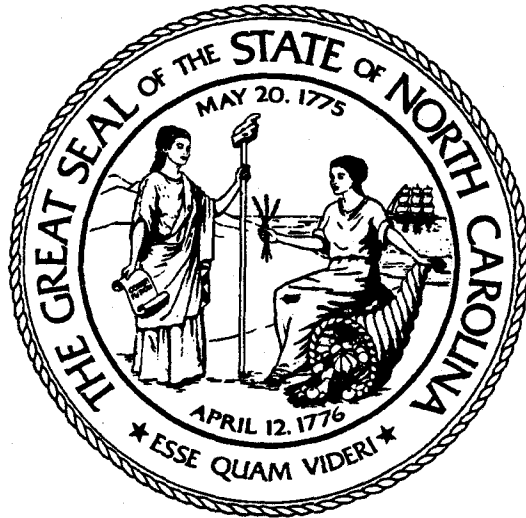


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1989

**LEGISLATIVE
RESEARCH COMMISSION**

**MILITARY JUSTICE CODE FOR
NATIONAL GUARD**



**REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1989 SESSION**

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LEGISLATIVE RESEARCH COMMISSION
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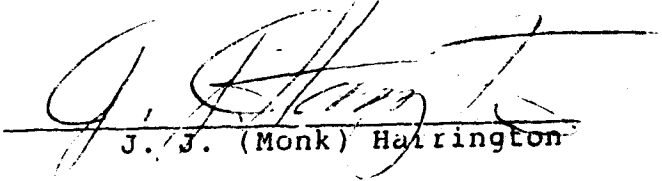
December 14, 1988

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY:

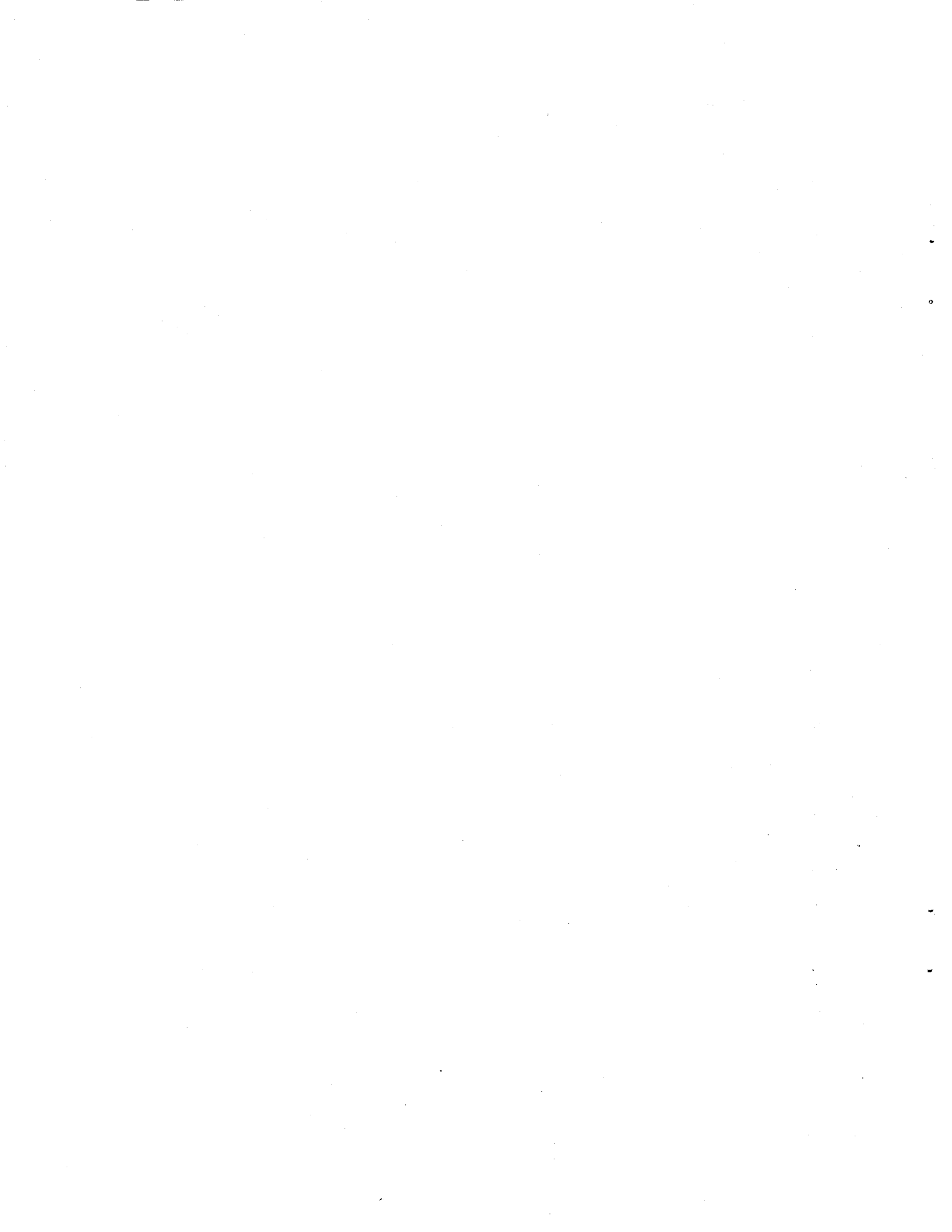
The Legislative Research Commission herewith submits to you for your consideration its final report on the Military Justice Code for the National Guard. The report was prepared by the Legislative Research Commission's Committee on the Military Code for the National Guard pursuant to Part II, Section 2.1 (20) of Chapter 873 of the 1987 Session Laws.

Respectfully submitted,


Liston B. Ramsey


J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission



1987-1988

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1987 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of the Military Justice Code for the National Guard was authorized by Part II, Section 2.1 (20) of Chapter 873 of the 1987 Session Laws (1987 Session). That act states that the Commission may consider House Bill 1265 in determining the

nature, scope and aspects of the study. The relevant portions of Chapter 873 and House Bill 1265 are included in Appendix A. The Legislative Research Commission grouped this study in its State Regulation area under the direction of Senator Henson P. Barnes. The Committee was chaired by Senator James F. Richardson and Representative Joe B. Raynor. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Military Justice Code for the National Guard Study Committee of the Legislative Research Commission met three times. At the first meeting, on December 15, 1987, the Committee reviewed House Bill 1265, which was introduced by Representative Alexander, a member of the Committee, and which served as the source legislation for the Committee. House Bill 1265 is attached to this report as part of Appendix A.

The Committee directed the staff to conduct a survey of the other states to determine how they handle military justice in their national guard components. That survey was conducted and the results are attached to this report as Appendix C.

The Committee also directed the staff to work with Representative Alexander and to revise House Bill 1265, after considering the best provisions of the statutes either proposed or enacted in other states and to prepare a new draft Military Code of Justice for consideration.

The new draft is attached to this report as Appendix D.

The Committee met on November 9, 1988, but due to a lack of a quorum, no business was transacted.

The Committee met on November 30, 1988 and considered the draft prepared for review by the staff and after deliberation recommended that the draft be forwarded to the Legislative Research Commission for transmission to the 1989 General Assembly.

FINDINGS AND RECOMMENDATIONS

The Committee finds that it is necessary to enact a Code of Military Justice for the National Guard to meet the requirements that the code of military justice provide a basis for training the national guard for wartime duty, to provide a vehicle for maintaining discipline within the national guard while it serves in "state status," and to bring the military justice code in as close uniformity with the codes governing the national guard units in the other states.

The Committee recommends the draft military justice code for the national guard, attached to this report as Appendix D, be enacted by the General Assembly.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 873
HOUSE BILL 1

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO AMEND STATUTORY LAW.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Study Commissions and Committees Act of 1987."

. . .

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1987 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

. . .

(20) Military Justice Code for National Guard (H.B. 1265-Alexander),

Sec. 2.6. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation to the 1989 General Assembly.

Sec. 2.7. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by

reference any of the substantive provisions contained in the original bill or resolution.

. . .

-----EFFECTIVE DATE

Sec. 31. This act is effective on July 1, 1987.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

1

HOUSE BILL 1265

Short Title: N.C. Uniform Code of Military Justice. (Public)

Sponsors: Representatives Alexander; Justus.

Referred to: Military and Veterans' Affairs.

May 5, 1987

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT A UNIFORM CODE OF MILITARY JUSTICE FOR THE NORTH
3 CAROLINA NATIONAL GUARD.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 127A of the General Statutes is
6 amended by adding a new Article to read:
7 "Article 17.
8 "Uniform Code of Military Justice.
9 "Part 1. General Provisions.
10 "§ 127A-210. Short title.--This Article may be referred to as
11 the 'North Carolina Code of Military Justice.'
12 "§ 127A-211. Definitions.--In this Article, unless the context
13 otherwise requires:
14 (1) 'Accuser' means a person who signs and swears to charges,
15 any person who directs that charges nominally be signed and sworn
16 to by another, and any person who has an interest other than an
17 official interest in the prosecution of the accused.
18 (2) 'Active State duty' means full-time duty in the active
19 military service of the State under an order of the Governor

1 issued under authority vested in him by law, and includes travel
2 to and from such duty.

3 (3) 'Code' means this Article.

4 (4) 'Commanding officer' includes only commissioned officers.

5 (5) 'Commissioned officer' includes a commissioned warrant
6 officer.

7 (6) 'Convening authority' includes, in addition to the person
8 who convened the court, a commissioned officer commanding for the
9 time being, or a successor in command.

10 (7) 'Duty status other than active State duty' means any one
11 of the types of duty described in G.S. 127A-29 and includes
12 travel to and from such duty.

13 (8) 'Enlisted member' means a person in an enlisted grade.

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

17 (10) 'Law officer' means an official of a general court-
18 martial detailed in accordance with G.S. 127A-254.

19 (11) 'Law specialist' means a commissioned officer of the
20 organized naval militia of the State designated for special duty
21 (law).

22 (12) 'Legal officer' means any commissioned officer of the
23 organized naval militia of the State designated to perform legal
24 duties for a command.

25 (13) 'May' is used in a permissive sense. The words 'no
26 person may . . .' mean that no person is required, authorized, or
27 permitted to do the act prescribed.

28 (14) 'Military' refers to any or all of the armed forces.

29 (15) 'Military court' means a court-martial, a court of
30 inquiry, or a provost court.

31 (16) 'Officer' means commissioned or warrant officer.

32 (17) 'Rank' means the order of precedents among members of the
33 State military forces.

34 (18) 'Shall' is used in an imperative sense.

1 (19) 'State judge advocate' means the commissioned officer
2 responsible for supervising the administration of the military
3 justice in the State military forces.

4 (20) 'State military forces' means the National Guard of the
5 State, as defined in Section 101(3) of Title 32, United States
6 Code, the organized Naval Militia of the State, and any other
7 military force organized under the laws of the State.

8 (21) 'Superior commissioned officer' means a commissioned
9 officer superior in rank or command.

10 "§ 127A-212. Persons subject to this code.--This code applies
11 to all members of the State military forces who are not in
12 federal service.

13 "§ 127A-213. Jurisdiction to try certain personnel.--(a) Each
14 person discharged from the State military forces who is later
15 charged with having fraudulently obtained his discharge is,
16 subject to G.S. 127A-277, subject to trial by court-martial on
17 that charge and is after apprehension subject to this code while
18 in the custody of the military for that trial. Upon conviction
19 of that charge he is subject to trial by court-martial for all
20 offenses under this code committed before the fraudulent
21 discharge.

22 (b) No person who has deserted from the State military forces
23 may be relieved from amenability to the jurisdiction of this code
24 by virtue of a separation from any later period of service.

25 "§ 127A-214. Dismissal of commissioned officer.--(a) If any
26 commissioned officer, dismissed by order of the Governor, makes a
27 written application for trial by court-martial, setting forth,
28 under oath, that he has been wrongfully dismissed, the Governor,
29 as soon as practicable, shall convene a general court-martial to
30 try that officer on the charges on which he was dismissed. A
31 court-martial so convened has jurisdiction to try the dismissed
32 officer on those charges, and he shall be considered to have
33 waived the right to plead any statute of limitations applicable
34 to any offense with which he is charged. The court-martial may,
35 as part of its sentence, adjudge the affirmance of the dismissal,

1 but if the court-martial acquits the accused or if the sentence
2 adjudged, as finally approved or affirmed, does not include
3 dismissal, the Adjutant General shall substitute for the
4 dismissal ordered by the Governor a form of discharge authorized
5 for administrative issue.

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

11 (c) If a discharge is substituted for a dismissal under this
12 code, the Governor alone may reappoint the officer to such
13 commissioned grade and with such rank as, in the opinion of the
14 Governor, that former officer would have attained had he not been
15 dismissed. The reappointment of such a former officer may be made
16 only if a vacancy is available under applicable tables of
17 organization. All time between the dismissal and the
18 reappointment shall be considered as actual service for all
19 purposes.

20 (d) If an officer is discharged from the organized militia by
21 administrative action or by board proceedings under law, or is
22 dropped from the rolls by order of the Governor, he has no right
23 to trial under this section.

24 "§ 127A-215. Territorial applicability of the code.--(a) This
25 code applies throughout the State. It also applies to all
26 persons otherwise subject to this code while they are serving
27 outside the State, and while they are going to and returning from
28 such service outside the State, in the same manner and to the
29 same extent as if they were serving inside the State.

30 (b) Courts-martial and courts of inquiry may be convened and
31 held in units of the State military forces while those units are
32 serving outside the State with the same jurisdiction and powers
33 as to persons subject to this code as if the proceedings were
34 held inside the State, and offenses committed outside the State
35 may be tried and punished either inside or outside the State.

