial

1 of the issues raised by a plea of not guilty;

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

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

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

13 These proceedings shall be conducted in the presence of the  
14 accused, the defense counsel and the trial counsel and shall be  
15 made a part of the record. These proceedings may be conducted  
16 notwithstanding the number of court members and without regard  
17 to the provisions of section 5508 (relating to absent and  
18 additional members).

19 (b) Other proceedings.--When the members of a court-martial  
20 deliberate or vote, only the members may be present. All other  
21 proceedings, including any other consultation of the court with  
22 counsel or the military judge, shall be made a part of the  
23 record and shall be in the presence of the accused, the defense  
24 counsel, the trial counsel and the military judge.

25 § 5705. Continuances.

26 The military judge of a court-martial or a summary court-  
27 martial may, for reasonable cause, grant a continuance to any  
28 party for such time, and as often, as may appear to be just.

29 § 5706. Challenges.

30 (a) Challenges for cause.--The military judge and members of

1 a general or special court-martial may be challenged by the  
2 accused or the trial counsel for cause stated to the court. The  
3 military judge shall determine the relevancy and validity of  
4 challenges for cause and shall not receive a challenge to more  
5 than one person at a time. Challenges by the trial counsel shall  
6 ordinarily be presented and decided before those by the accused  
7 are offered. If exercise of a challenge for cause reduces the  
8 court below the minimum number of members required by section  
9 5401 (relating to courts-martial classified), the parties shall,  
10 notwithstanding section 5508 (relating to absent and additional  
11 members), exercise or waive any challenge for cause against the  
12 remaining members of the court before additional members are  
13 detailed to the court.

14 (b) Preemptory challenges.--Each accused and the trial  
15 counsel are entitled to one initial preemptory challenge of  
16 members of the court. The military judge may not be challenged  
17 except for cause. When new members are detailed to the court to  
18 meet the minimum number of members required by section 5401 and  
19 after any challenges for cause against the new members are  
20 presented and decided, each accused and the trial counsel are  
21 entitled to one preemptory challenge against members not  
22 previously subject to preemptory challenge.

23 § 5707. Oaths or affirmations.

24 (a) General rule.--Before performing their respective  
25 duties, military judges, members of general and special courts-  
26 martial, trial counsel, assistant trial counsel, defense  
27 counsel, assistant defense counsel, reporters and interpreters  
28 shall take an oath or affirmation in the presence of the accused  
29 to perform their duties faithfully. The form of the oath or  
30 affirmation, the time and place of the taking thereof, the

1 manner of recording the same and whether the oath or affirmation  
2 shall be taken for all cases in which these duties are to be  
3 performed or for a particular case, shall be in accordance with  
4 regulations prescribed by the Governor or the department. These  
5 regulations may provide that an oath or affirmation to perform  
6 faithfully the duties as a military judge, trial counsel,  
7 assistant trial counsel, defense counsel or assistant defense  
8 counsel may be taken at any time by any judge advocate or other  
9 person certified or designated to be qualified or competent for  
10 the duty, and if such an oath or affirmation is taken, it need  
11 not be taken again at the time the judge advocate or other  
12 person is detailed to that duty.

13 (b) Witnesses.--Each witness before a court-martial shall be  
14 examined under oath or affirmation.

15 § 5708. Statute of limitations.

16 (a) Two-year limitation.--Except as otherwise provided in  
17 this part, a person subject to this part charged with any  
18 offense shall not be liable to be tried by court-martial or  
19 punished under section 5301 (relating to commanding officer's  
20 nonjudicial punishment) if the offense was committed more than  
21 two years before the receipt of sworn charges and specifications  
22 by an officer exercising court-martial jurisdiction over the  
23 command or before the imposition of nonjudicial punishment under  
24 section 5301.

25 (b) Computation of period of limitation.--The following  
26 shall be excluded in computing the period of limitation  
27 prescribed in this section:

28 (1) Periods in which the accused was absent without  
29 authority or fleeing from justice.

30 (2) Periods in which the accused was absent from

1 territory in which the Commonwealth has the authority to  
2 apprehend him, or in the custody of civil authorities or in  
3 the hands of the enemy.

4 (3) When the United States is at war, periods during war  
5 and until two years after the termination of hostilities as  
6 proclaimed by the President or by a joint resolution of  
7 Congress, when the accused commits any offense:

8 (i) involving fraud or attempted fraud against the  
9 United States, the Commonwealth or any agency thereof in  
10 any manner, whether by conspiracy or not;

11 (ii) in connection with the acquisition, care,  
12 handling, custody, control or disposition of any real or  
13 personal property of the United States or the  
14 Commonwealth; or

15 (iii) in connection with the negotiation,  
16 procurement, award, performance, payment, interim  
17 financing, cancellation or other termination or  
18 settlement of any contract, subcontract or purchase order  
19 which is connected with or related to the prosecution of  
20 the war or with any disposition of termination inventory  
21 by any war contractor or government agency.

22 (c) Subsequent action not barred.--If charges or  
23 specifications are dismissed before trial as defective or  
24 insufficient for any cause and the period prescribed by the  
25 applicable statute of limitations has expired or will expire  
26 within 180 days after the date of dismissal, trial and  
27 punishment under new charges and specifications are not barred  
28 by the statute of limitations if the new charges and  
29 specifications:

30 (1) are received by an officer exercising summary court-

1 martial jurisdiction over the command within 180 days after  
2 the dismissal of the charges or specifications; and

3 (2) allege the same acts or omissions that were included  
4 in the dismissed charges or specifications.

5 § 5709. Former jeopardy.

6 (a) General rule.--No person subject to this part shall,  
7 without the person's consent, be tried a second time for the  
8 same offense. Prosecution under this part shall not bar  
9 prosecution by civil authorities for a crime or offense growing  
10 out of the same act or omission committed in violation of the  
11 laws of the civil jurisdiction.

12 (b) Definition of trial.--No proceeding in which an accused  
13 has been found guilty by a court-martial upon any charge or  
14 specification is a trial in the sense of this section until the  
15 finding of guilty has become final after review of the case has  
16 been fully completed. However, a proceeding which, after the  
17 introduction of evidence but before a finding, is dismissed or  
18 terminated by the convening authority or on motion of the  
19 prosecution for failure of available evidence or witnesses  
20 without any fault of the accused is a trial in the sense of this  
21 section.

22 § 5710. Pleas of the accused.

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

27 (1) an accused makes an irregular pleading;

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

30 (3) it appears that an accused has entered a plea of

1 guilty improvidently or through lack of understanding or its  
2 meaning and effect; or

3 (4) an accused fails or refuses to plead.

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

12 § 5711. Opportunity to obtain witnesses and other evidence.

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

17 (b) Issuance of process.--The following shall apply to  
18 issuance of process:

19 (1) Process issued in court-martial cases to compel  
20 witnesses to appear and testify and to compel the production  
21 of other evidence shall apply the principles of law and the  
22 rules of courts-martial generally recognized in military  
23 criminal cases in the courts of the armed forces of the  
24 United States, unless contrary to or inconsistent with this  
25 part.

26 (2) If process in paragraph (1) is contrary or  
27 inconsistent with this part, process shall be similar to that  
28 which the courts of this Commonwealth having criminal  
29 jurisdiction may lawfully issue and shall run to any part of  
30 the Commonwealth and to any other state, territory or

1 district of possession in which the court-martial may be  
2 sitting.

3 (3) If process in paragraphs (1) and (2) are contrary to  
4 or inconsistent with this part, process may be executed by  
5 civil officers as prescribed by the laws of the place where  
6 the witness or evidence is located or of the United States.

7 § 5712. Refusal to appear or testify.

8 Any person not subject to this part who has been duly  
9 subpoenaed to appear as a witness or to produce books and  
10 records before a court-martial or court of inquiry or before any  
11 military or civil officer designated to take a deposition to be  
12 read in evidence before such a court who has been duly paid or  
13 tendered the fees and mileage of a witness at the rates allowed  
14 to witnesses attending a criminal court of the State and who  
15 willfully neglects or refuses to appear, refuses to qualify as a  
16 witness, refuses to testify or refuses to produce any evidence  
17 which that person may have been legally subpoenaed to produce is  
18 guilty of an offense and may be punished by the military court  
19 in the same manner as a criminal court of the Commonwealth.

20 § 5713. Contempts.

