

1 PART II. LOUISIANA CODE OF MILITARY JUSTICE

2 SUBPART A. DEFINITIONS

3 §101. Article 1. Definitions

4 A. In this code, unless the context otherwise requires:

5 (1) "State military forces" means the national guard of the state, as defined
6 in Section 101(3), (4) and (6) of Title 32, United States Code, and any other military
7 forces organized under the laws of the state, when not in a status subjecting them to
8 jurisdiction under Chapter 47 of Title 10, United States Code.

9 (2) "Commanding officer" includes only commissioned officers.

10 (3) "Superior commissioned officer" means a commissioned officer superior
11 in rank or command.

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

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

15 (6) "Rank" means the order of precedence among members of the state
16 military forces.

17 (7) "Duty status" means duty in the state military forces under an order
18 issued by authority of law, and includes travel to and from such duty.

19 (8) "Military court" means a court-martial or a court of inquiry.

20 (9) "Military judge" means ~~an official of a general or special court-martial~~
21 ~~detailed in accordance with R.S. 29:126.~~ judge advocate designated under R.S.
22 29:126(C) who is detailed under R.S.29:126a or 130a.

23 ~~(10) "Legal officer" means any commissioned officer of the state military~~
24 ~~forces designated to perform legal duties for a command.~~

25 ~~(10)~~(10) "State judge advocate" means the commissioned officer responsible
26 for supervising the administration of military justice in the state military forces.

27 ~~(12)~~(11) "Accuser" means a person who signs and swears to charges, any
28 person who directs that charges nominally be signed and sworn to by another, and

1 any person who has an interest other than an official interest in the prosecution of the
2 accused.

3 ~~(13)~~(12) "State" means the state of Louisiana.

4 ~~(14)~~(13) "Adjutant general" means the officer ~~who, under the laws of this~~
5 ~~state, performs the duties of that office.~~ who is appointed by the governor under R.S.
6 29:10.

7 ~~(15)~~(14) "Oath" includes affirmation.

8 (15) "Record" when used in connection with the proceedings of a court-
9 martial, means:

10 (a) an official written transcript, written summary, or other writing related
11 to the proceedings; or

12 (b) an official audiotape, videotape, or similar material from which sound,
13 or sound and visual images, depicting the proceedings may be reproduced.

14 (16) "Classified information" means:

15 (a) any information or material that has been determined by an official of the
16 United States pursuant to law, an Executive Order, or regulation to require protection
17 against unauthorized disclosure for reasons of nation security; and

18 (b) any restricted data, as defined in section 11(y) of the Atomic Energy Act
19 of 1954, 42 U.S.C. 2014(y).

20 (17) "National Security" means the national defense and foreign relations of
21 the United States.

22 * * *

23 §102. Article 2. Persons subject to this code

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25 D. This code applies to all persons in custody of a federal, state, or local
26 penal institution while serving a sentence imposed by a court-martial convened under
27 this Chapter.

1 §103. Article 3. Jurisdiction to try certain personnel

2 A. Subject to Article 43 of this Chapter, a person who is in a status in which
3 the person subject to this Chapter and who committed an offense against this Chapter
4 while formerly in a status in which the person was subject to this Chapter is not
5 relieved from amenability to the jurisdiction of this Chapter for that offense by
6 reason of a termination of that person's former status.

7 ~~A.B.~~ Each person discharged from the state military forces who is later
8 charged with having fraudulently obtained his discharge is subject to trial by court-
9 martial on that charge and is after apprehension subject to this code while in the
10 custody of the military for that trial. Upon conviction of that charge he is subject to
11 trial by court-martial for all offenses under this code committed before the fraudulent
12 discharge.

13 ~~B.C.~~ No person who has deserted from the state military forces may be
14 relieved from amenability to the jurisdiction of this code by virtue of a separation
15 from any later period of service.

16 * * *

17 §106. Article 6. Judge advocates and legal officers

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19 ~~E. No person who has acted as a member, military judge, trial counsel,~~
20 ~~assistant trial counsel, defense counsel, assistant defense counsel, or investigating~~
21 ~~officer in any case may later act as staff judge advocate or legal officer to any~~
22 ~~reviewing authority upon the same case. (1) No person who, with respect to a case,~~
23 ~~serves in a capacity specified in Paragraph (2) of this Subsection may later serve as~~
24 ~~a judge advocate or legal officer to any reviewing or convening authority upon the~~
25 ~~same case.~~

26 (2) The capacities referred to in Paragraph (1) of this Subsection are, with
27 respect to the case involved, any of the following:

28 (a) Preliminary hearing officer, court member, military judge, military
29 magistrate, or appellate judge.

1 **(b) Counsel who have acted in the same case or appeared in any proceeding**
2 **before a military judge, military magistrate, preliminary hearing officer, or appellate**
3 **court.**

4 **§106a. Article 6a. Investigation and disposition of matters pertaining to the fitness**
5 **of military judges**

6 **Procedures for the investigation and disposition of charges, allegations, or**
7 **information pertaining to the fitness of a military judge or military magistrate to**
8 **perform the duties of the position involved shall be determined in accordance with**
9 **procedures or regulations prescribed in Article 36 of this Code.**

10 * * *

11 **§110. Article 10. Restraint of persons charged ~~with offenses~~**

12 ~~Any person subject to this code charged with an offense under this code may~~
13 ~~be ordered into arrest or, under extraordinary circumstances, into confinement. When~~
14 ~~any person subject to this code is placed in arrest or confinement prior to trial, within~~
15 ~~twenty-four hours of arrest or confinement, the accused shall be informed of the~~
16 ~~specific wrong of which he is accused and appointed military defense counsel.~~
17 ~~Arrest or confinement prior to trial shall not exceed seventy-two hours unless~~
18 ~~approved by a military judge in writing which is provided to the appointed military~~
19 ~~defense counsel.~~

20 **A.(1) Subject to Paragraph (2) of this Subsection, any person subject to this**
21 **Chapter who is charged with an offense under this Chapter may be ordered into**
22 **arrest or confinement as the circumstances require.**

23 **(2) When a person subject to this Chapter is charged only with an offense**
24 **that is normally tried by summary court-martial, the person ordinarily should not be**
25 **ordered into confinement.**

26 **B.(1) When a person subject to this Chapter is ordered into arrest or**
27 **confinement before trial, immediate steps shall be taken:**

28 **(a) To inform the person of the specific offense of which the person is**
29 **accused.**

1 (b) To try the person or to dismiss the charges and release the person.

2 (2) The procedures relating to referral for trial, including procedures for
3 prompt forwarding of the charges and specifications and, if applicable, the
4 preliminary hearing report submitted under Article 32 of this Code, shall be
5 determined through rules and regulations prescribed under Article 36 of this Code.

6 * * *

7 §115. Article 15. Commanding officer's nonjudicial punishment

8 * * *

9 D. The officer who imposes the punishment authorized in Subsection B, or
10 his successors in command, may, at any time, suspend probationally a reduction in
11 grade or a forfeiture imposed under Subsection B, whether or not executed. In
12 addition, he may, at any time, remit or mitigate any part or amount of the unexecuted
13 punishment and may set aside in whole or in part the punishment, whether executed
14 or unexecuted, and restore all rights, privileges and property affected. He may also
15 mitigate reduction in grade to forfeiture of pay. When mitigating:

16 (1) arrest in quarters to restriction;

17 ~~(2) confinement on bread and water or diminished rations to extra duties or~~
18 ~~restriction, or both, or~~

19 ~~(3)~~(2) extra duties to restriction; the mitigated punishment shall not be for
20 a greater period than the punishment mitigated. When mitigating reduction in grade
21 to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount
22 that could have been imposed initially under this Section by the officer who imposed
23 the punishment mitigated.