1 "§ 127A-216. Judge advocates and legal officer.--(a) The
2 Governor, on the recommendation of the Adjutant General, shall
3 appoint an office of the State military forces as State Judge
4 Advocate. To be eligible for appointment, an officer must be a
5 member of the North Carolina State Bar and must have been a
6 member of the bar of the State for at least five years.

7 (b) The Adjutant General may appoint as many Assistant State
8 Judge Advocates as he considers necessary. To be eligible for
9 appointment, Assistant State Judge Advocates must be officers of
10 the State military forces and members of the bar of the highest
11 court of the State.

12 (c) The State Judge Advocate or his assistants shall make
13 frequent inspections in the field in supervision of the
14 Administration of military justice.

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

22 (e) No person who has acted as member, law officer, trial
23 counsel, assistant defense counsel, or investigating officer, or
24 who has been a witness of either the prosecution or defense, in
25 any case may later act as staff judge advocate or legal officer
26 to any reviewing authority upon the same case.

27 "§ 127A-217 through 127A-219. Reserved for future
28 codification.

29 "Part 2. Apprehension and Restraint.

30 "§ 127A-220. Apprehension.--(a) Apprehension is the taking of
31 a person into custody.

32 (b) Any person authorized by this code, or by regulations
33 issued under it, to apprehend persons subject to this code, any
34 marshal of a court-martial appointed pursuant to the provisions
35 of this code, and any peace officer authorized to do so by law,

1 may do so upon reasonable belief that an offense has been
2 committed and that the person apprehended committed it.

3 (c) Commissioned officers, warrant officers, petty officers
4 and noncommissioned officers have authority to quell quarrels,
5 frays, and disorders among persons subject to this code and to
6 apprehend persons subject to this code who take part therein.

7 "§ 127A-221. Apprehension of deserters.--Any civil officer
8 having authority to apprehend offenders under the laws of the
9 United States or of a state, territory, commonwealth, or
10 possession, or the District of Columbia may summarily apprehend a
11 deserter from the State military forces and deliver him into the
12 custody of the State military forces. If an offender is
13 apprehended outside the State, his return to the area must be in
14 accordance with normal extradition procedures or reciprocal
15 agreement.

16 "§ 127A-222. Imposition of restraint.--(a) Arrest is the
17 restraint of a person by an order, not imposed as a punishment
18 for an offense, directing him to remain within certain specified
19 limits. Confinement is the physical restraint of a person.

20 (b) An enlisted member may be ordered into arrest or
21 confinement by any commissioned officer by an order, oral or
22 written, delivered in person or through other persons subject to
23 this code or through any person authorized by this code to
24 apprehend persons. A commanding officer may authorize warrant
25 officers, petty officers or noncommissioned officers to order
26 enlisted members of his command or subject to his authority into
27 arrest or confinement.

28 (c) A commissioned officer or a warrant officer may be ordered
29 apprehended or into arrest or confinement only by a commanding
30 officer to whose authority he is subject, by an order, oral or
31 written, delivered in person or by another commissioned officer.
32 The authority to order such persons apprehended or into arrest or
33 confinement may not be delegated.

34 (d) No person may be ordered apprehended or into arrest or
35 confinement except for probable cause.

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

4 "§ 127A-223. Restraint of persons charged with offenses.--Any
5 person subject to this code charged with an offense under this
6 code shall be ordered into arrest or confinement, as
7 circumstances may require; but when charged only with an offense
8 normally tried by a summary court-martial, such person shall not
9 ordinarily be placed in confinement. When any person subject to
10 this code is placed in arrest or confinement prior to trial,
11 immediate steps shall be taken to inform him of the specific
12 wrong of which he is accused and to try him or to dismiss the
13 charge and release him.

14 "§ 127A-224. Confinement in jails.--Persons confined other
15 than in a guard house, whether before, during or after trial by a
16 military court, shall be confined in civil jails, penitentiaries,
17 or prisons designated by the Governor or by such person as he may
18 authorize to act.

19 "§ 127A-225. Reports and receiving of prisoners.--(a) No
20 provost marshal, commander of a guard, master-at-arms, warden,
21 keeper, or officer of a city or county jail or any other jail,
22 penitentiary, or prison designated under G.S. 127A-224, may
23 refuse to receive or keep any prisoner committed to his charge,
24 when the committing person furnishes a statement, signed by him,
25 of the offense charged against the prisoner.

26 (b) Every commander of a guard, master-at-arms, warden,
27 keeper, or officer of a city or county jail or of any other jail,
28 penitentiary, or prison designated under G.S. 127A-224, to whose
29 charge a prisoner is committed shall, within 24 hours after that
30 commitment or as soon as he is relieved from guard, report to the
31 commanding officer of the prisoner the name of the prisoner, the
32 offense charged against him, and the name of the person who
33 ordered or authorized the commitment.

34 "§ 127A-226. Punishment prohibited before trial.--Subject to
35 G.S. 127A-292, no person, while being held for trial or the

1 result of trial, may be subjected to punishment or penalty other
2 than arrest or confinement upon the charges pending against him,
3 nor shall the arrest or confinement imposed upon him be any more
4 rigorous than the circumstances require to insure his presence,
5 but he may be subjected to minor punishment during that period
6 for infractions of discipline.

7 "§ 127A-227. Delivery of offenders to civil authorities.--(a)
8 Under such regulations as may be prescribed under this code a
9 person subject to this code who is on active State duty who is
10 accused of an offense against civil authority may be delivered,
11 upon request, to the civil authority for trial.

12 (b) When delivery under G.S. 127A-227 is made to any civil
13 authority of a person undergoing sentence of a court-martial, the
14 delivery, if followed by conviction in a civil tribunal,
15 interrupts the execution of the sentence of the court-martial,
16 and the offender after having answered to the civil authorities
17 for his offense shall, upon the request of competent military
18 authority, be returned to military custody for the completion of
19 his sentence.

20 "§ 127A-228 through 127A-229. Reserved for future
21 codification.

22 "Part 3. Non-judicial Punishment.

23 "§ 127A-230. Commanding officer's non-judicial punishment.--

24 (a) Under such regulation as the Governor may prescribe any
25 commanding officer may, in addition to or in lieu of admonition
26 or reprimand, impose one of the following disciplinary
27 punishments for minor offenses without the intervention of a
28 court-martial:

- 29 (1) upon officer of his command:
- 30 a. withholding of privileges for not more than
 - 31 two consecutive weeks;
 - 32 b. restriction to certain specified limits, with
 - 33 or without suspension from duty, for not more
 - 34 than two consecutive weeks; or

- 1 c. if imposed by the Governor, the commanding
2 officer of a force of the State military
3 forces, or the commanding general of a
4 division, a fine or forfeiture of pay and
5 allowances of not more than seventy-five
6 dollars (\$75.00);
- 7 (2) upon other military personnel of his command:
- 8 a. withholding of privileges for not more than
9 two consecutive weeks;
- 10 b. restriction to certain specific limits, with
11 or without suspension from duty, for not more
12 than two consecutive weeks;
- 13 c. extra duties for not more than 14 days, which
14 need not be consecutive, and for not more than
15 two hours per day, holidays included;
- 16 d. reduction to next inferior grade if the grade
17 from which demoted was established by the
18 command or an equivalent or lower command;
- 19 e. if imposed upon a person attached to or
20 embarked in a vessel, confinement for not more
21 than seven consecutive days; or
- 22 f. if imposed by an officer exercising special
23 court-martial jurisdiction over the offender,
24 a fine or forfeiture of pay and allowances of
25 not more than ten dollars (\$10.00).

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

30 (c) An officer in charge may, for minor offenses, impose on
31 enlisted members assigned to the unit of which he is in charge,
32 such of the punishments authorized to be imposed by commanding
33 officers as the Governor may by regulation specifically
34 prescribe, as provided in subsections (a) and (b) of this
35 section.

1 (d) A person punished under this section who considers his
2 punishment unjust or disproportionate to the offense may, through
3 the proper channel, appeal to the next superior authority. The
4 appeal shall be promptly forwarded and decided, but the person
5 punished may in the meantime be required to undergo the
6 punishment adjudged. The officer who imposes the punishment, his
7 successor in command, and superior authority may suspend, set
8 aside, or remit any part or amount of the punishment and restore
9 all rights, privileges, and property affected.

10 (e) The imposition and enforcement of disciplinary punishment
11 under this section for any act or omission is not a bar to trial
12 by court-martial for a serious crime or offense growing out of
13 the same act or omission and not properly punishable under this
14 section; but the fact that a disciplinary punishment has been
15 enforced may be shown by the accused upon trial, and when so
16 shown shall be considered in determining the measure of
17 punishment to be adjudged in the event of a finding of guilty.

18 (f) Whenever a punishment of forfeiture of pay and allowances
19 is imposed under this section, the forfeiture may apply to pay or
20 allowances accruing on or after the date that punishment is
21 imposed and to any pay and allowances accrued before that date.

22 "§ 127A-231 through 127A-239. Reserved for future
23 codification.

24 "Part 4. Courts-Martial Jurisdiction.

25 "§ 127-240. Courts-martial of State military forces not in
26 federal service; composition; jurisdiction; powers and
27 proceedings.--(a) In the State military forces not in federal
28 service, there are general, special, and summary courts-martial
29 constituted like similar courts of the armed forces of the United
30 States. They have the jurisdiction and powers, except as to
31 punishments, and shall follow the forms and procedures provided
32 for those courts.

33 (b) The three kinds of courts-martial are:

34 (1) general courts-martial, consisting of a law officer
35 and not less than five members;

- 1 (2) special courts-martial, consisting of not less than
2 three members; and
3 (3) summary courts-martial, consisting of one
4 commissioned officer.

5 "§ 127A-241. Jurisdiction of courts-martial in general.--Each
6 force of the State military forces has court-martial jurisdiction
7 over all persons subject to this code. The exercise of
8 jurisdiction by one force over personnel of another force shall
9 be in accordance with regulations prescribed by the Governor.

10 "§ 127A-242. Jurisdiction of general courts-martial.--Subject
11 to G.S. 127A-241, general courts-martial have jurisdiction to try
12 persons subject to this code for any offense made punishable by
13 this code and may, under such limitation as the Governor may
14 prescribe, adjudge any of the following punishments:

- 15 (1) a fine of not more than two hundred dollars
16 (\$200.00);
17 (2) forfeiture of pay and allowances;
18 (3) a reprimand;
19 (4) dismissal or dishonorable discharge;
20 (5) reduction of a noncommissioned officer to the
21 ranks; or
22 (6) any combination of these punishments.

23 "§ 127A-243. Jurisdiction of special courts-martial.--Subject
24 to G.S. 127A-241, special courts-martial have jurisdiction to try
25 persons subject to this code for any offense for which they may
26 be punished under this code. A special court-martial has the
27 same powers of punishment as a general court-martial, except that
28 a fine imposed by a special court-martial may not be more than
29 one hundred dollars (\$100.00) for a single offense.

30 "§ 127A-244. Jurisdiction of summary courts-martial.--(a)
31 Subject to G.S. 127A-241, summary courts-martial have
32 jurisdiction to try persons subject to this code, except officers
33 for any offense made punishable by this code.

34 (b) No person with respect to whom summary courts-martial have
35 jurisdiction may be brought to trial before a summary court-

1 martial if he objects thereto, unless under G.S. 127A-230 he has
2 been permitted and has elected to refuse punishment under that
3 section. If objection to trial by summary court-martial is made
4 by an accused who has not been permitted to refuse punishment
5 under G.S. 127A-230, trial shall be ordered by special or general
6 court-martial, as may be appropriate.

7 (c) A summary court-martial may sentence to a fine of not more
8 then twenty-five dollars (\$25.00) for a single offense, to
9 forfeiture of pay and allowances, and to reduction of a
10 noncommissioned officer to the ranks.

11 "§ 127A-245. Sentences of dismissal or dishonorable discharge
12 to be approved by the Governor.--In the organized militia not in
13 federal service, no sentence of dismissal or dishonorable
14 discharge may be executed until it is approved by the Governor.

15 "§ 127A-246. Complete record of proceedings and testimony if
16 dishonorable discharge, bad conduct discharge or dismissal
17 adjudged.--A dishonorable discharge, bad conduct discharge or
18 dismissal may not be adjudged by any court-martial unless a
19 complete record of the proceedings and testimony before the court
20 has been made.

21 "§ 127A-247. Confinement instead of fine.--In the State
22 military forces not in federal service, a court-martial may,
23 instead of imposing a fine, sentence to confinement for not more
24 than one day for each dollar of the authorized fine.

25 "§ 127A-248 through 127A-249. Reserved for future
26 codification.

27 "Part 5. Appointment and Composition
28 of Courts-Martial.

29 "§ 127A-250. Who may convene general courts-martial.--In the
30 State military forces not in federal service, general courts-
31 martial may be convened by the President or by the Governor, or
32 by the commanding general of the National Guard of the District
33 of Columbia.

34 "§ 127A-251. Special courts-martial of State military forces
35 not in federal service-who may convene.--(a) In the State

1 military forces not in federal service, the commanding officer of
2 a garrison, fort, post, camp, air base, auxiliary air base, or
3 other place where troops are on duty, or of a brigade, regiment,
4 wing, group, detached battalion, separate squadron, or other
5 detached command, may convene special courts-martial. Special
6 courts-martial may also be convened by superior authority. When
7 any such officer is an accuser, the court shall be convened by
8 superior competent authority.

9 (b) A special court-martial may not try a commissioned
10 officer.