21 A military judge or summary court-martial officer may punish  
22 for contempt any person who uses any menacing word, sign or  
23 gesture in his presence, or who disturbs proceedings by any riot  
24 or disorder. The following punishments shall apply:

25 (1) A person subject to this part may be punished for  
26 contempt by confinement not to exceed 30 days or a fine of  
27 \$100, or both.

28 (2) A person not subject to this part may be punished  
29 for contempt by a military court in the same manner used by a  
30 criminal court of the jurisdiction.

1 § 5714. Depositions.

2 (a) General rule.--At any time after charges have been  
3 signed, as provided in section 5601 (relating to charges and  
4 specifications) any party may take oral or written depositions  
5 unless the military judge or summary court-martial officer  
6 hearing the case or, if the case is not being heard, an  
7 authority competent to convene a court-martial for the trial of  
8 those charges forbids it for good cause.

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

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

18 (d) Admissibility in evidence.--A duly authenticated  
19 deposition taken upon reasonable notice to the other parties, so  
20 far as otherwise admissible under the rules of evidence, may be  
21 read in evidence or, in the case of audiotape, videotape,  
22 digital image or file or similar material, may be played in  
23 evidence before any military court, if it appears:

24 (1) that the witness resides or is beyond the state in  
25 which the court is ordered to sit, or beyond 100 miles from  
26 the place of trial or hearing;

27 (2) that the witness, by reason of death, age, sickness,  
28 bodily infirmity, imprisonment, military necessity,  
29 nonamenability to process, or other reasonable cause, is  
30 unable or refuses to appear and testify in person at the

1 place of trial or hearing; or

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

4 § 5715. Admissibility of records of courts of inquiry.

5 (a) Court-martial.--In any case not extending to the  
6 dismissal of a commissioned officer, the sworn testimony  
7 contained in the duly authenticated record of proceedings of a  
8 court of inquiry of a person whose oral testimony cannot be  
9 obtained may, if otherwise admissible under the rules of  
10 evidence, be read in evidence by any party before a court-  
11 martial if the accused was a party before the court of inquiry  
12 and if the same issue was involved or if the accused consents to  
13 the introduction of such evidence.

14 (b) Use of testimony by defense.--Such testimony may be read  
15 in evidence only by the defense in cases extending to dismissal  
16 or dishonorable discharge of a commissioned officer.

17 (c) Court of inquiry.--Such testimony may also be read in  
18 evidence before a court of inquiry by either party.

19 § 5716. Voting and rulings.

20 (a) Findings, sentences and challenges.--Voting by members  
21 of a general or special court-martial on the findings and on the  
22 sentence shall be by secret written ballot. The junior member of  
23 the court shall count the votes. The count shall be checked by  
24 the president, who shall forthwith announce the result of the  
25 ballot to the members of the court.

26 (b) Questions of law and interlocutory questions.--The  
27 military judge shall rule upon all questions of law and all  
28 interlocutory questions arising during the proceedings. Any such  
29 ruling made by the military judge upon any question of law or  
30 any interlocutory question other than the factual issue of

1 mental responsibility of the accused is final and constitutes  
2 the ruling of the court. However, the military judge may change  
3 the ruling at any time during the trial. Unless the ruling is  
4 final, if any member objects thereto, the court shall be cleared  
5 and closed and the question decided by a voice vote as provided  
6 in section 5717 (relating to number of votes required),  
7 beginning with the junior in rank.

8 (c) Instructions to members of court.--Before a vote is  
9 taken on the findings, the military judge shall, in the presence  
10 of the accused and counsel, instruct the members of the court as  
11 to the elements of the offense and charge them:

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

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

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

22 (4) that the burden of proof to establish the guilt of  
23 the accused beyond reasonable doubt is upon the prosecution.

24 (d) Proceedings before military judge only.--Subsections  
25 (a), (b) and (c) do not apply to a court-martial composed of a  
26 military judge only. The military judge of such a court-martial  
27 shall determine all questions of law and fact arising during the  
28 proceedings and, if the accused is convicted, adjudge an  
29 appropriate sentence. The military judge of such a court-martial  
30 shall make a general finding and shall in addition, on request,

1 find the facts specially. If an opinion or memorandum of  
2 decision is filed, it will be sufficient if the findings of fact  
3 appear therein.

4 § 5717. Number of votes required.

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

9 (b) Other matters.--All other matters to be decided by the  
10 members of a general or special court-martial shall be  
11 determined by a majority vote, but a determination to reconsider  
12 a finding of guilty or to reconsider a sentence, with a view  
13 toward decreasing it, may be made by any lesser vote which  
14 indicates that the reconsideration is not opposed by the number  
15 of votes required for that finding or sentence. A tie vote on a  
16 challenge disqualifies the member challenged. A tie vote on a  
17 motion relating to the accused's sanity is a determination  
18 against the accused. A tie vote on any other matter is a  
19 determination in favor of the accused.

20 § 5718. Court to announce action.

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

23 § 5719. Record of trial.

24 (a) General and special courts-martial.--Each general and  
25 special courts-martial shall keep a separate record of the  
26 proceedings in each case brought before it, and the record shall  
27 be authenticated by the signature of the military judge. If the  
28 record cannot be authenticated by the military judge by reason  
29 of his death, disability or absence, it shall be authenticated  
30 by the signature of the trial counsel or by that of a member if

1 the trial counsel is unable to authenticate it by reason of his  
2 death, disability or absence. In a court-martial consisting of  
3 only a military judge, if the record cannot be authenticated by  
4 the military judge by reason of his death, disability or  
5 absence, the record shall be authenticated by the signature of  
6 the court reporter. A complete verbatim record of the  
7 proceedings and testimony shall be prepared in each general and  
8 special court-martial case resulting in a conviction. In all  
9 other court-martial cases, the record shall contain such matters  
10 as the Governor or department may by regulation prescribe.

11 (b) Summary court martial.--Each summary court-martial shall  
12 keep a separate record of the proceedings in each case. The  
13 record shall be authenticated in such manner as the Governor or  
14 department may by regulation prescribe.

15 (c) Furnishing record to accused.--A copy of the record of  
16 the proceedings of each general and special court-martial shall  
17 be given to the accused as soon as it is authenticated.

18 § 5720. Defense of lack of mental responsibility.

19 (a) General rule.--It shall be an affirmative defense in a  
20 trial by court-martial that, at the time of the commission of  
21 the acts constituting the offense, the accused, as a result of a  
22 severe mental disease or defect, was unable to appreciate the  
23 nature and quality or the wrongfulness of the acts. Mental  
24 disease or defect does not otherwise constitute a defense.

25 (b) Burden of proof.--The accused has the burden of proving  
26 the defense of lack of mental responsibility by clear and  
27 convincing evidence.

28 (c) Instructions or findings by military judge.--Whenever  
29 lack of mental responsibility of the accused with respect to an  
30 offense is properly at issue, the military judge shall:

1       (1) in a court-martial not composed of only a military  
2       judge, instruct the members of the court as to the defense of  
3       lack of mental responsibility under this section and charge  
4       them to find the accused guilty, not guilty or not guilty  
5       only by reason of lack of mental responsibility; or

6       (2) in a court-martial composed of only a military  
7       judge, find the accused guilty, not guilty or not guilty only  
8       by reason of lack of mental responsibility.

9       (d) Finding of not guilty.--Notwithstanding section 5717  
10      (relating to number of votes required), the accused shall be  
11      found not guilty only by reason of lack of mental responsibility  
12      if:

13       (1) a majority of the members of the court-martial  
14       present at the time the vote is taken determines that the  
15       defense of lack of mental responsibility has been  
16       established; or

17       (2) in the case of a court-martial composed of only a  
18       military judge, the military judge or summary court-martial  
19       officer determines that the defense of lack of mental  
20       responsibility has been established.

21      § 5721. Effect of finding of lack of mental capacity on trial  
22       proceedings.

23       (a) Mental incapacity generally.--When the accused is  
24       determined under this part to be suffering from a mental disease  
25       or defect rendering him mentally incompetent such that he is  
26       unable to understand the nature of the proceedings against him  
27       or to conduct or cooperate intelligently in the defense of the  
28       case, the general court-martial convening authority for the  
29       accused shall commit him to the custody of an agency or facility  
30       providing services to persons with such a disease or defect.

1     (b) Agency or facility action.--The agency or facility  
2 providing services shall take action in accordance with the  
3 jurisdictional laws applicable to persons incompetent to stand  
4 trial. If at the end of the period for hospitalization it is  
5 determined that the accused's mental condition has not so  
6 improved as to permit the trial to proceed, action shall be  
7 taken in accordance with the law of the jurisdiction.