24 * * *

25 §116. Article 16. Courts-martial classified

26 A. The three kinds of courts-martial in the state military forces are:

27 (1) general courts-martial, consisting of:

28 (a) a military judge and not less than ~~six~~ eight members, subject to Article
29 29 of this Code; or

1 (b) only a military judge, if before the court is assembled the accused,
2 knowing the identity of the military judge, and after consultation with defense
3 counsel, requests, orally on the record or in writing a court composed only of a
4 military judge and the military judge approves the request.

5 (2)(a) special courts-martial, consisting of a military judge and not less than
6 six members, subject to Article 25(E)(3) and Article 29 of this Code; or

7 (b) only a military judge, ~~if before the court is assembled the accused,~~
8 ~~knowing the identity of the military judge, and after consultation with defense~~
9 ~~counsel, requests in writing a court composed only of a military judge and the~~
10 ~~military judge approves.~~ under either of the following methods:

11 (i) if the case is so referred by the convening authority, subject to Article
12 19(D) of this Code and such limitations as may be set forth in rules or regulations
13 prescribed under Article 36 of this Code.

14 (ii) if the case is referred under Subparagraph (a) of this Paragraph and,
15 before the court is assembled the accused, knowing the identity of the military judge,
16 and after consultation with defense counsel, requests, orally on the record or in
17 writing, a court composed only of a military judge and military judge approves the
18 request.

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

20 * * *

21 §118. Article 18. General courts-martial

22 A. ~~In the National Guard not in federal service, general courts-martial may~~
23 ~~be convened by the governor or the adjutant general.~~ Subject to R.S. 29:117, general
24 courts-martial have jurisdiction to try persons subject to this Chapter for any offense
25 made punishable by this Chapter and may, under such limitations as the Adjutant
26 General may prescribe, adjudge any punishment not forbidden by this Chapter.

27 B. In the National Guard not in federal service, general courts-martial may
28 be convened by the governor or the adjutant general.

- 1 ~~B.C.~~ A general court-martial may sentence to:
- 2 (1) A fine of not more than one thousand dollars.
- 3 (2) Forfeiture of pay and allowances.
- 4 (3) A reprimand.
- 5 (4) Dismissal, bad conduct discharge, or dishonorable discharge.
- 6 (5) Reduction of a noncommissioned officer to the ranks.
- 7 (6) Confinement of not more than two years.
- 8 (7) Any combination of these punishments.

9 §119. Article 19. Special courts-martial

10 A. Subject to Article 17 of this Code, special courts-martial have jurisdiction
11 to try persons subject to this Code for any offense made punishable by this Code. A
12 special courts-martial may not try a commissioned officer.

13 ~~A.B.~~ In the national guard not in federal service, the commanding officer of
14 a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops
15 are on duty, or of a brigade, regiment, wing, group, detached battalion, separate
16 squadron, or other detached command, may convene special courts-martial. Special
17 courts-martial may also be convened by superior authority.

18 ~~B. A special court-martial may not try a commissioned officer.~~

- 19 C. A special court-martial may sentence to:
- 20 (1) A fine of not more than two hundred dollars.
- 21 (2) Forfeiture of pay and allowances.
- 22 (3) A reprimand.
- 23 (4) Bad conduct discharge or dishonorable discharge.
- 24 (5) Reduction of a noncommissioned officer to the ranks.
- 25 (6) Confinement of not more than twelve months.
- 26 (7) Any combination of these punishments.

27 D. If the charges and specifications are referred to a special court-martial
28 consisting of a military judge alone under R.S. 29:116(A)(2)(b):

1 (1) The military judge may not sentence an accused to a bad-conduct
2 discharge, nor confinement of more than six months, nor forfeiture of pay for more
3 than six months.

4 (2) With the consent of the parties, the military judge may appoint a military
5 magistrate to preside over the special court-martial.

6 §120. Article 20. Summary courts-martial

7 A. Subject to R.S. 29:117, summary courts-martial have jurisdiction to try
8 persons subject to this Chapter, except commissioned officers, warrant officers, and
9 cadets, for any offense made punishable by this Chapter. No person may be brought
10 to trial before summary court-martial if he objects thereto. If objection to trial by
11 summary court-martial is made by an accused, trial may be ordered by special or
12 general court-martial as may be appropriate.

13 A.B. In the national guard not in federal service, the commanding officer of
14 a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops
15 are on duty, or of a brigade, regiment, wing, group, detached battalion, detached
16 squadron, detached company or other detachment, may convene a summary court-
17 martial consisting of one commissioned officer. The proceedings shall be informal.

18 B. Summary courts-martial shall not have jurisdiction over officers.

19 * * *

20 §125. Article 25. Who may serve as members of courts-martial

21 * * *

22 C.(1) Any enlisted member of the state military forces ~~who is not a member~~
23 ~~of the same unit as the accused is eligible to serve on general and special courts-~~
24 ~~martial for the trial of any enlisted member of the state military forces who may~~
25 ~~lawfully be brought before such courts for trial, but he shall serve as a member of a~~
26 ~~court only if, before the conclusion of a session called by the military judge under~~
27 ~~Article 39(A) prior to trial or, in the absence of such a session, before the court is~~
28 ~~assembled for the trial of the accused, the accused personally has requested in~~
29 ~~writing that enlisted members serve on it. After such a request the accused may not~~

1 ~~be tried by a general court-martial, the membership of which does not include~~
2 ~~enlisted members in a number comprising at least one-third of the total membership~~
3 ~~of the court, unless eligible members cannot be obtained on account of physical~~
4 ~~conditions or military exigencies. If such members cannot be obtained, the court~~
5 ~~may be assembled and the trial held without them, but the convening authority shall~~
6 ~~make a detailed written statement, to be appended to the record, stating why they~~
7 ~~could not be obtained.~~ is eligible to serve on a general or special court-martial for the
8 trial of any other enlisted member.

9 (2) ~~In this Section, the word "unit" means any regularly organized body of~~
10 ~~the state military forces not larger than a company, a squadron, a division of the~~
11 ~~naval militia, or a body corresponding to one of them. Before a court-martial with~~
12 ~~a military judge and members is assembled for trial, an enlisted member who is~~
13 ~~accused may personally request, orally on the record or in writing, that:~~

14 (a) the membership of the court-martial be comprised entirely of officers; or

15 (b) enlisted members comprise at least one-third of the membership of the
16 court-martial, regardless of whether enlisted members have been detailed to the
17 court-martial.

18 (3) Except as provided in Paragraph (4) of this Subsection, after such a
19 request, the accused may not be tried by a general or special court-martial if the
20 membership of the court-martial is inconsistent with the request.

21 (4) If, because of physical conditions or military exigencies, a sufficient
22 number of eligible officers or enlisted members, as the case may be, are not available
23 to carry out Paragraph (2) of this Subsection, the trial may nevertheless be held. In
24 that event, the convening authority shall make a detailed written statement of the
25 reasons for nonavailability. The statement shall be appended to the record.

26 D. The accused in a court-martial with a military judge and members may,
27 after the findings are announced and before any matter is presented in the sentencing
28 phase, request, orally on the record or in writing, sentencing by the members.

1 ~~D.E.~~(1) When it can be avoided, no person subject to this code may be tried
2 by a court-martial any member of which is junior to him in rank or grade.

3 (2) When convening a court-martial, the convening authority shall detail as
4 members thereof such members of the state military force as, in his opinion, are best
5 qualified for the duty by reason of age, education, training, experience, length of
6 service, and judicial temperament. No member of the state military force is eligible
7 to serve as a member of a general court-martial when he is the accuser or a witness
8 for the prosecution or has acted as investigating officer, preliminary hearing officer,
9 or as counsel in the same case.