11 "§ 127A-252. Summary courts-martial of State military forces
12 not in federal service-who may convene.--(a) In the State
13 military forces not in federal service, the commanding officer of
14 a garrison, fort, post, camp, air base, auxiliary air base, or
15 other place where troops are on duty, or of a regiment, wing,
16 group, detached battalion, detached squadron, detached company,
17 or other detachment, may convene a summary court-martial
18 consisting of one commissioned officer. The proceedings shall be
19 informal.

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

26 "§ 127A-253. Who may serve on courts-martial.--(a) Any
27 commissioned officer of or on duty with the State Military forces
28 is eligible to serve on all courts-martial for the trial of any
29 person who may lawfully be brought before such courts for trial.

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

34 (c) (1) Any enlisted member of the State military forces
35 who is not a member of the same unit as the accused

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

20 (2) In this section, the word 'unit' means any
21 regularly organized body of the State military
22 forces not larger than a company, a squadron, a
23 division of the naval militia, or a body
24 corresponding to one of them.

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

28 (2) When convening a court-martial, the convening
29 authority shall detail as members thereof such
30 members as, in his opinion, are best qualified for
31 the duty by reason of age, education, training,
32 experience, length of service, and judicial
33 temperament. No member is eligible to serve as a
34 member of a general or special court-martial when
35 he is the accuser or a witness for the prosecution

1 or has acted as investigating officer or as counsel
2 in the same case. If within the command of the
3 convening authority there is present and not
4 otherwise disqualified a commissioned officer who
5 is a member of the State Bar of North Carolina and
6 of appropriate rank and grade, the convening
7 authority shall appoint him as president of a
8 special court-martial. Although this requirement
9 is binding on the convening authority, failure to
10 meet it in any case does not divest a military
11 court of jurisdiction.

12 "§ 127A-254. Law officer of a general court-martial.--(a) The
13 authority convening a general court-martial shall detail as law
14 officer thereof a commissioned officer who is a member of the
15 North Carolina State Bar, or a member of the bar of a federal
16 court, and who is certified to be qualified for such duty by the
17 State Judge Advocate. No person is eligible to act as law
18 officer in a case if he is the accuser or a witness for the
19 prosecution or has acted as investigating officer or as counsel.

20 (b) The law officer may not consult with the members of the
21 court, other than on the form of the findings as provided in G.S.
22 127A-273, except in the presence of the accused, trial counsel,
23 and defense counsel, nor may he vote with the members of the
24 court.

25 "§ 127A-255. Detail of trial counsel and defense counsel.--(a)
26 For each general and special court-martial the authority
27 convening the court shall detail trial counsel and defense
28 counsel, and such assistants as he considers appropriate. No
29 person who has acted as investigating officer, law officer, or
30 court member in any case may act later as trial counsel,
31 assistant trial counsel, or, unless expressly requested by the
32 accused, as defense counsel or assistant defense counsel in the
33 same case. No person who has acted for the prosecution may act
34 later in the same case for the defense, nor may any person who

1 has acted for the defense act later in the same case for the
2 prosecution.

3 (b) Trial counsel or defense counsel detailed for a general
4 court-martial:

5 (1) must be a person who is a member of the North
6 Carolina State Bar, or a member of the bar of a
7 federal court; and

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

10 (c) In the case of a special court-martial:

11 (1) if the trial counsel is qualified to act as counsel
12 before a general court-martial, the defense counsel
13 detailed by the convening authority must be a
14 person similarly qualified; and

15 (2) if the trial counsel is a member of the State Bar
16 of North Carolina, the defense counsel detailed by
17 the convening authority must be one of the
18 foregoing.

19 "§ 127A-256. Detail or employment of reporters and
20 interpreters.--Under such regulations as the Governor may
21 prescribe, the convening authority of a general or special court-
22 martial or court of inquiry shall detail or employ qualified
23 court reporters, who shall record the proceedings of any
24 testimony taken before that court. Under like regulations the
25 convening authority of military court may detail or employ
26 interpreters who shall interpret for the court.

27 "§ 127A-257. Absent and additional members.--(a) No member of
28 a general or special court-martial may be absent or excused after
29 the accused has been arraigned except for physical disability or
30 as the result of a challenge or by order of the convening
31 authority for good cause.

32 (b) Whenever a general court-martial is reduced below five
33 members, the trial may not proceed unless the convening authority
34 details new members sufficient in number to provide not less than
35 five members. When the new members have been sworn, the trial

1 may proceed after the recorded testimony of each witness
2 previously examined has been read to the court in the presence of
3 the law officer, the accused, and counsel.

4 (c) Whenever a special court-martial is reduced below three
5 members, the trial may not proceed unless the convening authority
6 details new members sufficient in number to provide not less than
7 three members. When the new members have been sworn, the trial
8 shall proceed as if no evidence has previously been introduced,
9 unless a verbatim record of the testimony of previously examined
10 witnesses or a stipulation thereof is read to the court in the
11 presence of the accused and counsel.

12 "§ 127A-258 through 127A-259. Reserved for future
13 codification.

14 "Part 6. Pre-Trial Procedure.

15 "§ 127A-260. Charges and specifications.--(a) Charges and
16 specifications shall be signed by a person subject to this code
17 under oath before a person authorized by this code to administer
18 oaths and shall state:

19 (1) that the signer has personal knowledge of, or has
20 investigated, the matters set forth therein; and
21 (2) that they are true in fact to the best of his
22 knowledge and belief.

23 (b) Upon the preferring of charges, the proper authority shall
24 take immediate steps to determine what disposition should be made
25 thereof in the interest of justice and discipline, and the person
26 accused shall be informed of the charges against him as soon as
27 practicable.

28 "§ 127A-261. Compulsory self-incrimination prohibited.--(a)
29 No person subject to this code may compel any person to
30 incriminate himself or to answer any questions the answer to
31 which may tend to incriminate him.

32 (b) No person subject to this code may interrogate, or request
33 any statement from, an accused or a person suspected of an
34 offense without first informing him of the nature of the
35 accusation and advising him that he does not have to make any

1 statement regarding the offense of which he is accused or
2 suspected and that any statement made by him may be used as
3 evidence against him in a trial by court-martial.

4 (c) No person subject to this code may compel any person to
5 make a statement or produce evidence before any military tribunal
6 if the statement or evidence is not material to the issue and may
7 tend to degrade him.

8 (d) No statement obtained from any person in violation of this
9 section, or through the use of coercion, unlawful influence, or
10 unlawful inducement may be received in evidence against him in a
11 trial by court-martial.

12 "§ 127A-262. Investigation.--(a) No charge or specification
13 may be referred to a general court-martial for trial until a
14 thorough and impartial investigation of all the matters set forth
15 therein has been made. This investigation shall include inquiry
16 as to the truth of the matter set forth in the charges,
17 consideration of the form of charges, and a recommendation as to
18 the disposition which should be made of the case in the interest
19 of justice and discipline.

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

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

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

14 "§ 127A-263. Forwarding of charges.--When a person is held for
15 trial by general court-martial the commanding officer shall,
16 within eight days after the accused is ordered into arrest or
17 confinement, if practicable, forward the charges, together with
18 the investigation and allied papers, to the Governor. If that is
19 not practicable, he shall report in writing to the Governor the
20 reasons for delay.

21 "§ 127A-264. Advice of State Judge Advocate and reference for
22 trial.--(a) Before directing the trial of any charge by general
23 court-martial, the convening authority shall refer it to the
24 State Judge Advocate for consideration and advice. The convening
25 authority may not refer a charge to a general court-martial for
26 trial unless he has found that the charge alleges an offense
27 under this code and is warranted by evidence indicated in the
28 report of the investigation.

29 (b) If the charges or specifications are not formally correct
30 or do not conform to the substance of the evidence contained in
31 the report of the investigating officer, formal corrections, and
32 such changes in the charges and specifications as are needed to
33 make them conform to the evidence may be made.

34 "§ 127A-265. Service of charges.--The trial counsel to whom
35 court-martial charges are referred for trial shall cause to be

1 served upon the accused a copy of the charges upon which trial is
2 to be had. In time of peace no person may, against his
3 objection, be brought to trial before a general court-martial
4 within a period of five days after the service of the charges
5 upon him, or before a special court-martial within a period of
6 three days after the service of the charges upon him.

7 "§ 127A-266 through 127A-269. Reserved for future
8 codification.

9 "Part 7. Trial Procedure.

10 "§ 127A-270. Governor may prescribe rules.--The procedure,
11 including modes of proof, in cases before military courts and
12 other military tribunals may be prescribed by the Governor by
13 regulations, which shall, so far as he considers practicable,
14 apply the principles of law and the rules of evidence generally
15 recognized in the trial of criminal cases in the courts of the
16 State, but which may not be contrary to or inconsistent with this
17 code.

18 "§ 127A-271. Unlawful influencing action of court.--No
19 authority convening a general, special, or summary court-martial
20 nor any other commanding officer, or officer serving on the staff
21 thereof, may ensure, reprimand, or admonish the court or any
22 member, law officer, or counsel thereof, with respect to the
23 findings or sentence adjudged by the court, or with respect to
24 any other exercise of its or his functions in the conduct of the
25 proceeding. No person subject to this code may attempt to coerce
26 or, by any unauthorized means, influence the action of the court-
27 martial or any other military tribunal or any member thereof, in
28 reaching the findings or sentence in any case, or the action of
29 any convening, approving, or reviewing authority with respect to
30 his judicial acts.

31 "§ 127A-272. Duties of trial counsel and defense counsel.--(a)
32 The trial counsel of a general or special court-martial shall
33 prosecute in the name of the State, and shall, under the
34 direction of the court, prepare the record of the proceedings.

1 (b) The accused has the right to be represented in his defense
2 before a general or special court-martial by civilian counsel if
3 provided by him, or by military counsel of his own selection if
4 reasonably available, or by the defense counsel detailed under
5 G.S. 127A-255. Should the accused have counsel of his own
6 selection, the defense counsel, and assistant defense counsel, if
7 any, who were detailed, shall, if the accused so desires, act as
8 his associate counsel; otherwise they shall be excused by the
9 president of the court.

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

16 (d) An assistant trial counsel of a general court-martial may,
17 under the direction of the trial counsel or when he is qualified
18 to be a trial counsel as required by G.S. 127A-255, perform any
19 duty imposed by law, regulation, or the custom of the service
20 upon the trial counsel of the court. An assistant trial counsel
21 of a special court-martial may perform any duty of the trial
22 counsel.

23 (e) An assistant defense counsel of a general or special
24 court-martial may, under the direction of the defense counsel or
25 when he is qualified to be the defense counsel as required by
26 G.S. 127A-255, perform any duty imposed by law, regulation, or
27 the custom of the service upon counsel for the accused.

28 "§ 127A-273. Sessions.--Whenever a general or special court-
29 martial deliberates or votes, only the members of the court may
30 be present. After a general court-martial has finally voted on
31 the findings, the court may request the law officer and the
32 reporter to appear before the court to put the findings in proper
33 form, and those proceedings shall be on the record. All other
34 proceedings, including any other consultation of the court with
35 counsel or the law officer, shall be made a part of the record

1 and shall be in the presence of the accused, the defense counsel,
2 the trial counsel, and in general court-martial cases, the law
3 officer.

4 "§ 127A-274. Continuances.--A court-martial may, for
5 reasonable cause, grant a continuance to any party for such time,
6 and as often, as may appear to be just.

7 "§ 127A-275. Challenges.--(a) Members of a general or special
8 court-martial and the law officer of a general court-martial may
9 be challenged by the accused or the trial counsel for cause
10 stated to the court. The court shall determine the relevancy and
11 validity of challenges for cause, and may not receive a challenge
12 to more than one person at a time. Challenges by the trial
13 counsel shall ordinarily be presented and decided before those by
14 the accused are offered.

15 (b) Each accused and the trial counsel is entitled to one
16 peremptory challenge, but the law officer may not be challenged
17 except for cause.

18 "§ 127A-276. Oaths.--(a) The law officer, interpreters, and,
19 in general and special courts-martial, members, trial counsel,
20 assistant trial counsel, defense counsel, assistant defense
21 counsel, and reporters shall take an oath or affirmation in the
22 presence of the accused to perform their duties faithfully.

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

25 "§ 127A-277. Statute of limitations.--(a) A person charged
26 with desertion or absence without leave in time of war, or with
27 aiding the enemy or with mutiny may be tried and punished at any
28 time without limitation.

29 (b) Except as otherwise provided in this section, a person
30 charged with desertion in time of peace or with the offense
31 punishable under G.S. 127A-360 is not liable to be tried by
32 court-martial if the offense was committed more than three years
33 before the receipt of sworn charges and specifications by an
34 officer exercising summary court-martial jurisdiction over the
35 command.

1 (c) Except as otherwise provided in this section, a person
2 charged with any offense is not liable to be tried by court-
3 martial or punished under G.S. 127A-230 if the offense was
4 committed more than two years before the receipt of sworn
5 charges and specifications by an officer exercising summary
6 court-martial jurisdiction over the command or before the
7 imposition of punishment under G.S. 127A-230.

8 (d) Periods in which the accused was absent from territory in
9 which the State has the authority to apprehend him, or in the
10 custody of civil authorities, or in the hands of the enemy, shall
11 be excluded in computing the period of limitations prescribed in
12 this section.

13 "§ 127A-278. Former jeopardy.--(a) No person may, without his
14 consent, be tried a second time in any military court of the
15 State for the same offense.

16 (b) No proceeding in which an accused has been found guilty by
17 a court-martial upon any charge or specification is a trial in
18 the sense of this section until the finding of guilty has become
19 final after review of the case has been fully completed.