8     (c) Recovery of accused.--When the director of a facility in  
9 which the accused is hospitalized determines that the accused  
10 has recovered to such an extent that he is able to understand  
11 the nature of the proceedings against him and to conduct or  
12 cooperate intelligently in the defense of the case, the director  
13 shall promptly transmit a notification of that determination to  
14 the general court-martial convening authority for the accused.  
15 The director shall send a copy of the notification to the  
16 defense counsel for the accused.

17     (d) Receipt of notification of competence.--Upon receipt of  
18 a notification transmitted under subsection (c), the general  
19 court-martial convening authority shall promptly take custody of  
20 the accused unless he is no longer subject to this part. If the  
21 accused is no longer subject to this part, the agency or  
22 facility with custody of the accused shall take such action as  
23 authorized by law of the jurisdiction. The director of the  
24 facility may retain custody of the accused for not more than 30  
25 days after transmitting the notifications required under  
26 subsection (c).

27     (e) Court ordering commitment.--In the application of  
28 jurisdictional law applicable to persons incompetent to stand  
29 trial, references to the court that ordered the commitment of a  
30 person and to the clerk of such court shall be deemed to refer

1 to the general court-martial convening authority for the  
2 accused. However, if the accused is no longer subject to this  
3 part, the State trial court with felony jurisdiction in the  
4 county where the accused is hospitalized or otherwise may be  
5 found shall be considered as the court that ordered the  
6 commitment of the accused.

7 § 5722. Trial finding of lack of mental responsibility.

8 (a) Finding of lack of mental responsibility generally.--If  
9 an accused is found by a court-martial not guilty only by reason  
10 of lack of mental responsibility, the accused shall be committed  
11 to a suitable facility until he is eligible for release in  
12 accordance with this section.

13 (b) Hearing required.--The court-martial shall conduct a  
14 hearing on the mental condition of the accused in accordance  
15 with the jurisdictional law applicable to persons incompetent to  
16 stand trial. A report of the results of the hearing shall be  
17 made to the general court-martial convening authority for the  
18 accused.

19 (c) Failure to find accused incompetent.--If the court-  
20 martial fails to find that the release of the accused would not  
21 create a substantial risk of bodily injury to another person or  
22 serious damage of property of another due to a mental disease or  
23 defect of the accused, the following shall take place:

24 (1) the general court-martial convening authority shall  
25 commit the accused to the custody of an agency or facility  
26 authorized to provide services to such persons; and

27 (2) the agency or facility with custody of the accused  
28 shall take action in accordance with the jurisdictional law  
29 applicable to persons incompetent to stand trial.

30 (d) Status change of accused while in custody.--If the

status of an accused changes while the accused is in the custody  
of a Commonwealth agency, hospitalized or on conditional release  
under a prescribed regimen of medical, psychiatric, or  
psychological care or treatment so that the accused is no longer  
subject to this part, the agency or facility with custody of  
action shall be taken in accordance with the jurisdictional law.

## CHAPTER 58

### SENTENCES

#### Sec.

5801. Cruel and unusual punishments prohibited.

5802. Maximum limits.

5803. Grading of offenses.

5804. Effective date of sentence.

5805. Execution of confinement.

5806. Deferment of sentence.

5807. Reduction in enlisted grade.

5808. Forfeiture of pay and allowances during confinement.

§ 5801. Cruel and unusual punishments prohibited.

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

§ 5802. Maximum limits.

(a) General rule.--The punishment which a court-martial may  
direct for an offense may not exceed such limits as the Governor  
or department may prescribe for that offense. In no instance may  
a sentence to confinement exceed more than five years for a  
military offense.

(b) Punitive offenses.--The limits of punishment for an

offense described in Chapter 60 (relating to punitive sections)  
shall be prescribed by the Governor or department by regulation.  
In no instance shall any punishment exceed that authorized by  
this section or the maximum punishment authorized by the United  
States Manual for Courts-Martial.

§ 5803. Grading of offenses.

(a) Felonies.--A conviction by general court-martial for any  
military offense for which an accused may receive a sentence of  
confinement for more than one year is the equivalent of a felony  
offense.

(b) Misdemeanors.--Except for convictions by a summary  
court-martial, all other military offenses are the equivalents  
of misdemeanors.

(c) Noncriminal.--Any conviction by a summary court-martial  
is not a criminal conviction.

§ 5804. Effective date of sentences.

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

(b) Confinement.--Any period of confinement included in a  
sentence of a court-martial begins to run from the date the  
sentence is adjudged by the court-martial, but periods during  
which the sentence to confinement is suspended or deferred shall  
be excluded in computing the service of the term of confinement.

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

1 § 5805. Execution of confinement.

2 (a) Place of confinement.--A sentence of confinement  
3 adjudged by a court-martial, whether or not the sentence  
4 includes discharge or dismissal and whether or not the discharge  
5 or dismissal has been executed, may be carried into execution by  
6 confinement in any place authorized by this part. Persons so  
7 confined are subject to the same discipline and treatment as  
8 persons regularly confined or committed to that place of  
9 confinement.

10 (b) Authority to require hard labor.--The omission of the  
11 words "hard labor" from any sentence or punishment authorized  
12 under this part does not deprive the confinement facility  
13 executing that sentence or punishment of the power to require  
14 hard labor as a part of the punishment if it is otherwise within  
15 the authority of that facility to do so.

16 (c) Refusal to accept accused prohibited.--No place of  
17 confinement may refuse or decline to accept an accused sentenced  
18 to confinement under this part or require payment of any fee or  
19 charge for so receiving or confining an accused except as  
20 otherwise provided by law. Any such fee or charge shall not  
21 exceed a per diem charge of \$25 per day if otherwise authorized  
22 by law.

23 § 5806. Deferment of sentences.

24 (a) Deferment upon application of accused.--On application  
25 by an accused, the convening authority or the person exercising  
26 general court-martial jurisdiction over the command to which the  
27 accused is currently assigned may, in that person's sole  
28 discretion, defer service of the sentence to confinement. The  
29 deferment shall terminate when the sentence is ordered executed.  
30 The deferment may be rescinded at any time by the person who

1 granted it or, if the accused is no longer under that person's  
2 jurisdiction, by the person exercising general court-martial  
3 jurisdiction over the command to which the accused is currently  
4 assigned.

5 (b) Deferment without consent of accused.--The convening  
6 authority may defer the service of the sentence to confinement,  
7 without the consent of the accused, until after the accused has  
8 been permanently released to the State military forces by a  
9 state, the United States or a foreign country. This subsection  
10 applies to a person subject to this part who:

11 (1) while in the custody of a state, the United States  
12 or a foreign country, is temporarily returned by that state,  
13 the United States or foreign country to the State military  
14 forces for trial by court-martial; and

15 (2) after the court-martial, is returned to that state,  
16 the United States or foreign country under the authority of a  
17 mutual agreement or treaty.

18 (c) Deferment while review of case is pending.--When a  
19 sentence to confinement has been ordered executed but review of  
20 the case is pending under section 5909 (relating to review by a  
21 board of review), the Adjutant General may defer further service  
22 of the sentence to confinement while the review is pending.

23 § 5807. Reduction in enlisted grade.

24 (a) General rule.--An enlisted member in a pay grade above  
25 E-1 receiving a sentence by a court-martial that includes a  
26 dishonorable or bad-conduct discharge or confinement shall  
27 receive a reduction in pay grade to E-1 effective on the date  
28 the sentence is approved.

29 (b) Sentence no longer effective.--If an enlisted member  
30 receives a reduction in pay grade under subsection (a) and the

sentence which led to a reduction in pay grade is later set aside, disapproved or, as finally approved, does not include a dishonorable or bad-conduct discharge or confinement, the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay grade and allowances.  
§ 5808. Forfeiture of pay and allowances during confinement.

(a) General rule.--An enlisted member receiving a court-martial sentence of confinement for more than six months, or confinement of six months or less and a dishonorable or bad-conduct discharge or dismissal, shall forfeit the pay and allowances due him during any period of confinement or parole as provided in this subsection. The forfeiture shall take effect on the date the sentence was approved. The pay and allowances forfeited in the case of a general court-martial shall be all pay and allowances due the enlisted member during such period and in the case of a special court-martial shall be two-thirds of all pay due the enlisted member during such period.

(b) Exception.--The convening authority or other person acting under section 5903 (relating to action on general court-martial records) may waive any or all requirements under subsection (a) for a period not to exceed six months if the accused has dependents. Any amount of pay or allowances that would be forfeited under subsection (a) shall be paid to the dependents of the accused.