10 (3) The convening authority shall detail not less than the number of members
11 necessary to impanel the court-martial under R.S. 29:129.

12 F. Before a court-martial is assembled for trial of a case, the convening
13 authority may excuse a member of the court from participating in the case. Under
14 such regulations as the adjutant general may prescribe, the convening authority may
15 delegate his authority under this Subsection to his state judge advocate or other
16 principal assistant.

17 §126. Article 26. Military judge of a general or special court-martial

18 * * *

19 B. A military judge shall be a commissioned officer of a state military force
20 who is a member of the bar of the highest court of a state, or a member of the bar of
21 a federal court, and who is certified to be qualified, by reason of education, training,
22 experience, and judicial temperament, for such duty by a the state judge advocate.

23 ~~C. The military judge of a general or special court-martial shall be~~
24 ~~designated by the state judge advocate, or his designee, for detail by the convening~~
25 ~~authority, and, unless the court-martial was convened by the governor neither the~~
26 ~~convening authority nor any member of his staff shall prepare or review any report~~
27 ~~concerning the effectiveness, fitness, or efficiency of the military judge so detailed,~~
28 ~~which relates to his performance of duty as a military judge. (1) In accordance with~~

1 rules prescribed under Article 36 of this Code, a military judge of a general or special
2 court-martial shall be designated for detail by the state judge advocate.

3 (2) A commissioned officer who is certified to be qualified for duty as a
4 military judge of a general court-martial may perform duties of a judicial or
5 nonjudicial nature other than those relating to the officer's primary duty as a military
6 judge of a general court-martial when such duties are assigned to the officer by or
7 with the approval of the state judge advocate.

8 D. No person is eligible to act as a military judge in a case if he is the
9 accuser or a witness for the prosecution or has acted as investigating officer,
10 preliminary hearing officer, or as a counsel in the same case.

11 * * *

12 F. A military judge may be detailed under Subsection A of this Section to a
13 court-martial or a proceeding under R.S. 29:130a that is convened in a different
14 armed force or another state military force, when so permitted by the state judge
15 advocate.

16 §126a. Article 126a. Military magistrates

17 A. A military magistrate shall be a commissioned officer of the state military
18 forces who:

19 (1) Is a member of the bar of a federal court or a member of the bar of the
20 highest court of a State; and

21 (2) Is certified to be qualified, by reason of education, training, experience,
22 and judicial temperament, for duty as a military magistrate by the state judge
23 advocate.

24 B. In accordance with the Federal Rules of Courts-Martial or regulations
25 prescribed by the governor or adjutant general, in addition to duties when designated
26 under R.S. 29:119 or 130a military magistrate may be assigned to perform other
27 duties of a nonjudicial nature.

1 §127. Article 27. Detail of trial counsel and defense counsel

2 A.(1) For each general and special court-martial the authority convening the
3 court shall detail trial counsel and defense counsel, and such assistants as he
4 considers appropriate. No person who has acted as investigating officer, military
5 judge, or court member in any case may act later as trial counsel, assistant trial
6 counsel, or, unless expressly requested by the accused, as defense counsel or
7 assistant defense counsel in the same case. ~~No person who has acted for the~~
8 ~~prosecution may act later in the same case for the defense, nor may any person who~~
9 ~~has acted for the defense act later in the same case for the prosecution.~~

10 (2) No person who, with respect to a case, has served as a preliminary
11 hearing officer, court member, military judge, military magistrate, or appellate judge,
12 may later serve as trial counsel, assistant trial counsel, or, unless expressly requested
13 by the accused, as defense counsel or assistant or associate defense counsel in the
14 same case. No person who has acted for the prosecution may act later in the same
15 case for the defense, nor may any person who has acted for the defense act later in
16 the same case for the prosecution.

17 * * *

18 C. ~~In the case of a special court-martial:~~

19 (1) ~~the accused shall be afforded the opportunity to be represented at the trial~~
20 ~~by counsel having the qualifications prescribed under Subsection B of this Section~~
21 ~~unless counsel having such qualifications cannot be obtained on account of physical~~
22 ~~conditions or military exigencies. If counsel having such qualifications cannot be~~
23 ~~obtained the court may be convened and the trial held by the convening authority~~
24 ~~shall make a detailed written statement, to be appended to the record stating why~~
25 ~~counsel with such qualifications could not be obtained;~~ Defense counsel and
26 assistant defense counsel detailed for a special court-martial shall have the
27 qualifications set forth in Subsection B of this Section.

28 (2) ~~if the trial counsel is qualified to act as counsel before a general court-~~
29 ~~martial, the defense counsel detailed by the convening authority must be a person~~

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 ~~similarly qualified; and~~ Trial counsel and assistant defense counsel detailed for a
2 special court-martial and assistant trial counsel detailed for a general court-martial
3 must be determined to be competent to perform such duties by the state judge
4 advocate or the Judge Advocate General of the United States Army or United States
5 Air Force.

6 (3) if the trial counsel is a member of the bar of the highest court of a state,
7 the defense counsel detailed by the convening authority must be one of the
8 foregoing.

9 §128. Article 28. Detail or employment of reporters and interpreters

10 Under such regulations ~~as the governor may prescribe~~ prescribed under
11 Article 36 of this Code, the convening authority of a general or special court-martial
12 or court of inquiry shall detail or employ qualified court reporters, who shall record
13 the proceedings of and testimony taken before that court. Under like regulations the
14 convening authority of a ~~military court~~ court-martial or court of inquiry may detail
15 or employ interpreters who shall interpret for the court.

16 §129. Article 29. ~~Absent and additional members~~ Assembly and impaneling of
17 members; detail of new members and military judges

18 A. ~~No member of a general court-martial may be absent or excused after the~~
19 ~~court has been assembled for the trial of the accused except for physical disability~~
20 ~~or as the result of a challenge or by order of the convening authority for good cause.~~
21 The military judge shall announce the assembly of a general or special court-martial
22 with members. After such a court-martial is assembled, no member may be absent,
23 unless the member is excused:

24 (1) As a result of a challenge.

25 (2) Under Subparagraph (B)(1)(b) of this Section.

26 (3) By order of the military judge or the convening authority for disability
27 or other good cause.

28 B. ~~Whenever a general court-martial, other than a general court-martial~~
29 ~~composed of a military judge only, is reduced below five members, the trial may not~~

1 ~~proceed unless the convening authority details new members sufficient in number~~
2 ~~to provide not less than five members. The trial may proceed with the new members~~
3 ~~present after the recorded evidence previously introduced before the members of the~~
4 ~~court has been read to the court in the presence of the military judge, the accused,~~
5 ~~and counsel for both sides. (1) Under rules prescribed under Article 36 of this Code,~~
6 the military judge or a general or special court-martial with members shall:

7 (a) After determination of challenges, impanel the court-martial; and

8 (b) Excuse members who, having been assembled, are not impaneled.

9 (2) In a general court-martial, the military judge shall impanel eight
10 members.

11 (3) In a special court-martial, the military judge shall impanel six members.

12 ~~C. If the military judge of a court-martial composed of a military judge only,~~
13 ~~is unable to proceed with the trial because of physical disability, as a result of a~~
14 ~~challenge, or for other good cause, the trial shall proceed, subject to any applicable~~
15 ~~conditions of Article 16(1)(b) of the Louisiana Code of Military Justice after the~~
16 ~~detail of a new military judge as if no evidence had previously been introduced~~
17 ~~unless a verbatim record of the evidence previously introduced or a stipulation~~
18 ~~thereof is read in court in the presence of the new military judge, the accused and~~
19 ~~counsel for both sides. In addition to members under Subsection B of this Section,~~
20 the military judge shall impanel alternate members, if the convening authority
21 authorizes alternate members.