20 (c) A proceeding which, after the introduction of evidence but
21 before a finding, is dismissed or terminated by the convening
22 authority or on motion of the prosecution for failure of
23 available evidence or witnesses without any fault of the accused
24 is a trial in the sense of this section.

25 "§ 127A-279. Pleas of the accused.--If an accused arraigned
26 before a court-martial makes an irregular pleading, or after a
27 plea of guilty sets up matter inconsistent with the plea, or if
28 it appears that he has entered the plea of guilty improvidently
29 or through lack of understanding of its meaning and effect, or if
30 he fails or refuses to plead, a plea of not guilty shall be
31 entered in the record, and the court shall proceed as though he
32 had pleaded not guilty.

33 "§ 127A-280. Opportunity to obtain witnesses and other
34 evidence.--(a) The trial counsel, the defense counsel, and the
35 court-martial shall have equal opportunity to obtain witnesses

1 and other evidence in accordance with such regulations as the
2 Governor may prescribe.

3 (b) The president of a court-martial or a summary court
4 officer may:

- 5 (1) issue a warrant for the arrest of any accused
6 person who having been served with a warrant and a
7 copy of the charges, disobeys a written order by
8 the convening authority to appear before the court;
- 9 (2) issue subpoenas duces tecum and other subpoenas;
- 10 (3) enforce by attachment the attendance of witnesses
11 and the production of books and papers; and
- 12 (4) sentence for refusal to be sworn or to answer, as
13 provided in actions before civil courts of the
14 State.

15 (c) Process issued in court-martial cases to compel witnesses
16 to appear and testify and to compel the production of other
17 evidence shall run to any part of the State and shall be executed
18 by civil officers as prescribed by the laws of the State.

19 "§ 127A-281. Refusal to appear or testify.--(a) Any person
20 not subject to this code who:

- 21 (1) has been duly subpoenaed to appear as a witness or
22 to produce books and records before a military
23 court or before any military or civil officer
24 designated to take a deposition to be read in
25 evidence before such a court;
- 26 (2) has been duly paid or tendered the fees and mileage
27 of a witness at the rates allowed to witnesses
28 attending superior court;
- 29 (3) willfully neglects or refuses to appear, or refuses
30 to qualify as a witness or to testify or to produce
31 any evidence which that person may have been
32 legally subpoenaed to produce;

33 is guilty of an offense against the State and a military court
34 may punish him in the same manner as the civil courts of the
35 State.

1 "§ 127A-282. Contempts.--A military court may punish for
2 contempt any person who uses any menacing word, sign, or gesture
3 in its presence, or who disturbs its proceedings by any riot or
4 disorder. The punishment may not exceed confinement for 30 days
5 or a fine of one hundred dollars (\$100.00) or both.

6 "§ 127A-283. Depositions.--(a) At any time after charges have
7 been signed, as provided in G.S. 127A-260, any party may take
8 oral or written depositions unless an authority competent to
9 convene a court-martial for the trial of those charges forbids it
10 for good cause. If a deposition is to be taken before charges
11 are referred for trial, such an authority may designate
12 commissioned officers to represent the prosecution and the
13 defense and may authorize those officers to take the deposition
14 of any witness.

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

18 (c) Depositions may be taken before and authenticated by any
19 military or civil officer authorized by the laws of the State or
20 by the laws of the place where the deposition is taken to
21 administer oaths.

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

27 (1) that the witness resides or is beyond the State in
28 which the court-martial or court of inquiry is
29 ordered to sit, or beyond the distance of 100 miles
30 from the place of trial or hearing;

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

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

3 "§ 127A-284. Admissibility of records of courts of inquiry.--

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

12 (b) Such testimony may be read in evidence only by the defense
13 in cases extending to the dismissal of a commissioned officer.

14 (c) Such testimony may also be read in evidence before a court
15 of inquiry or a military board.

16 "§ 127A-285. Voting and rulings.--(a) Voting by members of a
17 general or special court-martial upon questions of challenge, on
18 the findings, and on the sentence shall be by secret written
19 ballot. The junior member of the court shall in each case count
20 the votes. The count shall be checked by the president, who
21 shall forthwith announce the result of the ballot to the members
22 of the court.

23 (b) The law officer of a general court-martial and the
24 president of a special court-martial shall rule upon
25 interlocutory questions other than challenge, arising during the
26 proceedings. Any such ruling made by the law officer of a
27 general court-martial or by the president of a special court-
28 martial upon any interlocutory question other than a motion for a
29 finding of not guilty, or the question of accused's sanity, is
30 final and constitutes the ruling of the court. However, the law
31 officer or president may change the ruling at any time during the
32 trial except a ruling on a motion for a finding of not guilty
33 that was granted. Unless the ruling is final, if any member
34 objects thereto, the court shall be cleared and closed and the

1 question decided by a voice vote as provided in G.S. 127A-286
2 beginning with the junior in rank.

3 (c) Before a vote is taken on the findings, the law officer of
4 a general court-martial and the president of a special court-
5 martial shall, in the presence of the accused and counsel,
6 instruct the court as to the elements of the offense and charge
7 the court:

- 8 (1) that the accused must be presumed to be innocent
9 until his guilt is established by legal and
10 competent evidence beyond reasonable doubt;
11 (2) that in the case being considered, if there is a
12 reasonable doubt as to the guilt of the accused,
13 the doubt must be resolved in favor of the accused
14 and he must be acquitted;
15 (3) that, if there is a reasonable doubt as to the
16 degree of guilt, the finding must be in a lower
17 degree as to which there is no reasonable doubt;
18 and
19 (4) that the burden of proof of establishing the guilt
20 of the accused beyond reasonable doubt is upon the
21 State.

22 "§ 127A-286. Number of votes required.--(a) No person may be
23 convicted of an offense, except by the concurrence of two-thirds
24 of the members present at the time the vote is taken.

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

28 (c) All other questions to be decided by the members of a
29 general or special court-martial shall be determined by a
30 majority vote. A tie vote on a challenge disqualifies the member
31 challenged. A tie vote on a motion for a finding of not guilty
32 or on a motion relating to the question of the accused's sanity
33 is a determination against the accused. A tie vote on any other
34 question is a determination in favor of the accused.

1 "§ 127A-287. Court to announce action.--A court-martial shall
2 announce its findings and sentence to the parties as soon as
3 determined.

4 "§ 127A-288. Record of trial.--(a) Each court-martial shall
5 keep a separate record of the proceedings of the trial of each
6 case brought before it and the record shall be authenticated by
7 the signatures of the president and the law officer. If the
8 record cannot be authenticated by either the president or the law
9 officer, by reason of his death, disability, or absence, it shall
10 be signed by a member in lieu of him. If both the president and
11 the law officer are unavailable, the record shall be
12 authenticated by two members. A record of the proceedings of a
13 trial in which the sentence adjudged includes a bad conduct
14 discharge or is more than that which could be adjudged by a
15 special court-martial shall contain a verbatim account of the
16 proceedings and testimony before the court. All other records of
17 trial shall contain such matter and be authenticated in such
18 manner as the Governor may by regulation prescribe.

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

25 "§ 127A-289. Reserved for future codification.

26 "Part 8. Sentences.

27 § 127A-290. Cruel and unusual punishments
28 prohibited.--Punishment by flogging, or by branding, marking or
29 tattooing on the body, or any other cruel or unusual punishment,
30 may not be adjudged by any court-martial or inflicted upon any
31 person subject to this code. The use of irons, single or double,
32 except for the purpose of safe custody, is prohibited.

33 "§ 127A-291. Maximum limits.--The punishment which a court-
34 martial may direct for an offense may not exceed limits
35 prescribed by this code.

1 "§ 127A-292. Effective date of sentences.--(a) Whenever a
2 sentence of a court-martial as lawfully adjudged and approved
3 includes a forfeiture of pay or allowances in addition to
4 confinement not suspended, the forfeiture may apply to pay or
5 allowances becoming due on or after the date the sentence is
6 approved by the convening authority. No forfeiture may extend to
7 any pay or allowances accrued before that date.

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

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

18 "§ 127A-293. Execution of confinement.--(a) A sentence of
19 confinement adjudged by a military court, whether or not the
20 sentence includes discharge or dismissal, and whether or not the
21 discharge or dismissal has been executed, may be carried into
22 execution by confinement in any place of confinement under the
23 control of any of the forces of the State military forces or in
24 any jail, penitentiary, or prison designated for that purpose.
25 Persons so confined in a jail, penitentiary, or prison are
26 subject to the same discipline and treatment as persons confined
27 or committed to the jail, penitentiary, or prison by the courts
28 of the State or of any political subdivision thereof.

29 (b) The omission of the words 'hard labor' from any sentence
30 or punishment of a court-martial adjudging confinement does not
31 deprive the authority executing that sentence or punishment of
32 the power to require hard labor as a part of the punishment.

33 (c) The keepers, officers, and wardens of city or county jails
34 and of other jails, penitentiaries, or prisons designated by the
35 Governor, or by such person as he may authorize to act under G.S.

1 127A-224, shall receive persons ordered into confinement before
2 trial and persons committed to confinement by a military court
3 and shall confine them according to law. No such keeper,
4 officer, or warden may require payment of any fee or charge for
5 so receiving or confining a person.

6 "§ 127A-294 through 127A-299. Reserved for future
7 codification.

8 "Part 9. Review of Courts-Martial.

9 "§ 127A-300. Execution of sentence; suspension of sentence.--
10 Except as provided in G.S. 127A-246 and G.S. 127A-306, a court-
11 martial sentence, unless suspended, may be ordered executed by
12 the convening authority when approved by him. He shall approve
13 the sentence or such part, amount, or commuted form of the
14 sentence as he sees fit, and may suspend the execution of the
15 sentence as approved by him.

16 "§ 127A-301. Initial action on the record.--After a trial by
17 court-martial the record shall be forwarded to the convening
18 authority, as reviewing authority, and action thereon may be
19 taken by the person who convened the court, a commissioned
20 officer commanding for the time being, a successor in command, or
21 by the Governor.

22 "§ 127A-302. Initial action on the record; general court-
23 martial records.--The convening authority shall refer the record
24 of each general court-martial to the staff judge advocate, who
25 shall submit his written opinion thereon to the convening
26 authority. If the final action of the court has resulted in an
27 acquittal of all charges and specifications, the opinion shall be
28 limited to questions of jurisdiction.

29 "§ 127A-303. Reconsideration and revision.--(a) If a
30 specification before a court-martial has been dismissed on motion
31 and the ruling does not amount to a finding of not guilty, the
32 convening authority may return the record to the court for
33 reconsideration of the ruling and any further appropriate action.

34 (b) Where there is an apparent error or omission in the record
35 or where the record shows improper or inconsistent action by a

1 court-martial with respect to a finding or sentence which can be
2 rectified without material prejudice to the substantial rights of
3 the accused, the convening authority may return the record to the
4 court for appropriate action. In no case, however, may the
5 record be returned:

- 6 (1) for reconsideration of a finding of not guilty, or
7 a ruling which amounts to a finding of not guilty;
- 8 (2) for reconsideration of a finding of not guilty of
9 any charge, unless the record shows a finding of
10 guilty under a specification laid under that
11 charge, which sufficiently alleges a violation of
12 some section of this code; or
- 13 (3) for increasing the severity of the sentence unless
14 the sentence prescribed for the offense is
15 mandatory.

16 "§ 127A-304. Rehearings.--(a) If the convening authority
17 disapproves the findings and sentence of a court-martial he may,
18 except where there is lack of sufficient evidence in the record
19 to support the findings, order a rehearing. In such a case he
20 shall state the reasons for disapproval. If he disapproves the
21 findings and sentence and does not order a rehearing, he shall
22 dismiss the charges.

23 (b) Each rehearing shall take place before a court-martial
24 composed of members not members of the court-martial which first
25 heard the case. Upon a rehearing the accused may not be tried
26 for any offense of which he was found not guilty by the first
27 court-martial, and no sentence in excess of or more severe than
28 the original sentence may be imposed, unless the sentence is
29 based upon a finding of guilty of an offense not considered upon
30 the merits in the original proceedings, or unless the sentence
31 prescribed for the offense is mandatory.

32 "§ 127A-305. Approval by the convening authority.--In acting
33 on the findings and sentence of a court-martial, the convening
34 authority may approve only such findings of guilty, and the
35 sentence or such part or amount of the sentence, as he finds

1 correct in law and fact and as he in his discretion determines
2 should be approved. Unless he indicates otherwise, approval of
3 the sentence is approval of the findings and sentence.

4 "§ 127A-306. Review of records; disposition.--(a) If the
5 convening authority is the Governor, his action on the review of
6 any record of trial is final.

7 (b) In all other cases not covered by subsection (a), if the
8 sentence of a special court-martial as approved by the convening
9 authority includes a bad conduct discharge, whether or not
10 suspended, the entire record shall be sent to the appropriate
11 staff judge advocate or legal officer of the State force
12 concerned to be reviewed in the same manner as a record of trial
13 by general court-martial. The record and the opinion of the
14 staff judge advocate or legal officer shall then be sent to the
15 State Judge Advocate for review.

16 (c) All other special and summary court-martial records shall
17 be sent to the law specialist or legal officer of the appropriate
18 force of the State military forces and shall be acted upon,
19 transmitted, and disposed of as may be prescribed by regulations
20 prescribed by the Governor.

21 (d) The State Judge Advocate shall review the record of trial
22 in each case sent to him for review as provided under subsection
23 (b) of this section. If the final action of the court-martial
24 has resulted in an acquittal of all charges and specifications,
25 the opinion of the State Judge Advocate is limited to questions
26 of jurisdiction.