(c) Sentence no longer effective.--If an enlisted member is forced to forfeit pay and allowances under subsection (a) and the sentence which led to the forfeiture is later set aside, disapproved or, as finally approved, does not include confinement for more than six months or confinement for six months or less and a dishonorable or bad-conduct discharge or

dismissal, the member shall be paid the pay and allowances which  
he would have been paid for the period during which the  
forfeiture was in effect.

CHAPTER 59

POSTTRIAL PROCEDURE AND REVIEW

OF COURTS-MARTIAL

Sec.

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5902. Action by convening authority.

5903. Action on general court-martial records.

5904. Reconsideration and revision.

5905. Rehearings.

5906. Approval by convening authority.

5907. Disposition of records after review by convening  
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§ 5901. Error of law; lesser included offense.

(a) Error of law.--A finding or sentence of a court-martial  
shall not be held incorrect on the grounds of an error of law

1 unless the error materially prejudices the substantial rights of  
2 the accused.

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

7 § 5902. Action by convening authority.

8 (a) Report to convening authority.--The findings and  
9 sentence of a court-martial shall be reported promptly to the  
10 convening authority after the announcement of the sentence.

11 (b) Copy of record to accused.--In a summary court-martial  
12 case, the accused shall be promptly provided a copy of the  
13 record of trial for use in preparing a submission authorized by  
14 subsection (c).

15 (c) Submission of matters by accused to the convening  
16 authority.--The following shall apply to the submission of  
17 matters by an accused to the convening authority:

18 (1) The accused may submit to the convening authority  
19 matters for consideration by the convening authority with  
20 respect to the findings and the sentence. Any such submission  
21 shall be in writing. Except in a summary court-martial case,  
22 such a submission shall be made within ten days after the  
23 accused has been given an authenticated record of trial and,  
24 if applicable, the recommendation of a judge advocate under  
25 subsection (g). In a summary court-martial case, such a  
26 submission shall be made within seven days after the sentence  
27 is announced.

28 (2) If the accused shows that additional time is  
29 required for the accused to submit matters under paragraph  
30 (1), the convening authority or other person taking action

1 under this section may, for good cause, extend the applicable  
2 period under paragraph (1) for not more than an additional 20  
3 days.

4 (3) The accused may waive the right to make a submission  
5 to the convening authority under paragraph (1). Such a waiver  
6 must be made in writing and may not be revoked. The time  
7 within which the accused may make a submission under  
8 paragraph (1) shall be deemed to have expired upon the  
9 submission of a waiver to the convening authority.

10 (d) Action by the convening authority.--The authority of a  
11 convening authority to modify the findings and sentence of a  
12 court-martial is a matter of command prerogative and involves  
13 the sole discretion of the convening authority. No action is  
14 required to be taken by the convening authority. If action is  
15 taken by the convening authority, it must consider all matters  
16 submitted by the accused. If it is impractical for the convening  
17 authority to act, the convening authority shall forward the case  
18 to a person exercising general court-martial jurisdiction who  
19 may take action under this section.

20 (e) Actions by authority on sentence.--The authority  
21 authorized to take action may:

22 (1) Approve the sentence in whole or in part.

23 (2) Disapprove the sentence in whole or in part.

24 (3) Commute the sentence in whole or in part.

25 (4) Suspend the sentence in whole or in part.

26 (f) Action by authority on findings.-- The authority  
27 authorized to take action may:

28 (1) Dismiss any charge or specification by setting aside  
29 a finding of guilty.

30 (2) Change a finding of guilty to a charge or

1 specification to a finding of guilty to an offense that is a  
2 lesser included offense of the offense stated in the charge  
3 or specification.

4 (g) Recommendation of judge advocate.--Before acting on any  
5 general or special court-martial case in which there is a  
6 finding of guilt, the convening authority or other person taking  
7 action shall obtain and consider the written recommendation of a  
8 judge advocate. The convening authority or other authorized  
9 party shall refer the record of trial to a judge advocate and  
10 the judge advocate shall use such record in the preparation of  
11 the recommendation. The recommendation of the judge advocate  
12 shall include such matters as may be prescribed by regulation by  
13 the Governor or department and shall be served on the accused,  
14 who may submit any matter in the recommendation to the convening  
15 authority under subsection (c). An accused's failure to include  
16 any matter in the recommendation or attached to the  
17 recommendation in his submission waives his right to object to  
18 such matter.

19 § 5903. Action on general court-martial records.

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

29 § 5904. Reconsideration and revision.

30 (a) General rule.--The convening authority or other

1 authorized party may order a proceeding in revision. A  
2 proceeding in revision may be ordered if there is an apparent  
3 error or omission in the record or if the record shows improper  
4 or inconsistent action by a court-martial with respect to the  
5 findings or sentence that can be rectified without material  
6 prejudice to the substantial rights of the accused.

7 (b) Revision not authorized.--In no case may a proceeding in  
8 revision:

9 (1) reconsider a finding of not guilty of any  
10 specification or a ruling which amounts to a finding of not  
11 guilty;

12 (2) reconsider a finding of not guilty of any charge,  
13 unless there has been a finding of guilty under a  
14 specification laid under that charge which sufficiently  
15 alleges a violation of a punitive section of this title; or

16 (3) increase the severity of the sentence unless the  
17 sentence prescribed for the offense is mandatory.

18 § 5905. Rehearings.

19 (a) General rule.--The convening authority or other  
20 authorized party may order a rehearing. A rehearing may be  
21 ordered if the convening authority or other authorized party  
22 disapproves the findings and sentence and states the reasons for  
23 disapproval of the findings. If such party disapproves the  
24 findings and sentence but does not order a rehearing, that party  
25 shall dismiss the charges. A rehearing as to the findings may  
26 not be ordered where there is a lack of sufficient evidence in  
27 the record to support the findings. A rehearing as to the  
28 sentence may be ordered if the convening authority or other  
29 authorized party disapproves the sentence.

30 (b) Procedural requirements.--Each rehearing shall take

place before a court-martial composed of members not members of  
the court-martial which first heard the case. Upon a rehearing  
the accused may not be tried for any offense of which he was  
found not guilty by the first court-martial. No sentence in  
excess of or more severe than the original sentence may be  
approved, 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. If the sentence approved after the first court-  
martial was in accordance with a pretrial agreement and the  
accused at the rehearing changes a plea with respect to the  
charges or specifications upon which the pretrial agreement was  
based or otherwise does not comply with the pretrial agreement,  
the approved sentence as to those charges or specifications may  
include any punishment not in excess of that lawfully adjudged  
at the first court-martial.

§ 5906. Approval by convening authority.

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

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

(a) General rule.--Except as otherwise required by this  
title, all records of trial and related documents shall be  
transmitted and disposed of as prescribed by this section and  
regulations promulgated by the department.

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

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

10 (d) Bad-conduct discharge.--Where the sentence of a special  
11 court-martial as approved by the convening authority includes a  
12 bad-conduct discharge, whether or not suspended, the record  
13 shall be forwarded to the officer exercising general court-  
14 martial jurisdiction over the command to be reviewed in the same  
15 manner as a record of trial by a general court-martial. If the  
16 sentence as approved by an officer exercising general court-  
17 martial jurisdiction includes a bad-conduct discharge, whether  
18 or not suspended, the record shall be forwarded to the State  
19 Judge Advocate.

20 (e) Review and disposition of other records.--All other  
21 special and summary court-martial records shall be reviewed by a  
22 judge advocate of the Pennsylvania NATIONAL Guard and shall be  
23 transmitted and disposed of as the department may prescribe by  
24 regulations.

25 § 5908. Review by State Judge Advocate and Adjutant General.

26 (a) Review by State Judge Advocate of guilty finding.--Each  
27 general and special court-martial case in which there has been a  
28 finding of guilty shall be reviewed by the State Judge Advocate,  
29 or a designee. The State Judge Advocate may not review a case if  
30 he has acted in the same case as an accuser, investigating



officer, member of the court, military judge or counsel or has  
otherwise acted on behalf of the prosecution or defense. The  
State Judge Advocate's review shall be in writing and shall  
contain the following:

(1) Conclusions as to:

(i) whether the court had jurisdiction over the  
accused and the offense;

(ii) the sufficiency of the charge and  
specification; and

(iii) whether the sentence was within the limits  
prescribed as a matter of law.

(2) A response to each allegation of error made in  
writing by the accused.