22 D.(1) If, after members are impaneled, the membership of the court-martial
23 is reduced to fewer than six members with respect to a general or special court-
24 martial, the trial may not proceed unless the convening authority details new
25 members and, from among the members so detailed, the military judge impanels new
26 members sufficient to provide the membership specified in this Section.

27 E. If the military judge is unable to proceed with the trial because of
28 disability or otherwise, a new military judge shall be detailed to the court-martial.

1 F.(1) In the case of new members under Subsection D of this Section, the
2 trial may proceed with the new members present after the evidence previously
3 introduced is read or, in the case of audiotape, videotape, or similar recording, is
4 played, in the presence of the new members, the military judge, and counsel for both
5 sides.

6 (2) In the case of a new military judge under Subsection E of this Section,
7 the trial shall proceed as if no evidence had been introduced, unless the evidence
8 previously introduced is read or, in the case of audiotape, videotape, or similar
9 recording, is played, in the presence of the new military judge, the accused, and
10 counsel for both sides.

11 §130. Article 30. Charges and specifications

12 A. ~~Charges and specifications shall be signed by a person subject to this code~~
13 ~~under oath before a person authorized by this code to administer oaths and shall~~
14 ~~state:~~

15 ~~(1) that the signer has personal knowledge of, or has investigated, the matters~~
16 ~~set forth therein; and may be preferred only by a person subject to this Chapter; and~~

17 ~~(2) that they are true in fact to the best of his knowledge and belief. shall be~~
18 ~~preferred by presentment in writing, signed under oath before a commissioned~~
19 ~~officer of the state military forces who is authorized to administer oaths.~~

20 B. ~~Upon the preferring of charges, the proper authority shall take immediate~~
21 ~~steps to determine what disposition should be made thereof in the interest of justice~~
22 ~~and discipline, and the person accused shall be informed of the charges against him~~
23 ~~as soon as practicable. The writing under Subsection A of this Section shall state~~
24 ~~that:~~

25 ~~(1) The signer has personal knowledge of, or has investigated, that matter set~~
26 ~~forth in the charges and specifications; and~~

27 ~~(2) The matters set forth in the charges and specifications are true, to the best~~
28 ~~of the knowledge and belief of the signer.~~

1 C. When charges and specifications are preferred under Subsection A of this
2 Section, the proper authority shall, as soon as practicable:

3 (1) Inform the person accused of the charges and specifications.

4 (2) Determine what disposition shall be made of the charges and
5 specifications in the interest of justice and discipline.

6 §130a. Article 130a. Certain proceedings conducted before referral

7 A.(1) Proceedings may be conducted to review, or otherwise act on the
8 following matters before referral of charges and specification to court-martial for
9 trial in accordance with rules or regulations prescribed under Article 36 of this Code.

10 (a) Pre-referral investigative subpoenas.

11 (b) Pre-referral warrants or orders for electronic communications.

12 (c) Pre-referral matters referred by an appellate court.

13 (2) If any matter in a proceeding under this Section becomes a subject at
14 issue with respect to charges that have been referred to a general or special court-
15 martial, the matter shall be transferred to the military judge detailed in the court-
16 martial.

17 B. Military judges may be detailed to proceedings under Paragraph (A)(1)
18 of this Section in accordance with regulations prescribed under Article 36 of this
19 Code. A Section, other than a proceeding described in Subparagraph(b) of that
20 Paragraph, may designate a military magistrate to preside over the proceedings.

21 * * *

22 §132. Article 32. Preliminary hearing required before referral to general court-
23 martial

24 A. Preliminary Hearing Required. (1) ~~No charge or specification may be~~
25 ~~referred to a general court-martial for trial until completion of a preliminary hearing,~~
26 ~~unless such hearing is waived by the accused. (a) Except as provided in~~
27 Subparagraph (b) of this Paragraph, a preliminary hearing shall be held before
28 referral of charges and specifications for trial by general court-martial. The

1 preliminary hearing shall be conducted by an impartial hearing officer, detailed by
2 the convening authority in accordance with Subsection C of this Section.

3 (b) Under regulations prescribed under Article 36 of this Code, a preliminary
4 hearing need not be held if the accused submits a written waiver to the convening
5 authority and the convening authority determines a hearing is not required.

6 (2) The purpose of the preliminary hearing shall be limited to determining
7 the following:

8 (a) Whether or not the specification alleges an offense under this Chapter.

9 ~~(a) determining whether there is probable cause to believe an offense has~~
10 ~~been committed and the accused committed the offense;~~ (b) Whether or not there is
11 probably cause to believe that the accused committed the offense charged;

12 ~~(b) determining whether~~ (c) Whether or not the convening authority has
13 court-martial jurisdiction over the offense and the accused;

14 ~~(c) considering the form of the charges; and~~

15 ~~(d) recommending~~ A recommendation as to the disposition that should be
16 made of the case.

17 B. Hearing officer. (1) A preliminary hearing ~~conducted pursuant to~~
18 ~~Subsection A of~~ under this Section shall be conducted by an impartial hearing
19 officer, who: judge advocate certified under Article 27(B) of this code whenever
20 ~~practicable or, in exceptional circumstances in which the interests of justice warrant,~~
21 ~~by an impartial hearing officer who is not a judge advocate. If the hearing officer is~~
22 ~~not a judge advocate, a judge advocate certified under Article 27(B) shall be~~
23 ~~available to provide legal advice to the hearing officer.~~

24 (a) Whenever practicable, shall be a judge advocate who is certified under
25 Article 27(B) of this Code; or

26 (b) When is it not practicable to appoint a judge advocate because of
27 exceptional circumstances, the convening authority may detail an impartial
28 commissioned officer, who is not the accuser, as a preliminary hearing officer.

1 (2) In the case of a hearing officer under Paragraph (1) of this Subsection,
2 a judge advocate who is certified under Article 27(B) of this Code shall be available
3 to provide legal advice to the hearing officer.

4 ~~(2)(3)~~ Whenever practicable, the ~~judge advocate or other~~ hearing officer
5 ~~detailed to conduct a preliminary hearing~~ shall be equal to in grade or senior in grade
6 to the military counsel detailed to represent the accused or the government at a the
7 preliminary hearing.

8 C. Report of results to convening authority. At the conclusion of a
9 preliminary hearing conducted pursuant to Subsection A of this Section, the ~~judge~~
10 ~~advocate or other~~ hearing officer that conducted the preliminary hearing shall
11 ~~prepare a~~ submit to the convening authority a written report, accompanied by a
12 recording of the preliminary hearing under Subsection E of this Section, that
13 ~~addresses the matters specified in Paragraph (A)(2) and Subsection F of this Section.~~
14 includes the following:

15 (1) For each specification, a statement of the reasoning and conclusion of the
16 hearing officer with respect to determinations under Paragraph (A)(2) of this Section,
17 including a summary of relevant witness testimony and documentary evidence
18 presented at this hearing and any observations of the hearing officer concerning the
19 testimony of witnesses and the availability and admissibility of evidence at trial.

20 (2) Recommendations for any necessary modifications to the form of the
21 charges and specifications.

22 (3) An analysis of any additional information submitted after the hearing by
23 the parties or by a victim of an offense, that, under such rules prescribed under
24 Article 36 of this Code, is relevant to disposition under R.S. 29:130 and 134.

25 (4) A statement of action taken on evidence adduced with respect to
26 uncharged offenses, as described in Subsection F of this Section.

27 D. Rights of accused and victim. (1) The accused shall be advised of the
28 charges against him and of his right to be represented by counsel at a preliminary
29 hearing conducted pursuant to ~~Subsection A of this Section~~ Article. The accused has

1 the right to be represented at the preliminary hearing as provided in Article 38 of this
2 Code and in regulations prescribed under that Article.