27 (e) The State Judge Advocate shall take final action in any
28 case reviewable by him.

29 (f) In a case reviewable by the State Judge Advocate under
30 this section, the State Judge Advocate may act only with respect
31 to the findings and sentence as approved by the convening
32 authority. He may affirm only such findings of guilty, and the
33 sentence or such part or amount of the sentence, as he finds
34 correct in law and fact and determines, on the basis of the
35 entire record, should be approved. In considering the record, he

1 may weigh the evidence, judge the credibility of witnesses, and
2 determine controverted questions of fact, recognizing that the
3 trial court saw and heard the witnesses. If the State Judge
4 Advocate sets aside the findings and sentence, he may, except
5 where the setting aside is based on lack of sufficient evidence
6 in the record to support the findings, order a rehearing. If he
7 sets aside the findings and sentence and does not order a
8 rehearing, he shall order that the charges be dismissed.

9 (g) In a case reviewable by the State Judge Advocate under
10 this section, he shall instruct the convening authority to act in
11 accordance with his decision on the review. If he has ordered a
12 rehearing but the convening authority finds a rehearing
13 impracticable, he may dismiss the charges.

14 (h) The State Judge Advocate may order one or more boards of
15 review each composed of not less than three commissioned officers
16 of the State military forces, each of whom must be a member of
17 the State Bar of North Carolina. Each board of review shall
18 review the record of any trial by special court-martial,
19 including a sentence to a bad conduct discharge, referred to it
20 by the State Judge Advocate. Boards of review have the same
21 authority on review as the State Judge Advocate has under this
22 section.

23 "§ 127A-307. Error of law; lesser included offense.--(a) A
24 finding or sentence of a court-martial may not be held incorrect
25 on the ground of an error of law unless the error materially
26 prejudices the substantial rights of the accused.

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

30 "§ 127A-308. Review Counsel.--(a) Upon the final review of a
31 sentence of a general court-martial or of a sentence to a bad
32 conduct discharge, the accused has the right to be represented by
33 counsel before the reviewing authority, before the staff judge
34 advocate or legal officer, as the case may be, and before the
35 State Judge Advocate.

1 (b) Upon the request of an accused entitled to be so
2 represented, the State Judge Advocate shall appoint a lawyer who
3 is a member of the State military forces and who has the
4 qualifications prescribed in Section 506, if available, to
5 represent the accused before the reviewing authority, before the
6 staff judge advocate or legal officer, as the case may be, and
7 before the State Judge Advocate, in the review of cases specified
8 in subsection (a) of this section.

9 (c) If provided by him, an accused entitled to be so
10 represented may be represented by civilian counsel before the
11 reviewing authority, before the staff judge advocate or legal
12 officer, as the case may be, and before the State Judge Advocate.

13 "§ 127A-309. Vacation of suspension.--(a) Before the vacation
14 of the suspension of a special court-martial sentence which as
15 approved includes a bad conduct discharge, or of any general
16 court-martial sentence, the officer having special court-martial
17 jurisdiction over the probationer shall hold a hearing on the
18 alleged violation of probation. The probationer shall be
19 represented at the hearing by counsel if he so desires.

20 (b) The record of the hearing and the recommendation of the
21 officer having special court-martial jurisdiction shall be sent
22 for action to the Governor in cases involving a general court-
23 martial sentence and to the commanding officer of the force of
24 the State military forces of which the probationer is a member in
25 all other cases covered by subsection (a) of this section. If
26 the Governor or commanding officer vacates the suspension, any
27 unexecuted part of the sentence except a dismissal shall be
28 executed.

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

33 "§ 127A-310. Petition for a new trial.--At any time within two
34 years after approval by the convening authority of a court-
35 martial sentence which extends to dismissal, dishonorable or bad

1 conduct discharge, the accused may petition the Governor for a
2 new trial on grounds of newly discovered evidence or fraud on the
3 court-martial.

4 "§ 127A-311. Remission and suspension.--(a) A convening
5 authority may remit or suspend any part or amount of the
6 unexecuted part of any sentence, including all uncollected
7 forfeitures.

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

11 "§ 127A-312. Restoration.--(a) Under such regulations as the
12 Governor may prescribe, all rights, privileges, and property
13 affected by an executed part of a court-martial sentence which
14 has been set aside or disapproved, except an executed dismissal
15 or discharge, shall be restored unless a new trial or rehearing
16 is ordered and such executed part is included in a sentence
17 imposed upon a new trial or rehearing.

18 (b) If a previously executed sentence of a dishonorable or bad
19 conduct discharge is not imposed on a new trial, the Governor
20 shall substitute therefor a form of discharge authorized for
21 administrative issuance unless the accused is to serve out the
22 remainder of his enlistment.

23 (c) If a previously executed sentence of dismissal is not
24 imposed on a new trial, the Governor shall substitute therefor a
25 form of discharge authorized for administrative issue, and the
26 commissioned officer dismissed by that sentence may be
27 reappointed by the Governor alone to such commissioned grade and
28 with such rank as in the opinion of the Governor that former
29 officer would have attained had he not been dismissed. The
30 reappointment of such a former officer may be made if a position
31 vacancy is available under applicable tables of organization. All
32 time between the dismissal and reappointment shall be considered
33 as service for all purposes.

34 "§ 127A-313. Finality of proceedings, findings and
35 sentences.--The proceedings, findings and sentences of courts-

1 martial as reviewed and approved, as required by this code, and
2 all dismissals and discharges carried into execution under
3 sentences by courts-martial following review and approval, as
4 required by this code, are final and conclusive. Orders
5 publishing the proceedings of courts-martial and all action
6 taken pursuant to those proceedings are binding upon all
7 departments, courts, agencies, and officers of the State,
8 subject only to action upon a petition for a new trial as
9 provided in G.S. 127A-310.

10 "§ 127A-314 through 127A-319. Reserved for future
11 codification.

12 "Part 10. Punitive Articles.

13 "§ 127A-320. Persons to be tried or punished.--No person may
14 be tried or punished for any offense provided for in G.S. 127A-
15 321 through G.S. 127A-364, unless it was committed while he was
16 in a duty status.

17 "§ 127A-321. Principals.--Any person subject to this code who:
18 (1) commits an offense punishable by this code, or aids,
19 abets, counsels, commands, or procures its commission; or
20 (2) causes an act to be done which if directly performed by
21 him would be punishable by this code; is a principal.

22 "§ 127A-322. Accessory after the fact.--Any person subject to
23 this code who, knowing that an offense punishable by this code
24 has been committed, receives, comforts, or assists the offender
25 in order to hinder or prevent his apprehension, trial, or
26 punishment shall be punished as a court-martial may direct.

27 "§ 127A-323. Conviction of lesser included offense.--An
28 accused may be found guilty of an offense necessarily included in
29 the offense charged or of an attempt to commit either the offense
30 charged or an offense necessarily included therein.

31 "§ 127A-324. Attempts.--(a) An act, done with specific intent
32 to commit an offense under this code, amounting to more than mere
33 preparation and tending, even though failing, to effect its
34 commission, is an attempt to commit that offense.

1 (b) Any person subject to this code who attempts to commit any
2 offense punishable by this code shall be punished as a court-
3 martial may direct, unless otherwise specifically prescribed.

4 (c) Any person subject to this code may be convicted of an
5 attempt to commit an offense although it appears on the trial
6 that the offense was consummated.

7 "§ 127A-325. Conspiracy.--Any person subject to this code who
8 conspires with any other person to commit an offense under this
9 code shall, if one or more of the conspirators does an act to
10 effect the object of the conspiracy, be punished as a court-
11 martial may direct.

12 "§ 127A-326. Solicitation.--(a) Any person subject to this
13 code who solicits or advises another or others to desert in
14 violation of G.S. 127A-329 or mutiny in violation of G.S. 127A-
15 338 shall, if the offense solicited or advised is attempted or
16 committed, be punished with the punishment provided for the
17 commission of the offense, but, if the offense solicited or
18 advised is not committed or attempted, he shall be punished as a
19 court-martial may direct.

20 (b) Any person subject to this code who solicits or advises
21 another or others to commit an act of misbehavior before the
22 enemy in violation of G.S. 127A-343 or sedition in violation of
23 G.S. 127A-338 shall, if the offense solicited or advised is
24 committed, be punished with the punishment provided for the
25 commission of the offense, but, if the offense solicited or
26 advised is not committed, he shall be punished as a court-martial
27 may direct.

28 "§ 127A-327. Fraudulent enlistment, appointment or
29 separation.--Any person who:

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

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

5 "§ 127A-328. Unlawful enlistment, appointment, or
6 separation.--Any person subject to this code who effects an
7 enlistment or appointment in or a separation from the State
8 military forces of any person who is known to him to be
9 ineligible for that enlistment, appointment, or separation
10 because it is prohibited by law, regulation, or order shall be
11 punished as a court-martial may direct.

12 "§ 127A-329. Desertion.--(a) Any member of the State military
13 forces who:

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

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

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

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

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

34 "§ 127A-330. Absence without leave.--Any person subject to
35 this code who, without authority:

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

3 (2) goes from that place; or

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

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

8 "§ 127A-331. Missing movement.--Any person subject to this
9 code who through neglect or design misses the movement of a ship,
10 aircraft, or unit with which he is required in the course of duty
11 to move shall be punished as a court-martial may direct.

12 "§ 127A-332. Contempt towards officials.-- Any person subject
13 to this code who uses contemptuous words against the President,
14 the Governor, or the Governor of any other state, territory,
15 commonwealth, or possession in which that person may be serving,
16 shall be punished as a court-martial may direct.

17 "§ 127A-333. Disrespect towards superior commissioned
18 officer.--Any person subject to this code who behaves with
19 disrespect towards his superior commissioned officer shall be
20 punished as a court-martial may direct.

21 "§ 127A-334. Assaulting or willfully disobeying superior
22 commissioned officer.--Any person subject to this code who:

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

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

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

29 "§ 127A-335. Insubordinate conduct toward warrant officer,
30 noncommissioned officer, or petty officer.--Any warrant officer
31 or enlisted member who:

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

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

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

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

8 "§ 127A-336. Failure to obey order or regulation.--Any person
9 subject to this code who:

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

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

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

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

17 "§ 127A-337. Cruelty and maltreatment.--Any person subject to
18 this code who is guilty of cruelty toward, or oppression or
19 maltreatment of, any person subject to his orders shall be
20 punished as a court-martial may direct.

21 "§ 127A-338. Mutiny or sedition.--(a) Any person subject to
22 this code who:

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

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

33 (3) fails to do his utmost to prevent and suppress a
34 mutiny or sedition being committed in his presence,
35 or fails to take all reasonable means to inform his

1 superior commissioned officer or commanding officer
2 of a mutiny or sedition which he knows or has
3 reason to believe is taking place, is guilty of a
4 failure to suppress or report a mutiny or sedition.

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

8 "§ 127A-339. Resistance, breach of arrest, and escape.--Any
9 person subject to this code who resists apprehension or breaks
10 arrest or who escapes from physical restraint lawfully imposed
11 shall be punished as a court-martial may direct.

12 "§ 127A-340. Releasing prisoner without proper authority.--Any
13 person subject to this code who, without proper authority,
14 releases any prisoner committed to his charge, or who through
15 neglect or design suffers any such prisoner to escape, shall be
16 punished as a court-martial may direct, whether or not the
17 prisoner was committed in strict compliance with law.

18 "§ 127A-341. Unlawful detention of another.--Any person
19 subject to this code who, except as provided by law or
20 regulation, apprehends, arrests, or confines any person shall be
21 punished as a court-martial may direct.

22 "§ 127A-342. Noncompliance with procedural rules.--Any person
23 subject to this code who:

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

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

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

30 "§ 127A-343. Misbehavior before the enemy.--Any person subject
31 to this code who before or in the presence of the enemy:

32 (1) runs away;

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

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

4 (4) casts away his arms or ammunition;

5 (5) is guilty of cowardly conduct;

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

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

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

14 (9) does not afford all practicable relief and assistance to
15 any troops, combatants, vessels, or aircraft of the armed forces
16 belonging to the United States or their allies, to the State, or
17 to any other state, when engaged in battle;

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

19 "§ 127A-344. Subordinate compelling surrender.--Any person
20 subject to this code who compels or attempts to compel the
21 commander of any of the State military forces of the State, or of
22 any other state, to give it up to an enemy or to abandon it, or
23 who strikes the colors or flag to an enemy without proper
24 authority, shall be punished as a court-martial may direct.

25 "§ 127A-345. Improper use of countersign.--Any person subject
26 to this code who in time of war discloses the parole or
27 countersign to any person not entitled to receive it, or who
28 gives to another who is entitled to receive and use the parole or
29 countersign a different parole or countersign from that which, to
30 his knowledge, he was authorized and required to give, shall be
31 punished as a court-martial may direct.

32 "§ 127A-346. Forcing a safeguard.--Any person subject to this
33 code who forces a safeguard shall be punished as a court-martial
34 may direct.

1 "§ 127A-347. Captured or abandoned property.--(a) All persons
2 subject to this code shall secure all public property taken from
3 the enemy for the service of the United States, and shall give
4 notice and turn over to the proper authority without delay all
5 captured or abandoned property in their possession, custody, or
6 control.

7 (b) Any person subject to this code who:

8 (1) fails to carry out the duties prescribed in
9 subsection (a) of this section;

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

15 (3) engages in looting or pillaging;
16 shall be punished as a court-martial may direct.