(3) If the case is sent for action under subsection (b),  
a recommendation as to the appropriate action to be taken and  
an opinion as to whether corrective action is required as a  
matter of law.

(b) Review by Adjutant General of guilty finding.--The  
record of trial and related documents in each case reviewed  
under subsection (a) shall be sent for action to the Adjutant  
General, if:

(1) the judge advocate who reviewed the case recommends  
corrective action;

(2) the sentence approved under section 5903 (relating  
to action on general court-martial records) extends to  
dismissal, a bad-conduct or dishonorable discharge or  
confinement for more than six months; or

(3) such action is otherwise required by regulations  
promulgated by the department.

(c) Action by Adjutant General on guilty finding.--After

review under subsection (b), the Adjutant General may:

(1) disapprove or approve the findings or sentence in whole or in part;

(2) remit, commute or suspend the sentence in whole or in part;

(3) dismiss the charges; or

(4) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence or on both.

(d) Rehearing impracticable.--If a rehearing is ordered under subsection (c) but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(e) Review by Governor of guilty finding.--If the opinion of the State Judge Advocate is that corrective action is required as a matter of law and if the Adjutant General does not take action that is at least as favorable to the accused as that recommended by the State Judge Advocate, the record of trial and action thereon shall be sent to the Governor for review and action as deemed appropriate.

(f) Review by State Judge Advocate of not guilty finding.--The State Judge Advocate may review any case in which there has been a finding of not guilty of all charges and specifications. The State Judge Advocate may not review a case if he has acted in the same case as an accuser, investigating officer, member of the court, military judge or counsel or has otherwise acted on behalf of the prosecution or defense. The review by the State Judge Advocate shall be limited to questions of subject matter jurisdiction.

(g) Review by Adjutant General of not guilty finding.--The

record of trial and related documents in each case reviewed  
under subsection (f) shall be sent for action to the Adjutant  
General.

(h) Action by Adjutant General on not guilty finding.--After  
review under subsection (g), the Adjutant General may:

(1) when subject matter jurisdiction is found to be  
lacking, void the court-martial ab initio, with or without  
prejudice to the government; or

(2) return the record of trial and related documents to  
the State Judge Advocate for appeal by the government as  
provided by law.

§ 5909. Review by a board of review.

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

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

(c) Setting aside findings and sentence.--If the board of  
review sets aside the findings and sentence, it may, except

1 where the setting aside is based on lack of sufficient evidence  
2 in the record to support the findings, order a rehearing. If it  
3 sets aside the findings and sentence and does not order a  
4 rehearing, it shall order that the charges be dismissed.

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

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

17 (f) Waiver of review.--The accused may file with the  
18 convening authority a statement expressly withdrawing the right  
19 of the accused to have his case reviewed by a board of review.  
20 Such a withdrawal shall be signed by both the accused and  
21 defense counsel and must be filed in accordance with appellate  
22 procedures as provided by law. The accused may withdraw his case  
23 from review by a board of review at any time in accordance with  
24 appellate procedures as provided by law.

25 § 5910. Review by Superior Court.

26 (a) General rule.--Final judgments of courts-martial  
27 empowered to impose a sentence of confinement for one year or  
28 more are appealable to the Superior Court, after approval by the  
29 convening authority, in the same manner and subject to the same  
30 process as a criminal conviction by the courts of common pleas.

The appellate procedures to be followed shall be those provided by law for the appeal of criminal cases.

(b) Waiver of review.--The accused may file with the convening authority a statement expressly withdrawing the right of the accused to have his case reviewed by the Superior Court. Such a withdrawal shall be signed by both the accused and his defense counsel and must be filed in accordance with appellate procedures as provided by law. The accused may withdraw his case from review by the Superior Court at any time in accordance with appellate procedures as provided by law.

§ 5911. Appellate counsel.

(a) Counsel for the Commonwealth.--The State Judge Advocate shall detail a judge advocate as counsel to represent the Commonwealth in the review or appeal of cases by a board of review or before the Superior Court, or before any other court when requested to do so by the Attorney General. Counsel must be a member in good standing of the bar of the Supreme Court.

(b) Counsel for the accused.--In all posttrial reviews and appeals, whether initiated by the accused or the Commonwealth, the accused has the right to be represented by appellate military counsel before any reviewing authority and before any appellate court. Upon the request of an accused, the State Judge Advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases. An accused may be represented by civilian appellate counsel at no expense to the Commonwealth.

§ 5912. Execution of sentence; suspension of sentence.

(a) Appellate review not waived and appeal not withdrawn.--If a sentence extends to dismissal or a dishonorable or bad-conduct discharge, the right of the accused to appellate review is not waived and an appeal is not withdrawn, that part of the

1 sentence extending to dismissal or a dishonorable or bad-conduct  
2 discharge may not be executed until there is a final judgment as  
3 to the legality of the proceedings. A judgment as to the  
4 legality of the proceedings is final in such cases when review  
5 is completed by the Superior Court under section 5910 (relating  
6 to review by Superior Court) and is deemed final by the law of  
7 state where the judgment was had.

8 (b) Appellate review waived or appeal withdrawn.--If a  
9 sentence extends to dismissal or a dishonorable or bad-conduct  
10 discharge, the right of the accused to appellate review is  
11 waived or an appeal is withdrawn, that part of the sentence  
12 extending to dismissal or a dishonorable or bad-conduct  
13 discharge may not be executed until review of the case by the  
14 State Judge Advocate and any action on that review is completed.  
15 Any other part of a court-martial sentence may be ordered  
16 executed by the convening authority or other authorized party  
17 when approved under section 5906 (relating to approval by  
18 convening authority).

19 § 5913. Vacation of suspension.

20 (a) Bad-conduct discharges and general court-martial  
21 sentences.--Prior to the vacation of the suspension of a special  
22 court-martial sentence which as approved includes a bad-conduct  
23 discharge or of any general court-martial sentence, the officer  
24 having special court-martial jurisdiction over the probationer  
25 shall hold a hearing on an alleged violation of probation. The  
26 probationer shall be represented at the hearing by military  
27 counsel if the probationer so desires.

28 (b) Action by court-martial.--The record of the hearing and  
29 the recommendation of the officer having special court-martial  
30 jurisdiction shall be forwarded for action to the officer

1 exercising general court-martial jurisdiction over the  
2 probationer. If the officer vacates the suspension, any  
3 unexecuted part of the sentence except a dismissal shall be  
4 executed subject to applicable restrictions in this part.

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

9 § 5914. Petition for new trial.

10 At any time within two years after approval by the convening  
11 authority of a court-martial sentence, the accused may petition  
12 the Adjutant General for a new trial on the grounds of newly  
13 discovered evidence or fraud on the court-martial.

14 § 5915. Remission and suspension.

15 (a) General rule.--Any authority competent to convene, for  
16 the command in which the accused is serving or assigned, a court  
17 of the kind that imposed the sentence, may remit or suspend any  
18 part or amount of the unexecuted part of any sentence, including  
19 all uncollected forfeitures other than a sentence approved by  
20 the Governor.

21 (b) Substitution of administrative discharge by Governor.--  
22 The Governor may, for good cause, substitute an administrative  
23 form of discharge, as authorized by applicable military  
24 regulations, for a discharge or dismissal executed in accordance  
25 with the sentence of a court-martial.

26 § 5916. Restoration.

27 (a) General rule.--Under such regulations as may be  
28 prescribed by the Governor or department, all rights, privileges  
29 and property affected by an executed portion of a court-martial  
30 sentence which has been set aside or disapproved, except an

executed dismissal or discharge shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing.

(b) Substitution of administrative discharge for invalid discharge.--If a previously executed sentence of dishonorable or bad-conduct discharge is not sustained 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 enlistment.

§ 5917. Finality of proceedings, findings and sentences.

The appellate review of records of trial, the proceedings, findings and sentences of courts-martial as approved, reviewed, or affirmed and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review or affirmation are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies and officers of the United States and the several states, subject only to action upon a petition for a new trial as provided in section 5914 (relating to petition for new trial) and to action under section 5915 (relating to remission and suspension).

§ 5918. Leave pending review of conviction.

Under regulations prescribed by the Governor or the department, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this chapter if the sentence, as approved under section 5902 (relating to action by convening authority) or 5906 (relating to approval by convening authority) includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct

1 discharge. The accused may be required to begin such leave on  
2 the date on which the sentence is approved under section 5906 or  
3 at any time after such date and such leave may be continued  
4 until the date on which action under this chapter is completed  
5 or may be terminated at any earlier time.