3 (2) The accused may cross-examine witnesses who testify at the preliminary
4 hearing and present additional evidence ~~in defense and mitigation, relevant to the~~
5 ~~limited purposes of the hearing, as provided for in Paragraph (4) of this Subsection~~
6 ~~and Paragraph (A)(2) of this Section~~ that is relevant to the issues for determination
7 under Paragraph (A)(2) of this Article.

8 (3) A victim may not be required to testify at a preliminary hearing. A
9 victim who declines to testify shall be deemed to be not available for purposes of a
10 preliminary hearing. A declination under this Paragraph shall not serve as the sole
11 basis for ordering a deposition under Article 49 of this Code.

12 (4) The presentation of evidence and examination, including
13 cross-examination, of witnesses at a preliminary hearing shall be limited to the
14 matters relevant to ~~the limited purpose of the hearing, as provided in~~ determinations
15 under Paragraph (A)(2) of this Section Article.

16 E. Recording of preliminary hearing. A preliminary hearing under
17 Subsection A of this Section shall be recorded by a suitable recording device. The
18 victim may request the recording and shall have access to the recording ~~as prescribed~~
19 ~~by the Manual for Courts-Martial~~ under such rules prescribed under Article 36 of this
20 Code.

21 * * *

22 G. Effect of violation. The requirements of this Section are binding on all
23 persons administering this Chapter, but failure to follow the requirement does not
24 constitute jurisdictional error. A defect in a report under Subsection C of this Article
25 is not a basis for relief in the report is in substantial compliance with that Subsection.

26 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §134. Article 34. Advice ~~of state judge advocate and reference to convening~~
2 authority before referral for trial

3 A. ~~Before directing the trial of any charge by general court-martial, the~~
4 ~~convening authority shall refer it to the state judge advocate for consideration and~~
5 ~~advice. The convening authority may not refer a charge to a general court-martial~~
6 ~~for trial unless he has found that the charge alleges an offense under this code and~~
7 ~~is warranted by evidence indicated in the report of the investigation.~~ General court-
8 martial. (1) Before referral of charges and specifications to a general court-martial
9 for trial, the convening authority shall submit the matter to the state judge advocate
10 for advice, which the state judge advocate shall provide to the convening authority
11 in writing. The convening authority may not refer a specification under a charge to
12 a general court-martial unless the state judge advocate advises the convening
13 authority in writing that:

14 (a) The specification alleges an offense under this Code;

15 (b) There is probable cause to believe that the accused committed the offense
16 charged; and

17 (c) A court-martial would have jurisdiction over the accused and the offense.

18 (2) Together with the written advice provided under Paragraph (1) of this
19 Subsection, the state judge advocate shall provide a written recommendation to the
20 convening authority as to the disposition that should be made of this specification in
21 the interest of justice and discipline.

22 (3) When a convening authority makes a referral for trial by general court-
23 martial, the written advice of the state judge advocate under Paragraph (1) of this
24 Subsection and the written recommendation of the state judge advocate under
25 Paragraph (2) of this Subsection with respect to each specification shall accompany
26 the referral.

27 B. ~~If the charges or specifications are not formally correct or do not conform~~
28 ~~to the substance of the evidence contained in the report of the investigating officer,~~
29 ~~formal corrections, and such changes in the charges and specifications as are needed~~

1 ~~to make them conform to the evidence may be made.~~ Special court-martial. Before
2 referral of charges and specifications to a special court-martial for trial, the
3 convening authority shall consult a judge advocate on relevant legal issues.

4 C. Before referral for trial by general court-martial or special court-martial,
5 changes may be made to charges and specifications:

6 (1) To correct errors in form; and

7 (2) When applicable, to conform to the substance of the evidence contained
8 in a report under Subsection C of Article 32 of this Code.

9 D. In this Article, the term "referral" means the order of a convening
10 authority that charges and specifications against an accused be tried by a specified
11 court-martial.

12 §135. Article 35. Service of charges; ~~continuance~~ commencement of trial

13 A. The trial counsel to whom court-martial charges are referred for trial
14 detailed for a court-martial under Article 27 of this Code shall cause to be served
15 upon the accused a copy of the charges upon which trial is to be had and
16 specifications referred for trial. Upon a showing of good cause, the military judge
17 in a general or special court-martial may grant a continuance of any hearing in which
18 the presence of the accused is required.

19 B.(1) Subject to Paragraphs (2) and (3) of this Subsection, no trial or other
20 proceeding of a general court-martial or a special court-martial, including any
21 session under Article 39(A) of this Code may be held over the objection of the
22 accused:

23 (a) With respect to a general court-martial, from the time of service through
24 the fifth day after the date of service; of

25 (b) With respect to a special court-martial, from the time of service through
26 the third day after date of service.

27 (2) An objection under Paragraph (1) of this Subsection may be raised only
28 at the first session of the trial or other proceeding and only if the first session occurs
29 before the end of the applicable period under Subparagraphs (1)(a) or (b) of this

1 Subsection. If the first session occurs before the end of the applicable period, the
2 military judge shall, at that session, inquire as to whether the defense objects under
3 this Subsection.

4 C. Upon a showing of good cause, the military judge in a general or special
5 court-martial may grant a continuance of any hearing in which the presence of the
6 accused is required.

7 * * *

8 §138. Article 38. Duties of trial counsel and defense counsel

9 A. The trial counsel of a general or special court-martial shall prosecute in
10 the name of the state, and shall, under the direction of the court, prepare the record
11 of the proceedings.

12 B.(1) The accused has the right to be represented in his defense before a
13 general or special court-martial by ~~civilian counsel if provided by him at his own~~
14 ~~expense, or by military counsel of his own selection if reasonably available, or by the~~
15 ~~defense counsel detailed under Article 27 of this code. Should the accused have~~
16 ~~counsel of his own selection, the defense counsel, and assistant defense counsel, if~~
17 ~~any, who were detailed, shall, if the accused so desires, act as his associate counsel;~~
18 ~~otherwise they shall be excused by the military judge or by the president of a court-~~
19 ~~martial without a military judge. or at a preliminary hearing under Article 32 of this~~
20 Code as provided in this Subsection.

21 (2) The accused may be represented by civilian counsel if provided by him.

22 (3) The accused may be represented:

23 (a) By military counsel detailed under Article 27 of this Code; or

24 (b) By military counsel of his own selection if that counsel is reasonably
25 available, as determined under regulations and rules of procedure prescribed under
26 Article 36 of this Code.

27 (4) If the accused is represented by civilian counsel, the military counsel
28 detailed or selected under Paragraph (3) of this Subsection shall act as associate
29 counsel unless excused at the request of the accused.

1 (5) Except as provided under Paragraph (6) of this Subsection, if the accused
2 is represented by military counsel of his own selection under Subparagraph (3)(b) of
3 this Section, any military counsel detailed under Subparagraph (3)(a) of this Section
4 shall be excused.

5 (6) The accused is not entitled to be represented by more than one military
6 counsel. However, the person authorized under regulations prescribed under Article
7 27 of this Code to detail counsel, in his sole discretion:

8 (a) May detail additional military counsel as assistant defense counsel; and

9 (b) If the accused is represented by military counsel of his own selection
10 under Subparagraph (3)(b) of this Section, may approve a request from the accused
11 that military counsel detailed under Subparagraph (3)(a) of this Section act as
12 associate defense counsel.

13 C. In ~~every~~ any court-martial proceeding resulting in a conviction, the
14 defense counsel may; ~~in the event of conviction~~,

15 (1) forward for attachment to the record of proceedings a brief of such
16 matters he ~~feels~~ determines should be considered in behalf of the accused on review,
17 including any objection to the contents of the record which he considers appropriate.