17 "§ 127A-348. Aiding the enemy.--Any person subject to this
18 code who:

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

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

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

26 "§ 127A-349. Misconduct of a prisoner.--Any person subject to
27 this code who, while in the hands of the enemy in time of war:

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

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

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

1 "§ 127A-350. False official statements.--Any person subject to
2 this code who, with intent to deceive, signs any false record,
3 return, regulation, order, or other official document, knowing it
4 to be false, or makes any other false official statement knowing
5 it to be false, shall be punished as a court-martial may direct.

6 "§ 127A-351. Military property - loss, damage, destruction, or
7 wrongful disposition.--Any person subject to this code who,
8 without proper authority:

9 (1) sells or otherwise disposes of;

10 (2) willfully or through neglect damages, destroys, or loses;
11 or

12 (3) willfully or through neglect suffers to be damaged,
13 destroyed, sold, or wrongfully disposed of; any military property
14 of the United States or of the State;

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

16 "§ 127A-352. Property other than military property - waste,
17 spoilage, or destruction.--Any person subject to this code who,
18 while in a duty status, willfully or recklessly wastes, spoils,
19 or otherwise willfully and wrongfully destroys or damages any
20 property other than military property of the United States or of
21 the State shall be punished as a court-martial may direct.

22 "§ 127A-353. Improper hazarding of vessel.--(a) Any person
23 subject to this code who willfully and wrongfully hazards or
24 suffers to be hazarded any vessel of the armed forces of the
25 United States or of the State military forces shall be punished
26 as a court-martial may direct.

27 (b) Any person subject to this code who negligently hazards or
28 suffers to be hazarded any vessel of the armed forces of the
29 United States or of the State military forces shall be punished
30 as a court-martial may direct.

31 "§ 127A-354. Drunken or reckless driving.--Any person subject
32 to this code who operates any vehicle while drunk, or in a
33 reckless or wanton manner, shall be punished as a court-martial
34 may direct.

1 "§ 127A-355. Drunk on duty; sleeping on post; leaving post
2 before relief.--Any person subject to this code who is found
3 drunk on duty or sleeping upon his post, or who leaves his post
4 before he is regularly relieved, shall be punished as a court-
5 martial may direct.

6 "§ 127A-356. Dueling.--Any person subject to this code who
7 fights or promotes, or is concerned in or connives at fighting a
8 duel, or who, having knowledge of a challenge sent or about to be
9 sent, fails to report the fact promptly to the proper authority,
10 shall be punished as a court-martial may direct.

11 "§ 127A-357. Malingering.--Any person subject to this code who
12 for the purpose of avoiding work, duty or service in the State
13 military forces:

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

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

18 "§ 127A-358. Riot or breach of peace.--Any person subject to
19 this code who causes or participates in any riot or breach of the
20 peace shall be punished as a court-martial may direct.

21 "§ 127A-359. Provoking speeches or gestures.--Any person
22 subject to this code who uses provoking or reproachful words or
23 gestures towards any other person subject to this code shall be
24 punished as a court-martial may direct.

25 "§ 127A-360. Perjury.--Any person subject to this code who in
26 a judicial proceeding or in a court of justice conducted under
27 this code willfully and corruptly gives, upon a lawful oath or in
28 any form allowed by law to be substituted for an oath, any false
29 testimony material to the issue or matter of inquiry is guilty of
30 perjury and shall be punished as a court-martial may direct.

31 "§ 127A-361. Frauds against the government.--Any person
32 subject to this code:

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

34 a. makes any claim against the United States, the
35 State, or any officer thereof; or

1 b. presents to any person in the civil or military
2 service thereof, for approval or payment any claim
3 against the United States, the State, or any
4 officer thereof;

5 (2) who, for the purpose of obtaining the approval, allowance,
6 or payment of any claim against the United States, the State, or
7 any officer thereof:

8 a. makes or uses any writing or other paper knowing it
9 to contain any false or fraudulent statements;

10 b. makes any oath to any fact or to any writing or
11 other paper knowing the oath to be false; or

12 c. forges or counterfeits any signature upon any
13 writing or other paper, or uses any such signature
14 knowing it to be forged or counterfeited;

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

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

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

30 "§ 127A-362. Larceny and wrongful appropriation.--(a) Any
31 person subject to this code who wrongfully takes, obtains, or
32 withholds, by any means, from the possession of the owner or of
33 any other person any money, personal property, or article of
34 value of any kind:

1 (1) with intent permanently to deprive or defraud
2 another person of the use and benefit of property
3 or to appropriate it to his own use or the use of
4 any person other than the owner, steals that
5 property and is guilty of larceny; or

6 (2) with intent temporarily to deprive or defraud
7 another person of the use and benefit of property
8 or to appropriate it to his own use or the use of
9 any person other than the owner, is guilty of
10 wrongful appropriation.

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

13 "§ 127A-363. Conduct unbecoming an officer and a
14 gentleman.--Any commissioned officer who is convicted of conduct
15 unbecoming an officer and a gentleman shall be punished as a
16 court-martial may direct.

17 "§ 127A-364. General article.--Though not specifically
18 mentioned in this code, all disorders and neglects to the
19 prejudice of good order and discipline in the State military
20 forces, of which persons subject to this code may be guilty,
21 shall be taken cognizance of by a general, special or summary
22 court-martial, according to the nature and degree of the offense,
23 and shall be punished at the discretion of that court. However,
24 cognizance may not be taken of, and jurisdiction may not be
25 extended to, the crimes of murder, manslaughter, rape, robbery,
26 maiming, sodomy, arson, extortion, assault, burglary, or
27 housebreaking, jurisdiction of which is reserved to civil courts.

28 "§ 127A-365 through 127A-369. Reserved for future
29 codification.

30 "Part 11. Miscellaneous Provisions.

31 "§ 127A-370. Courts of inquiry.--(a) Courts of inquiry to
32 investigate any matter may be convened by the Governor or by any
33 other person designated by the Governor for that purpose, whether
34 or not the persons involved have requested such an inquiry.

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

4 (c) Any person subject to this code whose conduct is subject
5 to inquiry shall be designated as a party. Any person subject to
6 this code or employed in the division of military and naval
7 affairs, who has a direct interest in the subject of inquiry has
8 the right to be designated as a party upon request to the court.
9 Any person designated as a party shall be given due notice and
10 has the right to be present, to be represented by counsel, to
11 cross-examine witnesses, and to introduce evidence.

12 (d) Members of a court of inquiry may be challenged by a
13 party, but only for cause stated to the court.

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

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

20 (g) Courts of inquiry shall make findings of fact but may not
21 express opinions or make recommendations unless required to do so
22 by the convening authority.

23 (h) Each court of inquiry shall keep a record of its
24 proceedings, which shall be authenticated by the signatures of
25 the president and counsel for the court and forwarded to the
26 convening authority. If the record cannot be authenticated by
27 the president, it shall be signed by a member in lieu of the
28 president. If the record cannot be authenticated by the counsel
29 for the court, it shall be signed by a member in lieu of the
30 counsel.

31 "§ 127A-371. Authority to administer oaths.--(a) The
32 following members of the State military forces may administer
33 oaths for the purposes of military administration, including
34 military justice, and affidavits may be taken for those purposes
35 before persons having the general powers of a notary public:

- 1 (1) The State Judge Advocate and all assistant State
- 2 judge advocates.
- 3 (2) All law specialists.
- 4 (3) All summary courts-martial.
- 5 (4) All adjutants, assistant adjutants, acting
- 6 adjutants, and personnel adjutants.
- 7 (5) All commanding officers of the naval militia.
- 8 (6) All legal officers.
- 9 (7) The president, law officer, trial counsel, and
- 10 assistant trial counsel for all general and special
- 11 courts-martial.
- 12 (8) The president and the counsel for the court of any
- 13 court of inquiry.
- 14 (9) All officers designated to take a deposition.
- 15 (10) All persons detailed to conduct an investigation;
- 16 and
- 17 (11) All other persons designated by regulations of the
- 18 Governor.
- 19 (b) Officers of the State military forces may not be
- 20 authorized to administer oaths as provided in this section unless
- 21 they are on active duty in or with those forces under orders of
- 22 the Governor as prescribed in this code.
- 23 (c) The signature without seal of any such person, together
- 24 with the title of his office, is **prima facie** evidence of his
- 25 authority.
- 26 "§ 127A-372. Sections to be explained.--G.S. 127A-212, 127A-
- 27 213, 127A-220 through 127A-330, 127A-253, 127A-255, 127A-271,
- 28 127A-290, 127A-320 through 127A-362, and 127A-372 through 127A-
- 29 374 shall be carefully explained to every enlisted member at the
- 30 time of his enlistment or transfer or induction into, or at the
- 31 time of his order to duty in or with any of the State military
- 32 forces or within 30 days thereafter. They shall also be
- 33 explained annually to each unit of the State military forces. A
- 34 complete text of this code and of the regulations prescribed by
- 35 the Governor thereunder shall be made available to any member of

1 the State military forces, upon his request, for his personal
2 examination.

3 "§ 127A-373. Complaints of wrongs.--Any member of the State
4 military forces who believes himself wronged by his commanding
5 officer, and who, upon due application to that commanding
6 officer, is refused redress, may complain to any superior
7 commissioned officer, who shall forward the complaint to the
8 Governor or Adjutant General.

9 "§ 127A-374. Redress of injuries to property.--(a) Whenever
10 complaint is made to any commanding officer that willful damage
11 has been done to the property of any person or that his property
12 has been wrongfully taken by members of the State military
13 forces, he may, subject to such regulations as the Governor may
14 prescribe, convene a board to investigate the complaint. The
15 board shall consist of from one to three commissioned officers
16 and, for the purpose of that investigation, it has power to
17 summon witnesses and examine them upon oath or affirmation, to
18 receive depositions or other documentary evidence, and to assess
19 the damages sustained against the responsible parties. The
20 assessment of damages made by the board is subject to the
21 approval of the commanding officer, and in the amount approved by
22 him shall be charged against the pay of the offenders. The order
23 of the commanding officer directing charges herein authorized is
24 conclusive, except as provided in subsection (c) of this section,
25 on any disbursing officer for the payment by him to the injured
26 parties of the damages so assessed and approved.

27 (b) If the offenders cannot be ascertained, but the
28 organization or detachment to which they belong is known, charges
29 totaling the amount of damages assessed and approved may be paid
30 to the injured parties from the military funds of the units of
31 the State military forces to which the offenders belonged.

32 (c) Any person subject to this code who is accused of causing
33 willful damage to property has the right to be represented by
34 counsel, to summon witnesses in his behalf, and to cross-examine

1 those appearing against him. He has the right of appeal to the
2 next higher commander.

3 "§ 127A-375. Execution of process and sentence.--In the State
4 military forces not in federal service, the processes and
5 sentences of its courts-martial shall be executed by the civil
6 officers prescribed by the laws of the State.

7 "§ 127A-376. Process of military courts.--(a) Military courts
8 may issue any process or mandate necessary to carry into effect
9 their powers. Such a court may issue subpoenas and subpoenas
10 *duces tecum* and enforce by attachment attendance of witnesses and
11 production of books and records, when it is sitting within the
12 State and the witnesses, books and records sought are also so
13 located.

14 (b) Process and mandates may be issued by summary courts-
15 martial, provost courts, or the president of other military
16 courts and may be directed to and may be executed by the marshals
17 of the military court or any peace officer and shall be in such
18 form as may be prescribed by regulations issued under this code.

19 (c) All officers to whom process or mandates may be so
20 directed shall execute them and make return of their acts
21 thereunder according to the requirements of those documents.
22 Except as otherwise specifically provided in this code, no such
23 officer may demand or require payment of any fee or charge for
24 receiving, executing, or returning such a process or mandate or
25 for any service in connection therewith.

26 "§ 127A-377. Payment of fines and disposition thereof.--Fines
27 imposed by a military court may be paid to it or to an officer
28 executing its process. The amount of such a fine may be noted
29 upon any State roll or account for pay of the delinquent amount
30 and deducted from any pay or allowance due or thereafter to
31 become due him, until the fine is liquidated. Any sum so
32 deducted shall be turned in to the military court which imposed
33 the fine. Notwithstanding any other law, the officer collecting
34 a fine or penalty imposed by a military court upon an officer or
35 enlisted man shall pay it within 30 days to the State Treasurer.

1 Such a fine becomes a part of, is credited to, and may be spent
2 from, the military fund of the organization or detachment to
3 which the officer or enlisted man who paid the fine belonged.
4 The Treasurer of the State shall then report the amount thereof
5 designating the organization or detachment to which it belongs,
6 to the Adjutant General of the State, and shall pay it over to
7 the organization or detachment on request of its commanding
8 officer.

9 "§ 127A-378. Immunity for action of military courts.--No
10 accused may bring an action or proceeding against the convening
11 authority or a member of a military court or officer or person
12 acting under its authority or reviewing its proceedings because
13 of the approval, imposition, or execution of any sentence or the
14 imposition or collection of a fine or penalty, or the execution
15 of any process or mandate of a military court.

16 "§ 127A-379. Presumption of jurisdiction.--The jurisdiction of
17 the military courts and boards established by this code shall be
18 presumed and the burden of proof rests on any person seeking to
19 oust those courts or boards of jurisdiction in any action or
20 proceeding.