6 § 5919. Appeal by the Commonwealth.

7 (a) General rule.--In a trial by court-martial in which a  
8 punitive discharge may be adjudged, the Commonwealth may appeal  
9 the following:

10 (1) An order or ruling of the military judge which  
11 terminates the proceedings with respect to a charge or  
12 specification.

13 (2) An order or ruling which excludes evidence that is  
14 substantial proof of a fact material in the proceeding.

15 (3) An order or ruling which directs the disclosure of  
16 classified information.

17 (4) An order or ruling which imposes sanctions for  
18 nondisclosure of classified information.

19 (5) A refusal of the military judge to issue a  
20 protective order sought by the Commonwealth to prevent the  
21 disclosure of classified information.

22 (6) A refusal by the military judge to enforce a  
23 protective order sought by the Commonwealth to prevent the  
24 disclosure of classified information which has previously  
25 been issued by appropriate authority.

26 (b) Exceptions.--Notwithstanding subsection (a), the  
27 Commonwealth may not appeal a finding of not guilty with respect  
28 to the charge or specification by the members of the court-  
29 martial or by a judge in a bench trial so long as it is not made  
30 in reconsideration.

1 (c) Written notice required.--An appeal of an order or  
2 ruling may not be taken unless the trial counsel provides the  
3 military judge with written notice of appeal from the order or  
4 ruling within 72 hours of the order or ruling. Such notice shall  
5 include a certification by the trial counsel that the appeal is  
6 not taken for the purpose of delay and, if the order or ruling  
7 appealed is one which excludes evidence, that the evidence  
8 excluded is substantial proof of a fact material in the  
9 proceeding.

10 (d) Diligent prosecution required.--An appeal under this  
11 section shall be diligently prosecuted. Any period of delay  
12 resulting from an appeal under this section shall be excluded in  
13 deciding any issue regarding denial of a speedy trial unless an  
14 appropriate authority determines that the appeal was filed  
15 solely for the purpose of delay with the knowledge that it was  
16 totally frivolous and without merit.

17 (e) Action by Superior Court.--An appeal under this section  
18 shall be forwarded to the Superior Court. In ruling on an appeal  
19 under this section, the court may act only with respect to  
20 matters of law.

## 21 CHAPTER 60

### 22 PUNITIVE SECTIONS

23 Sec.

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14 6047. Purchasing and receiving military property in pawn.

15 6048. Wrongful use and possession of controlled substances.

16 § 6001. Principals.

17 Any person subject to this part who:

18 (1) commits an offense punishable by this part or aids,  
19 abets, counsels, commands or procures its commission; or

20 (2) causes an act to be done which if directly performed  
21 by him would be punishable by this part;

22 is a principal.

23 § 6002. Accessory after the fact.

24 Any person subject to this part who, knowing that an offense  
25 punishable by this part has been committed, receives, comforts  
26 or assists the offender in order to hinder or prevent his  
27 apprehension, trial or punishment shall be punished as a court-  
28 martial may direct.

29 § 6003. Conviction of lesser included offense.

30 An accused may be found guilty of an offense necessarily

1 included in the offense charged or of an attempt to commit  
2 either the offense charged or an offense necessarily included  
3 therein.

4 § 6004. Attempts.

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

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

13 (c) Effect of consummation of offense.--Any person subject  
14 to this part may be convicted of an attempt to commit an offense  
15 although it appears at the trial that the offense was  
16 consummated.

17 § 6005. Conspiracy.

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

22 § 6006. Solicitation.

23 (a) Desertion and mutiny.--Any person subject to this part  
24 who solicits or advises another or others to desert in violation  
25 of section 6009 (relating to desertion) or mutiny in violation  
26 of section 6018 (relating to mutiny or sedition) shall, if the  
27 offense solicited or advised is attempted or committed, be  
28 punished with the punishment provided for the commission of the  
29 offense, but, if the offense solicited or advised is not  
30 committed or attempted, the person shall be punished as a court-

1 martial may direct.

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

11 § 6007. Fraudulent enlistment, appointment or separation.

12 Any person who:

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

18 (2) procures his own separation from the State military  
19 forces by knowingly false representation or deliberate  
20 concealment as to his eligibility for that separation;  
21 shall be punished as a court-martial may direct.

22 § 6008. Unlawful enlistment, appointment or separation.

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

29 § 6009. Desertion.

30 (a) Offense defined.--Any member of the State military

1 forces who:

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

5 (2) quits his unit, organization or place of duty with  
6 intent to avoid hazardous duty or to shirk important service;  
7 or

8 (3) without being regularly separated from one of the  
9 State military forces enlists or accepts an appointment in  
10 the same or another one of the State military forces, or in  
11 one of the armed forces of the United States, without fully  
12 disclosing the fact that he has not been regularly separated  
13 or enters any foreign armed service, except when authorized  
14 by the United States;  
15 is guilty of desertion.

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

21 (c) Punishment.--Any person found guilty of desertion or  
22 attempt to desert shall be punished, if the offense is committed  
23 in time of war, by confinement of not more than five years or  
24 such other punishment as a court-martial may direct. If the  
25 desertion or attempt to desert occurs at any other time the  
26 person shall be punished as a court-martial may direct.

27 § 6010. Absence without leave.

28 (a) Offense defined.--Any person subject to this part who,  
29 without authority:

30 (1) fails to go to his appointed place of duty at the

1 time prescribed;

2 (2) goes from that place; or

3 (3) absents himself or remains absent from his unit,  
4 organization or place of duty at which he is required to be  
5 at the time prescribed;

6 is absent without leave and shall be punished as a court-martial  
7 may direct for a military offense or may be charged with a  
8 summary offense.

9 (b) Military offense.--Absence without leave is a military  
10 offense subject to punishment as a court-martial may direct or  
11 by nonjudicial punishment under this part.

12 (c) Summary offense.--Absence without leave as defined in  
13 subsection (a) is a summary offense.

14 (d) Fines.--A person convicted of the summary offense of  
15 absence without leave shall be sentenced to pay a fine of not  
16 less than \$100 nor more than \$300 for the first offense and a  
17 fine of not less than \$300 nor more than \$1,000 for a second or  
18 subsequent offense.

19 (e) Costs.--Any person convicted of the summary offense of  
20 absence without leave shall, in addition to the fine imposed, be  
21 sentenced to pay costs as provided or prescribed by or pursuant  
22 to 42 Pa.C.S. Ch. 17 (relating to governance of the system).

23 (f) Institution of proceedings.--A person subject to this  
24 part authorized by the Adjutant General or his designee may  
25 institute summary proceedings for violation of this section by  
26 filing a complaint with an issuing authority as provided in the  
27 Pennsylvania Rules of Criminal Procedure. The alleged offense  
28 shall be deemed to have occurred in the magisterial district  
29 where the unit to which the member is assigned is located.

30 (g) Withdraw of complaint.--The person instituting summary

1 proceedings for a violation of this section or his or her  
2 superior commissioned officer may withdraw the complaint if the  
3 accused executes a military service participation agreement and  
4 pays all costs as described in subsection (e).

5 (h) Military counsel.--Military counsel shall not be  
6 assigned to represent the Commonwealth or the accused in summary  
7 proceedings brought under this section.

8 (i) Prima facie evidence.--An extract from official military  
9 records showing that the accused person was absent without leave  
10 as defined in subsection (a) shall constitute prima facie  
11 evidence of a violation of this section.

12 (j) Limitations on proceedings.--No action may be commenced  
13 for a violation of this section more than 12 months after the  
14 last date on which the person is alleged to have been absent  
15 without leave. No court-martial or nonjudicial punishment  
16 proceedings for absence without leave under this part may be  
17 instituted against a person who has been charged with the  
18 summary offense of absence without leave for the same time  
19 period. No summary offense proceedings for absence without leave  
20 under this section may be instituted against a person who has  
21 been the subject of court-martial or nonjudicial punishment for  
22 absence without leave under this part for the same time period.

23 § 6011. Missing movement.

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

28 § 6012. Contempt toward officials.

29 Any commissioned officer who uses contemptuous words against  
30 the President of the United States, Vice President of the United

States, Congress, Secretary of Defense, secretary of a military department, Secretary of Homeland Security, Governor of the Commonwealth of Pennsylvania, Adjutant General of the Commonwealth of Pennsylvania or General Assembly of the Commonwealth of Pennsylvania shall be punished as a court-martial may direct.

§ 6013. Disrespect toward superior commissioned officer.