18 (2) take other action authorized by this Code.

19 D. An assistant trial counsel of a general court-martial may, under the
20 direction of the trial counsel or when he is qualified to be a trial counsel as required
21 by ~~R.S. 29:127~~ Article 27 of this Code, perform any duty imposed by law,
22 regulation, or the custom of the service upon the trial counsel of the court. An
23 assistant trial counsel of a special court-martial may perform any duty of the trial
24 counsel.

25 E. An assistant defense counsel of a general or special court-martial may,
26 ~~under the direction of the defense counsel or when he is qualified to be the defense~~
27 ~~counsel as required by R.S. 29:127~~, perform any duty imposed by law, regulation,
28 or the custom of the service upon counsel for the accused.

1 §139. Article 39. Sessions

2 A. At any time after the service of charges which have been referred for trial
3 to a court-martial composed of a military judge and members, the military judge
4 may, subject to ~~R.S. 29:135~~ Article 35 of this Code, call the court into session
5 without the presence of the members for the purpose of:

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

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

11 (3) ~~if permitted by regulations of the governor~~, holding the arraignment and
12 receiving the pleas of the accused; ~~and~~

13 (4) conducting a sentencing proceeding and sentencing the accused; and

14 ~~(4)~~(5) performing any other procedural function which may be performed
15 by the military judge under this code or under rules prescribed pursuant to ~~R.S.~~
16 ~~29:136~~ Article 36 and which does not require the presence of the members of the
17 court.

18 ~~B. These proceedings~~ Proceedings under Subsection A of this Section shall
19 be conducted in the presence of the accused, the defense counsel, and the trial
20 counsel and shall be made a part of the record. These proceedings may be conducted
21 notwithstanding the number of members of the court and without regard to Article
22 29 of this Code. If authorized by procedures and regulations specified in Article 36
23 of this Code, and if at least one defense counsel is physically in the presence of the
24 accused, the presence required by this Subsection may otherwise be established by
25 audiovisual technology, such as video conferencing technology.

26 ~~B.C.~~ When the members of a court-martial deliberate or vote, only the
27 members may be present. All other proceedings, including any other consultation
28 of the members of the court with counsel or the military judge, shall be made a part
29 of the record and shall be in the presence of the accused, the defense counsel, the

1 trial counsel, and ~~in cases in which a military judge has been detailed to the court,~~
2 the military judge.

3 §140. Article 40. Continuances

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

7 §141. Article 41. Challenges

8 A.(1) The military judge and the members of a general court-martial may be
9 challenged by the accused or the trial counsel for cause stated to the court. The
10 military judge ~~or, if none, the court~~ shall determine the relevancy and validity of
11 challenges for cause, and may not receive a challenge to more than one person at a
12 time. Challenges by the trial counsel shall ordinarily be presented and decided
13 before those by the accused are offered.

14 (2) If exercise of a challenge for cause reduces the court below the number
15 of members required by Article 16 of this Code, all parties shall, notwithstanding
16 Article 29 of this Code, either exercise or waive any challenge for cause then
17 apparent against the remaining members of the court before additional members are
18 detailed to the court. However, peremptory challenges shall not be exercised at that
19 time.

20 B.(1) Each accused and the trial counsel ~~is~~ are entitled initially to one
21 peremptory challenge of members of the court. ~~, but the~~ The military judge may not
22 be challenged except for cause.

23 (2) If exercise of a preemptory challenge reduces the court below the number
24 of members required by Article 16 of this Code, the parties shall, notwithstanding
25 Article 29 of this Code, either exercise or waive any remaining peremptory
26 challenge, not previously waived, against the remaining members of the court before
27 additional members are detailed to the court.

28 C. Whenever additional members are detailed to the court, and after any
29 challenges for cause against such additional members are presented and decided,

1 each accused and the trial counsel are entitled to one peremptory challenge against
2 members not previously subject to peremptory challenge.

3 §142. Article 42. Oaths

4 A. Before performing their respective duties, military judges, members of
5 a general and special court-martial, trial counsel, assistant trial counsel, defense
6 counsel, assistant defense counsel, reporters and interpreters shall take an oath to
7 perform their duties faithfully. The form of the oath, the time and place of the taking
8 thereof, the manner of recording the same, and whether the oath shall be taken for
9 all cases in which these duties are to be performed or for a particular case, shall be
10 as prescribed in procedures and regulations of the governor prescribed in Article 36
11 of this Code. These regulations may provide that an oath to perform faithfully duties
12 as a military judge, trial counsel, assistant trial counsel, defense counsel or assistant
13 defense counsel may be taken at any time by any judge advocate or legal officer, or
14 other person certified to be qualified or competent for the duty, and if such an oath
15 is taken it need not again be taken at the time the judge advocate or ~~legal officer~~
16 other person is detailed to that duty.

17 B. Each witness before a court-martial shall be examined on oath.

18 §143. Article 43. Statute of limitations

19 A. A person charged with desertion, missing movement, ~~or~~ absence without
20 leave in time of war, or with aiding the enemy or with mutiny may be tried and
21 punished at any time without limitation.

22 B. Except as otherwise provided in this Article, a person charged with
23 desertion in time of peace or with the offense punishable under ~~R.S. 29:231 and~~
24 ~~29:232~~ Article 131 or Article 132 is not liable to be tried by court-martial if the
25 offense was committed more than ~~three~~ five years before the receipt of sworn
26 charges and specifications by an officer exercising summary court-martial
27 jurisdiction over the command.

28 C. Except as otherwise provided in this Section, a person charged with any
29 offense is not liable to be tried by court-martial or punished under R.S. 29:115 if the

1 offense was committed more than two years before the receipt of sworn charges and
2 specifications by an officer exercising summary court-martial jurisdiction over the
3 command or before the imposition of punishment under R.S. 29:115.

4 D.(1) Periods in which the accused is absent without authority or fleeing
5 from justice shall be excluded in computing the period of limitation prescribed in this
6 Article.

7 (2) Periods in which the accused was absent from Louisiana or in the hands
8 of the enemy shall be excluded in computing the period of limitation prescribed in
9 this Article.

10 E.(1) If charges or specifications are dismissed as defective or insufficient
11 for any cause and the period prescribed by the applicable statute of limitations has
12 expired or will expire within one hundred eighty days after date of dismissal of the
13 charges and specifications, trial and punishment under new charges and
14 specifications are not banned by the statute of limitations if the conditions in
15 Paragraph (2) of this Subsection are met.

16 (2) In order to move forward with new charges and specifications after
17 dismissal as described in Paragraph (1) of this Subsection, the new charges and
18 specifications must:

19 (a) Be received by an officer exercising summary court-martial jurisdiction
20 over the offenses within one hundred eighty days after dismissal of the charges and
21 specification; and

22 (b) Allege the same acts or omissions that were alleged in the dismissed
23 charges or specifications, or alleged acts or omissions that were included in the
24 dismissed charges or specifications.

25 F. A person charged with fraudulent enlistment or fraudulent appointment
26 under Article 83 may be tried by court-martial if the sworn charges and
27 specifications are received by an officer exercising summary court-martial
28 jurisdiction with respect to that person as follows:

1 (1) In the case of an enlisted member, during the period of the enlistment or
2 five years, whichever provides a longer period.

3 (2) In the case of an officer, during the period of the appointment or five
4 years, whichever provides a longer period.

5 G. If DNA testing implicates an identified person in the commission of an
6 offense punishable by confinement for more than one year, no statute of limitations
7 that would otherwise preclude prosecution of the offense shall preclude such
8 prosecution until a period of time following the implication of the person by DNA
9 testing has elapsed that is equal to the otherwise applicable limitation period.