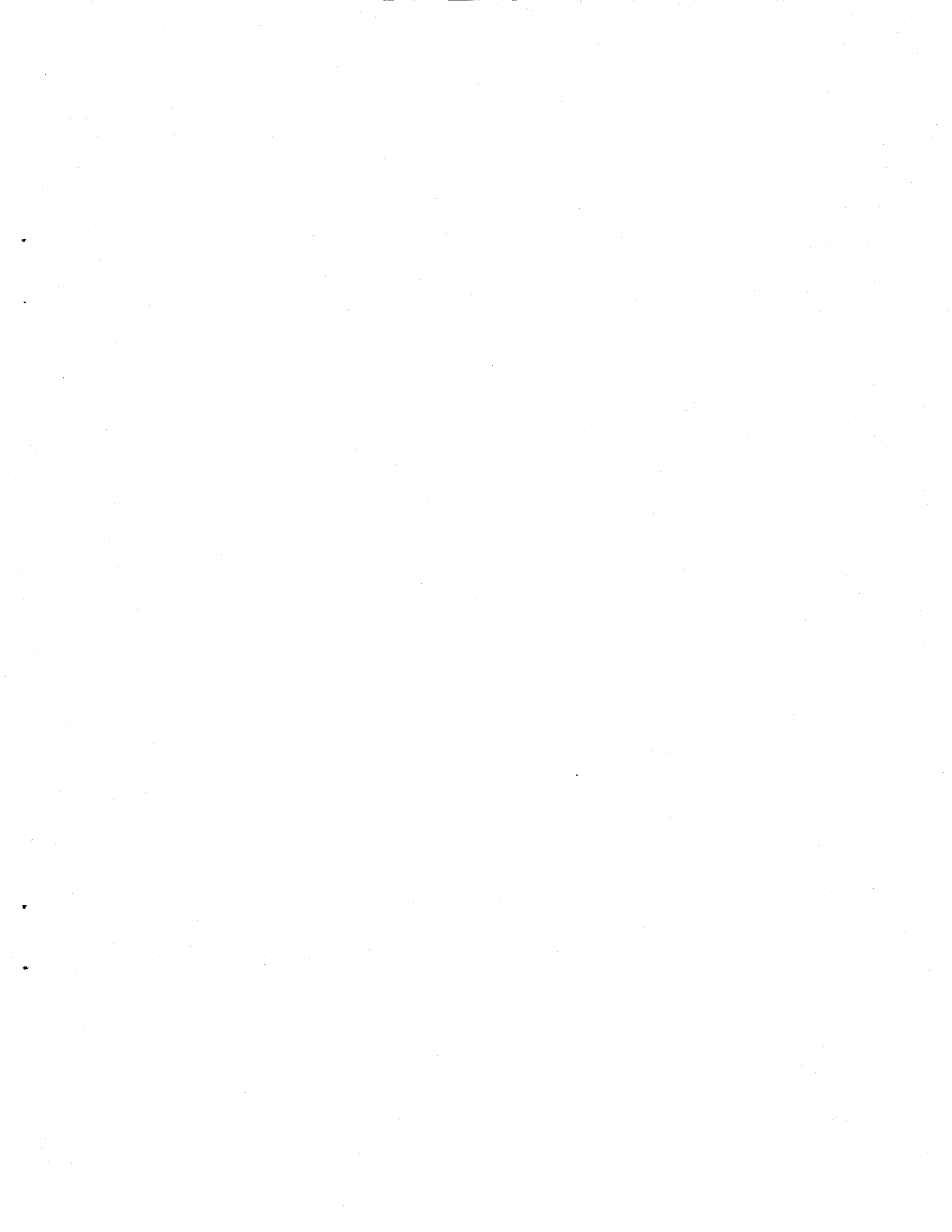
21 "§ 127A-380. Delegation of authority by the Governor.--The
22 Governor may delegate any authority vested in him under this
23 code, and may provide for the subdelegation of any such
24 authority, except the power given him by G.S. 127A-245 and G.S.
25 127A-250.

26 "§ 127A-381. Uniformity of interpretation.--This Article shall
27 be so construed as to effectuate its general purpose to make
28 uniform the law of those states which enact it and, so far as
29 practical, to make that law uniform with the law of the United
30 States."

31 Sec. 2. G.S. 127A-47 through 127A-61 are repealed.

32 Sec. 3. This act shall become effective October 1,
33 1987.

34



APPENDIX B

SUBJECT: MILITARY JUSTICE CODE FOR NATIONAL GUARD
Authority: Chapter 873, Part II, § 2.1 (20) (HB 1265-Alexander)
Report by: Legislative Research Commission (Committee on Military Justice Code for National Guard)
Report to: General Assembly
Date: 1989 Session

MEMBERS

Pres. Pro Tem's Appointments

Speaker's Appointments

Sen. James F. Richardson,
Cochair
1739 Northbrook Drive
Charlotte, NC 28216
(704) 399-1555

Sen. James C. Johnson, Jr.
29 Church Street, SE
Concord, NC 28025
(704) 788-3142

Sen. Anthony E. Rand
Post Office Box 1239
Fayetteville, NC 28302
(919) 483-2101

Sen. William W. Staton
Post Office Box 1320
Sanford, NC 27330
(919) 775-5616

Sen. Dennis J. Winner
81B Central Avenue
Asheville, NC 28801
(704) 258-0094

Rep. Joe B. Raynor, Cochair
345 Winslow Street
Fayetteville, NC 28301
(919) 483-8711

Rep. William G. Alexander
90 Church Street, NE
Concord, NC 28025
(704) 788-6721

Rep. Daniel T. Lilley
Post Office Box 824
Kinston, NC 28501
(919) 523-4309

Rep. Coy C. Privette
Post Office Box 2126
Raleigh, NC 27602
(919) 828-7815

Rep. Wade F. Wilmoth
Post Office Box 268
Downtown Station
Boone, NC 28607
(704) 264-2969

Staff: Mr. Kenneth Levenbook
Legislative Services Office
(919) 733-6660

Clerk: Ms. Sarah Murphy
(919) 733-5804 (O)
(919) 828-6735 (H)

LRC Member: Sen. Henson P. Barnes

APPENDIX C

SURVEY OF THE STATES ON MILITARY JUSTICE

Question 1: Does your state have a statutory code of military justice that applies to the Guard in state-status?

Question 2: How are offenses, either those with a civil equivalent or those purely military offenses, handled by the Guard of your state?

Question 3: Has military punishment, above the level of Article 15, or other nonjudicial punishment, been imposed on any member of the Guard for action occurring when the Guard was in state-status?

Question 4: Has your State conducted any special or general courts-martial while in state-status?

Question 5: Has the verdict of any special or general court-martial conducted while in state-status been upheld on appeal?

Question 6: How are jurisdictional problems, such as when an offense occurs while the Guard is in training status in another state or when an offense occurs on a military aircraft over another state, handled?

	Q1	Q2	Q3	Q4	Q5	Q6
ALABAMA						
ALASKA	Y	C=C M=N/A	N	N	N/A	N/A
ARIZONA	Y	C=C M=N/A	N	N	N/A	L/A
ARKANSAS	Y	C=C	Y	Y	N	L/A
CALIFORNIA	Y	C=C M=M	Y	Y	N	L/A
COLORADO	Y	C=C M=M	N	N	N/A	L/A
CONNECTICUT						
DELAWARE						
FLORIDA	Y	C=C M=M	Y	Y	N/A	L/A
GEORGIA	Y	C=C	Y	Y	N/A	L/A

GUAM	Y	M=M N	N	N	N	N/A
HAWAII						
IDAHO	Y	C=N/A M=M	N	N	N/A	L/A
ILLINOIS	Y	C=C	N	N	N/A	N/A
INDIANA	Y	MISD=M FEL=C	Y	Y	N	L/A
IOWA	Y	MISD=M FEL=C	Y	N	N/A	L/A
KANSAS	Y	C/FEL=C M=M	?	?	?	L/A
KENTUCKY						
LOUISIANA						
MAINE	Y	C=C M=M	N	N	N/A	L/A
MARYLAND	Y	C=C M=M	N	N	N/A	L/A
MASSACHUSETTS						
MICHIGAN						
MINNESOTA	Y	C=C/M M=M	Y	Y(S)	N/A	L/A
MISSISSIPPI						
MISSOURI	Y	N/A	N/A	N/A	N/A	N
MONTANA						
NEBRASKA	Y	C=N/A	N	N	N/A	L/A
NEVADA	Y	C=C M=M	Y	Y	N	L/A
NEW HAMPSHIRE						
NEW JERSEY						
NEW MEXICO	Y	C=C M=C/M	N	N	N/A	L/A
NEW YORK	Y	C=C M=M	Y	Y	N	L/A
NORTH CAROLINA						
NORTH DAKOTA	Y	C=C M=M	N	N	N/A	N/A
OHIO	Y	MINOR MISD=M FEL=C	Y	Y	NONE	L/A

OKLAHOMA	Y	C=C M=M	Y	Y	N	L/A
OREGON	Y	C=C/M M=M	Y	Y	N	L/A
PENNSYLVANIA						
RHODE ISLAND	Y	C=C M=M	Y	Y	N	L/A
SOUTH CAROLINA	Y	C=M/C M=M	Y	Y	N	L/A
SOUTH DAKOTA						
TENNESSEE		Y	C=C	N	N	N/A
INTERSTATE AGREEMENTS						
TEXAS	Y	M=M C=C M=M	Y	Y	Y	L/A
UTAH	Y	N/A	N	N	N/A	L/A
VERMONT						
VIRGINIA	Y	C=C/M M=M	Y	Y	N	L/A
WASHINGTON	Y	C=C M=M	Y	Y	N	N/A
WEST VIRGINIA						
WISCONSIN						
WYOMING	Y	C=C	N	Y	PART	NOT COVERED

NOTES:

ALASKA:

Major Bowen of the Alaska National Guard wrote a personal legal analysis that says that the national guard when it is in "state-status" is really in a quasi-federal status because the training in "state-status" comes under Title 32 of the United States Code and the pay for that training comes from the finance centers of the active components of the Army and the Air Force and therefore the jurisdictional basis for the courts-martial that applies to the active forces also applies to the National Guard.

He apparently considers the term "state-status" to be only correctly used to describe the National Guard when it is called out by the governor of the state for peace time actions in the service of the state such as disaster relief, rescue, and other services for the state.

He points to 32 U.S.C. 501(a) which states:

The discipline, including training, of the Army National Guard shall conform to that of the Army. The discipline, including training, of the Air National Guard shall conform to that of the Air Force.

He also points to 32 U.S.C. 326 which states:

In the National Guard not in federal service, there are general, special, and summary courts martial constituted like similar courts of the Army and Air Force. They have the jurisdiction and powers except as to punishments and shall follow the forms and procedures provided for those courts.

He states "[r]eading sections 326 and 501, consistently it appears that Congress intended that the system of military justice in the National Guard be in conformity with that established by Congress for the active component."

In Solario v. United States, No. 85-1581, found at 107 S.Ct. 2924 (1987), the United States Supreme Court, settled the jurisdictional basis for courts-martial in the active forces. The Court held that it was Congress' intent, expressed pursuant to its powers granted in Art. I, §8, cl. 14, of the Constitution which grants Congress plenary power "[t]o make Rules for the Government and Regulation of the land and naval Forces", that the jurisdiction of a court-martial depends solely on the accused's status as a member of the armed forces, and not the "service connection" of the offense charged as had been held in O'Callahan v. Parker, 395 U.S. 258, 89 S.Ct. 1683, 23 L.Ed.2d 291 (1969) which was expressly overruled.

It then appears that since Congress has decreed that a National Guard court-martial has the same jurisdiction and powers as a court-martial in the active component (except for the punishments that may be imposed), see 32 U.S.C. 326 above, the status as a member of the National Guard is sufficient to make an individual subject to the jurisdiction of a court-martial constituted pursuant to a state military code even if the offense took place, and the court-martial proceedings were conducted, in another state during annual training.

ARIZONA:

Major Michael M. Haran, Arizona Army National Guard Staff Judge Advocate provided the following information:

I enclose a copy of Sections 26-201 through 26-210 of the Arizona Revised Statutes. You will note that Section 26-201 purports to adopt the Uniform Code of Military Justice together with amendments and changes thereto and the Manual for

Courts-Martial of the United States as the law of Arizona. Under constitutional law principles the legislature may not delegate its legislative authority to Congress or to the President. Consequently, the Uniform Code of Military Justice and the Manual for Courts-Martial as they existed when Section 26-201 was passed is probably the law of Arizona. Subsequent amendments and changes are not valid unless specifically adopted by the legislature. The language of Section 26-201 dates back to 1952. Consequently, it is exceedingly difficult to establish the exact language of the manual and code the legislature adopted.

Because of the foregoing problems, Major General Donald L. Owens, the Adjutant General for Arizona, has instructed me to prepare a new state military code. That code is currently in draft and is being staffed. Hopefully, it will be introduced in the 1989 session of the legislature.

Currently, offenses which are also a crime under the civil law are turned over to civil authorities for enforcement. Those offenses which are purely military in nature (AWOL, disrespect, etc.) are handled administratively. As the Arizona National Guard continues to grow, these administrative measures are proving to be more and more unsatisfactory.

No military judicial or non-judicial punishment has been imposed in Arizona for quite some time. I am told that a special court-martial was convened some time in the 1960s. I am unaware of any since then. Under the draft state military code, courts-martial and non-judicial punishment for infractions committed while on state status would be possible. The draft provides for an appeal through a specially created Arizona Court of Military Appeals to the Supreme Court of Arizona. Because the draft provides that jurisdiction over the individual soldier exists by virtue of his membership in the Arizona National Guard, the situs of the offense is unimportant for jurisdictional purposes.

ARKANSAS:

Title 11 of the Arkansas Statutes Annotated entitled "Military Affairs and Emergency Services" contains Chapter 6 which regulates "Military Justice."