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

§ 6014. Assaulting or willfully disobeying superior commissioned officer.

Any person subject to this part who:

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

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

shall be punished, if the offense is committed in time of war, by confinement of not more than five years or such other punishment as a court-martial may direct. If the offense is committed at any other time, the person shall be punished as a court-martial may direct.

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

Any warrant officer or enlisted member who:

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

(2) willfully disobeys the lawful order of a warrant

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

shall be punished as a court-martial may direct.

§ 6016. Failure to obey order or regulation.

Any person subject to this part who:

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

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

(3) is derelict in the performance of his duties;  
shall be punished as a court-martial may direct.

§ 6017. Cruelty and maltreatment.

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

§ 6018. Mutiny or sedition.

(a) Offense defined.--Any person subject to this part who:

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

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

(3) fails to do his utmost to prevent and suppress a

1 mutiny or sedition being committed in his presence, or fails  
2 to take all reasonable means to inform his superior  
3 commissioned officer or commanding officer of a mutiny or  
4 sedition which he knows or has reason to believe is taking  
5 place, is guilty of a failure to suppress or report a mutiny  
6 or sedition.

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

11 § 6019. Resistance, flight, breach of arrest and escape.

12 Any person subject to this part who resists apprehension,  
13 fleees from apprehension, breaks arrest or escapes from custody  
14 or confinement shall be punished as a court-marital may direct.

15 § 6020. Releasing prisoner without proper authority.

16 Any person subject to this part who, without proper  
17 authority, releases any prisoner committed to his charge or who,  
18 through neglect or design, suffers any such prisoner to escape,  
19 shall be punished as a court-martial may direct, whether or not  
20 the prisoner was committed in strict compliance with law.

21 § 6021. Unlawful detention of another.

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

25 § 6022. Noncompliance with procedural rules.

26 Any person subject to this part who:

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

30 (2) knowingly and intentionally fails to enforce or

comply with any provision of this part regulating the  
proceedings before, during or after trial of an accused;  
shall be punished as a court-martial may direct.

§ 6023. Misbehavior before enemy.

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

(1) runs away;

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

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

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

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

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

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

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

shall be punished as a court-martial may direct.

§ 6024. Subordinate compelling surrender.

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

7 § 6025. Improper use of countersign.

8 Any person subject to this part who, in time of war or  
9 national emergency, discloses the parole or countersign to any  
10 person not entitled to receive it or who gives to another who is  
11 entitled to receive and use the parole or countersign a  
12 different parole or countersign from that which, to his  
13 knowledge, he was authorized and required to give, shall be  
14 punished as a court-martial may direct.

15 § 6026. Forcing a safeguard.

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

18 § 6027. Captured or abandoned property.

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

24 (b) Offense.--Any person subject to this part who:

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

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

1 himself; or

2 (3) engages in looting or pillaging;  
3 shall be punished as a court-martial may direct.

4 § 6028. Aiding the enemy.

5 Any person subject to this part who:

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

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

12 shall be punished as a court-martial may direct.

13 § 6029. Misconduct of prisoner.

14 Any person subject to this part who, while in the hands of  
15 the enemy in time of war:

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

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

23 shall be punished as a court-martial may direct.

24 § 6030. False official statements.

25 Any person subject to this part who, with intent to deceive,  
26 signs any false record, return, regulation, order or other  
27 official document made in the line of duty, knowing the same to  
28 be false, or makes any other false official statement made in  
29 the line of duty knowing the same to be false, shall be punished  
30 as a court-martial may direct.

1 § 6031. Loss, damage, destruction or wrongful disposition of  
2 military property.

3 Any person subject to this part who, without proper  
4 authority:

5 (1) sells or otherwise disposes of;

6 (2) willfully or through neglect damages, destroys or  
7 loses; or

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

10 any military property of the United States or of the  
11 Commonwealth or any other state shall be punished as a court-  
12 martial may direct.

13 § 6032. Waste, spoilage or destruction of nonmilitary property.

14 Any person subject to this part who willfully or recklessly  
15 wastes, spoils or otherwise willfully and wrongfully destroys or  
16 damages any property other than military property belonging to  
17 the United States, the Commonwealth or any other state shall be  
18 punished as a court-martial may direct.

19 § 6033. Improper hazarding of vessel.

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

24 (b) Negligent conduct.--Any person subject to this part who  
25 negligently hazards or suffers to be hazarded any vessel of the  
26 armed forces of the United States or the State military forces  
27 shall be punished as a court-martial may direct.

28 § 6034. Drunken or reckless driving.

29 Any person subject to this part who, while in a duty status  
30 or while on a military installation, operates any vehicle while

drunk or in a reckless or wanton manner shall be punished as a court-martial may direct.

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

(a) General rule.--Except as provided in subsection (b), any person subject to this part who is found drunk on duty, sleeping on his post or who leaves his post before being relieved shall be punished as a court-martial may direct.

(b) Sentinel or look-out.--Any sentinel or look-out who is found drunk on duty, sleeping on his post or who leaves his post before being relieved shall be punished, if the offense is committed in time of war, by confinement of not more than five years or by other punishment as a court-martial may direct. If the offense is committed at any other time, the person shall be punished as a court-martial may direct.

§ 6036. Dueling.

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

§ 6037. Malingering.

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

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

(2) intentionally inflicts self-injury;  
shall be punished as a court-martial may direct.

§ 6038. Riot or breach of peace.

Any person subject to this part who causes or participates in

any riot or breach of the peace shall be punished as a court-martial may direct.

§ 6039. Provoking speeches or gestures.

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

§ 6040. Perjury.

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

§ 6041. Frauds against government.

Any person subject to this part:

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

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

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

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

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

(ii) makes any oath, affirmation or certification to

1 any fact or to any writing or other paper knowing the  
2 oath, affirmation or certification to be false;

3 (iii) forges or counterfeits any signature upon any  
4 writing or other paper or uses any such signature knowing  
5 it to be forged or counterfeited;

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

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

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

23 § 6042. Larceny and wrongful appropriation.

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

29 (1) with intent permanently to deprive or defraud  
30 another person of the use and benefit of property or to

1 appropriate the same to his own use or the use of any person  
2 other than the true owner, steals such property, is guilty of  
3 larceny; or

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

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

12 § 6043. Assault.

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

18 § 6044. Conduct unbecoming an officer and a gentleman.

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

22 § 6045. General article.

23 Though not specifically described in this part, a person  
24 subject to this title who engages in any disorder and neglect to  
25 the prejudice of good order and discipline in the State military  
26 forces or who engages in any conduct of a nature to bring  
27 discredit upon the State military forces shall be punished as a  
28 court-martial may direct. However, where an act or omission  
29 constitutes an offense that violates both this part and the  
30 criminal laws of the state where the offense occurs or criminal

1 laws of the United States, jurisdiction of the military court  
2 will be determined in accordance with section 5105(b) (relating  
3 to jurisdiction to try certain personnel) 5104 (RELATING TO  
4 SUBJECT MATTER JURISDICTION).

5 § 6046. Embezzlement.

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

11 § 6047. Purchasing and receiving military property in pawn.

12 Any person subject to this part who knowingly and willfully  
13 sells, purchases or receives in pawn or pledge any military  
14 property of the Commonwealth of Pennsylvania or of the United  
15 States in use by the Commonwealth shall be punished as a court-  
16 martial may direct.

17 § 6048. Wrongful use and possession of controlled substances.

18 (a) General rule.--Any person subject to this title who  
19 wrongfully uses, possesses, manufactures, distributes, imports  
20 into the customs territory of the United States, exports from  
21 the United States or introduces into an installation, vessel,  
22 vehicle or aircraft used by or under the control of the armed  
23 forces of the United States or the State military forces a  
24 controlled substance shall be punished as a court-martial may  
25 direct.

26 (b) Definition.--As used in this section, the following  
27 words and phrases shall have the meanings given to them in this  
28 subsection unless the context clearly indicates otherwise:

29 "Controlled substance." The term means:

30 (1) Opium, heroin, cocaine, amphetamine, lysergic acid

diethylamide, methamphetamine, phencyclidine, barbituric acid  
and marijuana and any compound or derivative of any such  
substance.

(2) Any substance not specified in paragraph (1) that is  
listed on a schedule of controlled substances prescribed by  
the President of the United States for the purposes of the  
Uniform Code of Military Justice of the armed forces of the  
United States (10 U.S.C. § 801 et seq.).