10 * * *

11 §145. Article 45. Pleas of the accused

12 * * *

13 B. With respect to any charge or specification to which a plea of guilty has
14 been made by the accused and accepted by the military judge, ~~or by a court-martial~~
15 ~~without a military judge~~, a finding of guilty of the charge or specification may, ~~if~~
16 ~~permitted by regulations of the governor~~, be entered immediately without vote. This
17 finding shall constitute the finding of the court unless the plea of guilty is withdrawn
18 prior to the announcement of the sentence, in which event the proceedings shall
19 continue as though the accused had pleaded not guilty.

20 C. A variance from the requirements of this Article is harmless error if the
21 variance does not materially prejudice the substantial rights of the accused.

22 §146. Article 46. Opportunity to obtain witnesses and other evidence in trial by
23 court-martial

24 A. In a case referred for trial by court-martial, the ~~The~~ trial counsel, the
25 defense counsel, and the court-martial shall have equal opportunity to obtain
26 witnesses and other evidence in accordance with such regulations ~~as the governor~~
27 ~~may prescribe~~. prescribed in accordance of Article 36 of this Code.

28 B. Process issued in court-martial cases to compel witnesses to appear and
29 testify and to compel the production of other evidence shall be similar to that which

1 civil courts of this state having criminal jurisdiction may lawfully issue and shall run
2 to any part of the state and may be executed by civil officers of this state.

3 C. A subpoena or other process may be issued to compel a witness to appear
4 and testify:

5 (1) Before a court-martial or court of inquiry;

6 (2) At a deposition under Article 49 of this Code; or

7 (3) As otherwise authorized under this Code.

8 D.(1) A subpoena or other process may be issued to compel the production
9 of evidence:

10 (a) For a court-martial or court of inquiry;

11 (b) For a deposition under Article 49 of this Code;

12 (c) For an investigation of an offense under this Code;

13 (d) As otherwise authorized under this Code.

14 (2) An investigative subpoena under Subparagraph (1)(c) of this Section may
15 be issued before referral of charges to a court-martial only if a general court-martial
16 convening authority has authorized counsel for the government to issue such a
17 subpoena or a military judge issues such a subpoena pursuant to Article 30a of this
18 Code.

19 (3) With respect to an investigation of an offense under this Code, a military
20 judge detailed in accordance with Article 26 or 30a of this Code, may issue warrants
21 or court orders for the contents of, and records concerning, wire or electronic
22 communications in the same manner as such warrants and orders may be issued by
23 a district court of this state, subject to rules prescribed under Article 36 of this Code.

24 E. If a person requests relief from a subpoena or other process under this
25 Article on grounds that compliance is unreasonable or oppressive or is prohibited by
26 law, a military judge detailed in accordance with Article 26 or 30a of this Code shall
27 review the request and shall:

28 (1) Order that the subpoena or other process be modified or withdrawn, as
29 appropriate; or

1 (2) Order the person to comply with the subpoena or other process.

2 §147. Article 47. Refusal to appear or testify

3 A.(1) Any person not subject to this code described in Paragraph (2) of this
4 Subsection who:

5 ~~(1)~~(a) ~~has~~ Has been duly subpoenaed to appear as a witness or to produce
6 books and records before a military court or before any military or civil officer
7 designated to take a deposition to be read in evidence before such a court;

8 ~~(2)~~(b) ~~has~~ Has been duly paid or tendered the fees and mileage of a witness
9 at the rates allowed to witnesses attending the courts of the state; and

10 ~~(3)~~(c) ~~willfully~~ Willfully neglects or refuses to appear, or refuses to qualify
11 as a witness or to testify or to produce any evidence which that person may have
12 been legally subpoenaed to produce;

13 (d) Is is guilty of an offense against the state.

14 (2) For purposes of this Section, "person" shall mean the following:

15 (a) Any person not subject to this Chapter who:

16 (i) Is issued a subpoena or other process described in Subsection C of Article
17 46 of this Code; and

18 (ii) Is provided a means for reimbursement from the government for fees and
19 mileage at the rate allowed to witnesses attending the district courts of this state or,
20 in the case of extraordinary hardship, is advanced such fees and mileage.

21 (b) Any person not subject to this Code who is issued a subpoena or other
22 process described in Subsection D of Article 46 of this Code.

23 * * *

24 §149. Article 49. Depositions

25 A. ~~At any time after charges have been signed, as provided in R.S. 29:130,~~
26 ~~any party may take oral or written depositions unless the military judge or court-~~
27 ~~martial without a military judge hearing the case, or if the case is not being heard,~~
28 ~~an authority competent to convene a court-martial for the trial of those charges~~
29 ~~forbids it for good cause. If a deposition is to be taken before charges are referred~~

1 ~~for trial, such an authority may designate commissioned officers to represent the~~
2 ~~prosecution and the defense and may authorize those officers to take the deposition~~
3 ~~of any witness.~~ (1) A convening authority or a military judge may order depositions
4 at the request of any party. A deposition may be ordered only if the requesting party
5 demonstrates that, due to exceptional circumstances, it is in the best interest of
6 justice that the testimony of a prospective witness be preserved for use at a court-
7 martial, court of inquiry, or other military court or board.

8 (2) A party who requests a deposition under this Article shall give to every
9 other party reasonable notice of the time and place for the deposition. A deposition
10 under this Article shall be taken before, and authenticated by, an impartial officer,
11 as follows:

12 (a) Whenever practicable, by an impartial judge advocate certified under
13 Article 27(B) of this Code.

14 (b) In exceptional circumstances, by an impartial military or civil officer
15 authorized to administer oaths by the laws of the United States or the state of
16 Louisiana.

17 ~~B. The party at whose instance a deposition is to be taken shall give to every~~
18 ~~other party reasonable written notice of the time and place for taking the deposition.~~
19 Representation of the parties with respect to a deposition shall be by counsel detailed
20 in the same manner as trial counsel and defense counsel are detailed under Article
21 27 of this Code. In addition, the accused shall have the right to be represented by
22 civilian or military counsel in the same manner as such counsel are provided for in
23 Article 38(B) of this Code.

24 ~~C. Depositions may be taken before and authenticated by any military or~~
25 ~~civil officer authorized by the laws of this state or by the laws of the place where the~~
26 ~~deposition is taken to administer oaths.~~ A deposition order under Subsection A of
27 this Article does not control the admissibility of the deposition in the court-martial
28 or other proceeding under this Code.

1 ~~D. A duly authenticated deposition taken upon reasonable notice to the other~~
2 ~~parties, so far as otherwise admissible under the rules of evidence, may be read in~~
3 ~~evidence before any court-martial or in any proceeding before a court of inquiry, if~~
4 ~~it appears:~~

5 ~~(1) that the witness is a nonresident, or resides beyond the distance of one~~
6 ~~hundred miles from the place of trial or hearing;~~

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

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

12 §150. Article 50. Admissibility of sworn testimony from records of courts of
13 inquiry

14 A. In any case not extending to the dismissal of a commissioned officer, the
15 sworn testimony, contained in the duly authenticated record of proceedings of a court
16 of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise
17 admissible under the rules of evidence mandated by Article 36 of this Code, be read
18 in evidence by any party before a court-martial if the accused was a party before the
19 court of inquiry and if the same issue was involved or if the accused consents to the
20 introduction of such evidence.

21 B. Such testimony may be read in evidence only by the defense in cases
22 extending to the dismissal of a commissioned officer.

23 C. Such testimony may also be read in evidence before a court of inquiry or
24 a military board.

25 D. Sworn testimony that:

26 (1) Is recorded by audiotape, videotape, or similar method: and

27 (2) Is contained in the duly authenticated record of proceedings of a court of
28 inquiry;

1 (3) Is admissible before a court-martial, court of inquiry, or military board,
2 to the same extent as sworn testimony may be read in evidence before any such body
3 under Subsections A, B, or C of this Article.