(3) Any other substance not specified in paragraph (1)  
or contained on a list prescribed by the President of the  
United States under paragraph (2) that is listed in schedules  
I, II, III, IV and V of Section 202 of the Controlled  
Substances Act (Public Law 91-513, 84 Stat. 1236).

#### CHAPTER 61

#### MISCELLANEOUS PROVISIONS

Sec.

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2 § 6101. Courts of inquiry.

3 (a) Who may convene.--Courts of inquiry to investigate any  
4 matter of concern to the State military forces may be convened  
5 by any person authorized to convene a general court-martial,  
6 whether or not the persons involved have requested such an  
7 inquiry.

8 (b) Composition.--A court of inquiry consists of three or  
9 more commissioned officers. For each court of inquiry, the  
10 convening authority shall also appoint counsel for the court.

11 (c) Parties.--Any person subject to this part whose conduct  
12 is subject to inquiry shall be designated as a party. Any person  
13 subject to this part who has a direct interest in the subject of  
14 inquiry has the right to be designated as a party upon request  
15 to the court. Any person designated as a party shall be given  
16 due notice and has the right to be present, to be represented by  
17 counsel, to cross-examine witnesses and to introduce evidence.

18 (d) Challenging member.--Members of a court of inquiry may  
19 be challenged by a party, but only for cause stated to the  
20 court.

21 (e) Oath or affirmation.--The members, counsel, reporters  
22 and interpreters of courts of inquiry shall take an oath to  
23 faithfully perform their duties.

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

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

1     (h) Record.--Each court of inquiry shall keep a record of  
2 its proceedings, which shall be authenticated by the signatures  
3 of the president and counsel for the court and forwarded to the  
4 convening authority. If the record cannot be authenticated by  
5 the president, it shall be signed by a member in lieu of the  
6 president. If the record cannot be authenticated by the counsel  
7 for the court, it shall be signed by a member in lieu of the  
8 counsel.

9     § 6102. Authority to administer oaths and to act as notary.

10     (a) Military administration and justice.--The following  
11 members of the State military forces may administer oaths for  
12 the purposes of military administration, including military  
13 justice:

14         (1) All judge advocates, including the State Judge  
15 Advocate.

16         (2) All summary courts-martial.

17         (3) All adjutants, assistant adjutants, acting adjutants  
18 and personnel adjutants.

19         (4) All other persons designated by law or by  
20 regulations of the State military forces or the armed forces  
21 of the United States.

22     (b) Performance of particular duties.--The following persons  
23 may administer oaths necessary in the performance of their  
24 duties:

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

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

29         (3) All officers designated to take a deposition.

30         (4) All persons detailed to conduct an investigation.

1       (5) All recruiting officers.

2       (6) All other persons designated by law or by  
3       regulations of the State military forces or the armed forces  
4       of the United States.

5       (c) Evidence of authority.--The signature without seal of  
6       any such person, together with the title of his office, is prima  
7       facie evidence of the person's authority.

8       § 6103. Text of part to be available.

9       (a) Explanation of certain provisions.--Provisions of this  
10      part specifically designated by regulation as required to be  
11      explained to enlisted members shall be carefully explained to  
12      each enlisted member at the time of, or within 30 days after,  
13      the member's initial entry into the State military forces and at  
14      such periodic briefings as shall be required by regulation.

15      (b) Availability of text.--A complete text of this part and  
16      of the regulations prescribed by the Governor, Adjutant General  
17      or department shall be made available to members of the State  
18      military forces, upon request.

19      § 6104. Complaints of wrongs.

20      Any member of the State military forces who believes himself  
21      wronged by a commanding officer, and who, upon due application  
22      to that commanding officer, is refused redress, may complain to  
23      any superior commissioned officer, who shall forward the  
24      complaint to the officer exercising general court-martial  
25      jurisdiction over the officer against whom it is made. The  
26      officer exercising general court-martial jurisdiction shall  
27      examine the complaint and take proper measures for redressing  
28      the wrong. The officer shall, as soon as possible, send to the  
29      Adjutant General a statement of the complaint, with a statement  
30      of the measures taken to address the wrong.

1 § 6105. Redress of damages to property.

2 (a) Assessment of damages.--Whenever complaint is made to  
3 any commanding officer that willful damage has been done to the  
4 property of any person or that the person's property has been  
5 wrongfully taken by members of the State military forces, that  
6 person may, subject to such regulations as the Governor or  
7 department may prescribe, convene a board to investigate the  
8 complaint. The board shall consist of from one to three  
9 commissioned officers and shall have for the purpose of that  
10 investigation power to summon witnesses and examine them upon  
11 oath or affirmation, to receive depositions or other documentary  
12 evidence and to assess the damages sustained against the  
13 responsible parties. The assessment of damages made by the board  
14 is subject to the approval of the commanding officer, and the  
15 amount approved by that officer shall be charged against the pay  
16 of the offenders. The order of the commanding officer directing  
17 charges herein authorized is conclusive on any disbursing  
18 officer for payment to the injured parties of the damages  
19 assessed and approved.

20 (b) Offender not known.--If the offenders cannot be  
21 ascertained, but the organization or detachment to which they  
22 belong is known, charges totaling the amount of damages assessed  
23 and approved may be made in such proportion as may be considered  
24 just upon the individual members thereof who are shown to have  
25 been present at the scene at the time the damages complained of  
26 were inflicted, as determined by the approved findings of the  
27 board.

28 § 6106. Execution of process and sentence.

29 The processes and sentences of courts-martial of the State  
30 military forces shall be executed by the civil officers

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

§ 6107. Disposition of fines and penalties.

(a) Military court or nonjudicial punishment.--Fines imposed by a military court or through imposition of nonjudicial punishment may be paid to the Commonwealth and delivered to the court or imposing officer or to a person executing their process. Fines may be collected in the following manner:

(1) By cash or money order.

(2) By retention of any pay or allowances due or to become due to the person fined.

(3) By garnishment or levy, together with costs, on the wages, goods and chattels of a person delinquent in paying a fine, as provided by law.

(b) Court-martial.--All fines and penalties imposed and collected through the sentence of courts-martial shall be forwarded to the Adjutant General, who shall deposit the same in the State Military Justice Fund of the State Treasury.

§ 6108. Liability of public officers for nonexecution of process.

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

1 of \$1,000 to the use of the Commonwealth.

2 § 6109. Compensation of court.

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

17 (b) Witnesses.--The fees and authorized travel expenses of  
18 all witnesses, experts, victims, court reporters and  
19 interpreters, as well as fees for the service of process, the  
20 costs of collection, apprehension, detention and confinement,  
21 and all other necessary expenses of prosecution and the  
22 administration of military justice not otherwise payable by any  
23 other source, shall be paid out of the State Military Justice  
24 Fund of the State Treasury.

25 § 6110. Immunity for action of military courts.

26 No accused may bring an action or proceeding against the  
27 convening authority or a member of a military court or officer  
28 or person acting under its authority or reviewing its  
29 proceedings because of the approval, imposition or execution of  
30 any sentence or the imposition or collection of a fine or

1 penalty, or the execution of any process or mandate of a  
2 military court.

3 § 6111. Delegation of authority by Governor and Adjutant  
4 General.

5 The Governor or Adjutant General may delegate any authority  
6 vested in him under this part, and provide for the subdelegation  
7 of any such authority, except the power given the Governor by  
8 section 5406 (relating to sentences of dismissal, dishonorable  
9 discharge or bad-conduct to be approved by Governor).

10 § 6112. Uniformity of interpretation.

11 This part shall be so construed as to, so far as practical,  
12 make this law uniform with the law of the United States,  
13 especially as embodied in the Uniform Code of Military Justice.

14 § 6113. State Military Justice Fund.

15 There is hereby established in the State Treasury a special  
16 nonlapsing fund designated as the State Military Justice Fund.  
17 The EXPENDITURES FROM THE fund shall be administered by the ←  
18 Adjutant General. The fund shall be used to pay expenses  
19 incurred in the administration of military justice. All fines,  
20 penalties, fees and other moneys paid to the Commonwealth under  
21 this part shall be deposited in the fund. The General Assembly  
22 may appropriate and have deposited in the fund such funds as it  
23 deems necessary to carry out the purposes of this part.

24 Section 3. All actions initiated or commenced under the  
25 provisions of Part IV of Title 51 before the effective date of  
26 this ~~act~~ SECTION shall proceed to conclusion following the law ←  
27 and procedures in effect on the date the action was initiated or  
28 commenced.

29 Section 4. This act shall take effect in ~~six months~~ ONE ←  
30 YEAR.