4 * * *

5 §153. Article 53. ~~Court to announce action~~ Findings and sentencing
6 A ~~court-martial shall announce its findings and sentence to the parties as soon~~
7 ~~as determined:~~ A. Announcement. A court-martial shall announce its findings and
8 sentence to the parties as soon as determined.

9 B. Sentencing Generally.
10 (1) General and Special Court-Martial
11 (a) Sentencing by Military Judge. Except as provided in Subparagraph (b)
12 of this Paragraph, if the accused is convicted of an offense in a trial, the military
13 judge shall sentence the accused.

14 (b) Sentencing by Members. If the accused is convicted of an offense by
15 general or special court-martial consisting of a military judge and members and the
16 accused elects sentencing by members under Article 25 of this Code, the members
17 shall sentence the accused.

18 (c) Sentence of the Accused. The sentence determined pursuant to this
19 Paragraph constitutes the sentence of the accused.

20 (2) Summary Courts-Martial. If the accused is convicted of an offense in a
21 trial by summary court-martial, the court-martial shall sentence the accused.

22 §153a. Article 53a. Plea agreements
23 A.(1) At any time before the announcement of findings under Article 53 of
24 this Code, the convening authority and the accused may enter into a plea agreement
25 with respect to such matters as:

26 (a) The manner in which the convening authority will depose of one or more
27 charges and specifications; and

28 (b) Limitations on the sentence that may be adjudged for one or more
29 charges and specifications.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (2) The military judge of a general or special court-martial may not
2 participate in discussions between the parties concerning prospective terms and
3 conditions of a plea agreement.

4 B. The military judge of a general or special court-martial shall reject a plea
5 agreement that:

6 (1) Contains a provision that has not been accepted by both parties;

7 (2) Contains a provision that is not understood by the accused;

8 (3) Except as provided in Subsection C of this Article, contains a provision
9 for a sentence that is less than the mandatory minimum sentence applicable to an
10 offense referred to in Article 56(B)(2) of this Code;

11 (4) Is prohibited by law; or

12 (5) Is contrary to, or is inconsistent with, rules promulgated by Article 36 of
13 this Code with respect to terms, conditions, or other aspects of plea agreements.

14 C. With respect to an offense referred to in Article 56(B)(2) of this Code:

15 (1) The military judge may accept a plea agreement that provides for a
16 sentence of bad conduct discharge; and

17 (2) Upon recommendation of the trial counsel, in exchange for substantial
18 assistance by the accused in the investigation or prosecution of another person who
19 has committed an offense, the military judge may accept a plea agreement that
20 provides for a sentence that is less than the mandatory minimum sentence for the
21 offense charged.

22 D. Upon acceptance by the military judge of a general or special court-
23 martial, a plea agreement shall bind the parties and the court-martial.

24 §154. Article 54. Record of trial

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

1 ~~unable to authenticate it by reason of his death, disability, or absence. In a court-~~
2 ~~martial consisting of only a military judge the record shall be authenticated by the~~
3 ~~court reporter under the same conditions which would impose such a duty on a~~
4 ~~member under this Subparagraph. If the proceedings have resulted in an acquittal~~
5 ~~of all charges and specifications or, if not affecting a general or flag officer, in a~~
6 ~~sentence not including discharge or confinement and not in excess of that which may~~
7 ~~otherwise be adjudged by a special court-martial, the record shall contain such~~
8 ~~matters as may be prescribed by regulations of the governor. The record shall be~~
9 ~~certified by a court reporter, except that in the case of death, disability, or absence~~
10 ~~of the court reporter, the record shall be certified by an official selected under rules~~
11 ~~prescribed under Article 36 of this Code.~~

12 B. Each ~~special and~~ summary court-martial shall keep a separate record of
13 the proceedings in each case, and the record shall contain the matter and shall be
14 ~~authenticated~~ certified in the manner required by rules prescribed under Article 36
15 ~~of this Code. such regulations as the governor may prescribe.~~

16 C.(1) Except as provided in Paragraph (2) of this Subsection, the record shall
17 contain such matters as required by rules prescribed under Article 36 of this Code.

18 (2) In accordance with rules prescribed under Article 36 of this Code, a
19 complete record or proceedings and testimony shall be prepared in any case of a
20 sentence of dismissal, discharge, confinement for more than six months, or forfeiture
21 of pay for more than six months.

22 ~~C.D.~~ A copy of the record of the proceedings of each general and special
23 court-martial shall be given to the accused as soon as it is ~~authenticated~~ certified.

24 E. In the case of a general or special court-martial, upon request, a copy of
25 all prepared records of the proceedings of the court-martial shall be given to the
26 victim of the offense if the victim testified during the proceedings. The records of
27 the proceedings shall be provided without charge and as soon as the records are
28 certified. The victim shall be notified of the opportunity to receive the records of the
29 proceedings.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 360 Reengrossed

2019 Regular Session

Jones

Abstract: Provides for a revision of the Code of Military Justice to align with provisions of the U.S. Code of Military Justice.

Present law provides for the Louisiana Code of Military Justice which applies to all members of the state military forces at all times and in all places.

Proposed law retains present law and adds that this Code applies to all persons in custody of federal, state, or local penal institution while serving a sentence imposed by a court-martial.

Present law has three different courts-martial in state military forces; general, special, and summary. A traditional special court-martial requires a military judge and at least six members.

Proposed law retains present law and creates a new special court martial that only requires a judge. The sentence is limited to no punitive discharge and confinement of not more than six months.

Present law outlines who is eligible to serve as a member of a court martial. Proposed law retains present law, however, it allows any enlisted member of a state military force to serve on a general or special court martial for the trial of another enlisted member. The accused also may request orally or in writing for the membership of his court martial to either be comprised of officers entirely or enlisted members which will comprise 1/3 of the membership of the court-martial.

Proposed law creates a new military magistrate position, and provides that this person can be assigned to preside over the proposed special court martial and pre-referral program proceedings.

Proposed law adds procedures by which the fitness of a military judge or military magistrate will be determined.

Present law requires that the advice of a state judge advocate be given before directing the trial of a general court-martial.

Proposed law requires the convening authority to receive a recommendation in writing from the state judge advocate before a referral of charges and specifications to a general court martial can be made. The written recommendation must include specification of alleged offenses, probable cause, and confirmation of jurisdiction.

Proposed law allows for subpoena or other process to be issued to compel a witness to appear and testify and provides for the manner and circumstances in which those subpoenas may be issued.

Proposed law binds the convening authority, the accused, and the military judge to plea agreements once signed by the accused and provides for the circumstances in which such agreements may be entered into.

Present law requires each general court martial to keep a separate record of the proceedings in each case brought before it.

Proposed law retains present law and requires special court-martial to keep a separate record. Requires for the records to be certified by a court reporter or an official. Also, requires for a copy of all prepared records of the proceedings of a court-martial to be given to the victim if they testified at trial at no cost to the victim.

Proposed law reorganizes many provisions of present law to align it with the U.S. Code of Military Justice.

(Amends R.S. 29:101(A), 103, 106(E), 110, 115(D), 116(A), 118, 119, 120(A) and (B), 125(C) and (D), 126(B),(C), and (D), 127(A) and (C), 128, 129, 130, 132(A), (B), (C), (D), (E), and (G), 134, 135, 138, 139, 140, 141, 142, 143, 145(B), 146, 147(A), 149, 150, 153, and 154; Adds R.S. 29:102(D), 106a, 125(E) and (F), 126(F), 126a, 130a, 145(C), and 153a)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical corrections.