The jurisdictional question is addressed in §11-616 which states: "Each force of the organized Militia has court-martial jurisdiction over all persons subject to this code [§' 11-101 to 11-106]. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor."

The statutes referring to military justice address the question of out-of-state jurisdiction in §11-116 which states: "Officers

and enlisted men of the National Guard shall be subject to and governed by the provisions of this act [§'11-101 -- 11-1106] while without this State under the order or authorization of the Governor under the preceding section in like manner and to the same extent as when on duty within this State under orders of the Governor."

§11-614 provides for nonjudicial punishment pursuant to regulations prescribed by the Governor. This section does not provide for an accused to refuse nonjudicial punishment and be tried by court-martial in the alternative. Appeal of nonjudicial punishment is to be to the next superior authority.

Senate Bill 16, signed into law on 3/9/87, authorizes the appointment of military judges in general and special courts-martial. The Bill provides that military judges shall be commissioned officers, members of the highest court of a state or a member of a bar of a federal court and be certified as qualified by the State Judge Advocate.

The bill provides:

Neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the State Judge Advocate, or his designee and may perform duties of a judicial or non-judicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of the State Judge Advocate or his designee.

Presumably the above quoted language is intended to insulate the judge by taking him out of the normal chain of command for purposes of officer efficiency reviews and promotion potential, but it is not quite clear.

The newly enacted legislation also provides for the appointment of trial and defense counsel to special and general courts-martial.

Also provided in the new legislation is appeal or a court-martial conviction and sentence, after exhaustion or all review rights within the organized militia, to the Arkansas Supreme Court, or to the Court of Appeals if the Supreme Court Rules provide for this intermediate appeal. Appeal procedure

applied to criminal convictions from the civilian courts will apply when appeal to the Supreme Court is made.

CALIFORNIA:

The California Manual for Courts-Martial which, incorporates the federal Manual for Courts-Martial insofar as it is not in conflict, provides that California maintains jurisdiction that is extraterritorial. For example, if a unit conducts training at Fort Lewis, Washington and an individual commits an offense, the Commander may impose nonjudicial punishment of a California State Court Martial in Washington. The individual may receive punishment upon return to California. This has been challenged. There are cases where individuals who are attending school in other states and are in a Title 32 U.S.C. status. While at the school they commit an offense. The school does not have jurisdiction to impose nonjudicial punishment or court-martial punishment since they have no jurisdiction over persons serving under Title 32. When the individual is returned to California, punitive measures or administrative measures may be, and are, imposed. When an individual is on an overseas deployment, this is pursuant to Title 10, U.S.C. and the active components have jurisdiction to impose punishment.

COLORADO:

Captain Gary R. Brown, JA, COARNG AGR, Assistant Staff Judge Advocate provided the following comments:

The Colorado Code of Military Justice incorporates primarily military related offenses. Those for which there would be a civil equivalent require that the local District Attorney waive jurisdiction prior to the military taking jurisdiction... Jurisdiction of our Code incorporates the fact that the member will be subject to the Code whether or not within the State of Colorado and during times of travel to and from training. It is our opinion that the jurisdiction even in Title 10 status would not preclude the state from taking jurisdiction if appropriate.

FLORIDA:

Title XVII of the Florida Statutes, Chapter 250, Sections 250.35 to 250.39 serve as the basis for military justice in Florida. §250.35 adopts the Uniform Code of Military Justice "for use by the organized militia, except as otherwise provided

by this chapter." The chapter then limits courts-martial punishments as provided for in 32 U.S.C. 326-333 by Congress.

Florida has implemented the Uniform Code of Military Justice through the use of a comprehensive regulation (Florida National Guard Pamphlet 27-10).

In Florida the accused has the option of accepting non-judicial punishment or demanding trial by summary or special court-martial. A commissioned officer may not be tried by a summary court-martial.

Appeal of a court-martial sentence is automatic up through the Adjutant General (TAG-FL (ATTN: SJA)) and then "if an accused is dissatisfied with the final action by the Adjutant General, he or she may appeal first the District Court of Appeals (DCA) in the appropriate judicial circuit" for special or general courts-martial only.

GEORGIA:

The Georgia Military Laws can be found in Chapter 2 of Title 38 of the Code of Georgia. Article 5 of that Chapter, entitled Code of Military Justice, provides the statutory framework for the application of military justice to the members of the Georgia National Guard.

The Georgia Military Code takes a unique approach to the potential problems with jurisdiction. §38-2-324 states:

The jurisdiction of the military courts and boards established by this article shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding.

The Georgia Military Code then, in §38-2-325 indicates that the code applies both inside and outside the state and that courts-martial can be convened and held outside the state in the same manner and with the same powers as inside the state.

§38-2-360 provides for nonjudicial punishment. There is a provision for the promulgation of regulations that will allow the accused to refuse the nonjudicial punishment. GaNGR 27-1 provides in paragraph 4-11 that: "No non-judicial punishment under the provisions of O.C.G.A. § 38-2-360 may be imposed upon any soldier on 'active state duty' if the accused has, prior to the imposition of such punishment, demanded a trial by court-martial, in lieu of such non-judicial punishment." "Active state duty" is then defined in paragraph 4-12 as "full-time

military duty in the active service of the State under an order of the Governor issued pursuant to O.C.G.A. § 38-2-6."

Under §38-2-374, officers and warrant officers are not subject to summary court-martial jurisdiction.

§38-2-394 provides that the convening authority ordering a general court-martial shall appoint as a law officer "an officer who is a member of the bar of this state."

§38-2-395 requires the convening authority ordering a general or special court-martial shall appoint a trial and defense counsel (with similar qualifications) and any person appointed to either of these two positions "must be a member of the bar of the highest court of a state of the United States."

Part 9 (§'38-2-480 through 38-2-493) of the Georgia Military Laws pertain to the review of court-martial findings and sentences. They provide that every court-martial is review by the convening authority who must approve or disapprove the result of the court-martial action. No sentence to confinement by a summary or special court-martial will be executed until it has been approved in writing by the Judge Advocate of the next higher command. No sentence involving a bad conduct discharge will be executed until it has been approved in writing by the Judge Advocate of the next higher command and the State Judge Advocate. All sentences by general courts-martial shall be approved in writing by the State Judge Advocate and forwarded to the Governor for final review.

§38-2-393 makes the orders and executions of sentences of courts-martial final and binding on all departments, courts, agencies, and officers of the state. As GaNGR 27-1, paragraph 5-5 states: "In other words, a conviction of an offense by a court-martial has the same legal effect as a conviction of a court in the State of Georgia."

INDIANA:

Indiana Code §10-2-5-1 [45-2201] provides the basic statutory statement covering military justice for the Indiana National Guard. It states:

Whenever the national guard of this state or any portion thereof shall be in active service on behalf of the state in case of public disaster, riot, tumult, breach of peace, resistance of process, whenever called upon in aid of civil authorities, or under martial law, or at encampments, or any scheduled training periods or drills for which a member is entitled to pay, within or outside the

state or upon any other duty requiring the entire time of the national guard, or any part thereof, the uniform code of military justice governing the armed forces of the United States as now in effect, or as hereafter changed and such change approved by the adjutant general as applicable to Indiana military law, shall be in force and regarded as part of IC 10-2 [10-2-1-1 -- 10-2-11-5] so far as said forces are concerned, until said forces shall be relieved from said duty except as herein specifically limited that confinement in a penitentiary shall be in a penitentiary of this state, and Provided That offenses committed while in active service may be tried and punished by a court-martial lawful appointed, after such active service is terminated, and if found guilty the accused shall be punished according to the uniform code of military justice and the rules and regulations governing the United States armed forces, except as to punishments as hereinafter provided, but within the limits prescribed by federal law for court-martial in the national guard: Provided, That in any case when the offense charged is also made an offense by the civil law of this state, the officer whose duty is to approve the charge may, in his discretion, order the person charged to be turned over to the civil authorities for trial and, Provided further, That no punishment under such rules and articles of the uniform code of military justice which shall extend to the taking of life shall, in any case, be inflicted, except in time of actual war, invasion or insurrection, declared by proclamation of the governor to exist, or to be threatened or anticipated: Provided, further, That in case any person or persons resisting the laws of the state or unlawfully or riotously assembled for such purpose, or any bystander or person in the vicinity thereof, shall be killed or injured by any such state forces called into active service, under the provisions of IC 10-2 [10-2-1-1 -- 10-2-11-5], and acting in obedience to the orders of its commanding officer, no such officer or member of said national guard shall be subject to indictment, trial or any civil process whatever other than by a court-martial, to be convened for that purpose by the governor, and the finding of such court-martial, when submitted to and

approved by the governor, in accordance with such uniform code of military justice, shall be final and conclusive on all persons; and, in the event that any indictment shall be found or information filed against such person, no writ or other process shall be issued thereon by the clerk of the court where such indictment was returned or information filed against the defendant or defendants, but such clerk shall forthwith transmit to the governor a duly certified copy thereof, and, upon the receipt thereof, the governor shall cause to be convened a court-martial for the purpose of determining the truth of such charges and the punishment, if any, to be inflicted therefor.

In his answer to the survey, Major George C. Thompson, State Judge Advocate of the State of Indiana Military Department commented that 328 Summary Courts-Martial and 2 Special Courts-Martial resulting in punishment were imposed in Indiana during 1986.

IOWA:

LtCol Edward J. Strobl, Staff Judge Advocate in the Iowa Air National Guard made the following comments concerning military justice:

A special note on the enclosed pamphlet [Iowa Arng Miscellaneous Publication No. 9-2, Guide for Administration of Military Justice Under the Iowa Code] and code [Iowa Code of Military Justice (Chapter 29B, Code of Iowa)] is appropriate. It is in two parts, a guide to administering non-judicial punishment and a punitive articles. Our legislature wisely drafted the General Article 29B.116 to reserve jurisdiction to Iowa's civil courts for felony and capital offenses enumerated therein. So more serious offenses would be referred to the County Attorney or State Attorney General for prosecution. I recommend this to other states.

MAINE:

The Maine Military Code can be found at 37-B M.R.S.A. §'101-A through 453.

In a discussion of the military versus civilian processing of offenses, Major Gunnar C. Myrbeck, Deputy Staff Judge Advocate of the Maine Air National Guard, pointed out that:

First there are only a very limited number of offenses recognized by the military code (see §437 through §453). The first sentence of §418 states, "The jurisdiction a court-martial is limited to trial of persons subject to this code who are accused of military offenses described in this code." Second, if an offense falls under the purview of both the state military code and a civilian statute, the offender "shall be released to the civil authorities if the crime carries a penalty greater than the maximum penalty for the military offense provided by the code."

The Maine Military Code also provides an additional vehicle for the imposition of military justice. It is the "nonjudicial punishment panel" for disciplinary matters between commander imposed Article 15's and courts-martial. As Major Myrbeck states:

The panel provides a guard member with an option of eliminating the negative consequences of a criminal misdemeanor or felony conviction and yet taking advantage of a 3-member nonjudicial punishment panel which might have a more detached viewpoint than a directly involved commander. I believe the nonjudicial punishment panel thereby makes an attractive alternative to air effective rebuttals and minimizes the potential for courts-martial.

As to the question of out-of-state jurisdiction of courts-martial over members of the Maine National Guard, Major Myrbeck points out that:

There is a further problem that we encounter in the Maine National Guard having so few operative offenses with no general disciplinary offenses such as Article 134 of the US Code of Military Justice which is compounded by Guard offenses out of state. I am enclosing an actual scenario with the names blackened out demonstrating the disposition of a shoplifting offense by a guardsperson at the post exchange at Fort Drum, New York. Note that the soldier accepted the state Article 15 despite the fact that she could have

successfully barred imposition in this instance.

The case mentioned in the above quote involves a guardsperson who shoplifted at the Fort Drum PX while the guard was in Title 32 "state-status" training. The regulations at Fort Drum provided that Title 10, federalized national guardsmen, were to be turned over the provost-martial for disposition at the post. Title 32 guardsmen were to be treated as civilians with the matter being referred to the local civil authorities. Major Myrbeck describes the problems with this procedure by stating:

The problem in dealing with the matter locally is that out of state prosecution means that the guardsmen may have to be detained locally until the charges are disposed of or bail posted against the guardsman's return at his/her own expense for a later court date assuming he or she was allowed to return to Maine with his/her unit. This is an inconvenient expensive process at best.

MARYLAND:

Maryland has just completed the revision of their regulation governing military justice.

The Maryland National Guard is governed by Article 65 (Militia) of the Annotated Code of Maryland. The sections dealing with military justice generally paraphrase the provisions of Title 32 of the United States Code.

Purely military offenses (violation of Section 47, Article 65, MD. ANN. CODE) are handled by court-martial. Offenses with a civilian equivalent are generally referred to the civilian court system unless the infraction is minor in nature, in which case, they may be tried by court-martial as, "conduct prejudicial to good order and military discipline".

The Maryland National Guard has adopted the so-called "doctrine of extraterritoriality" which subscribes to the theory that "jurisdiction follows the flag". Their new regulation provides:

"5. Territorial Applicability:

(a) General. This regulation applies to any member of the MDARNG whether serving in or out of this State for any offense whether committed in or out of this State.

(b) Location of Proceedings. Courts-Martial and Courts of Inquiry may be convened and held in units of the Maryland National Guard whether those units are serving in or out of this State.

(c) Charges. Charges may be preferred or initiated and processed and trial or nonjudicial punishment proceedings may be held without regard to duty status of the accused or the period of duty during which the offense took place."

MINNESOTA:

Minnesota has adopted a code broadly similar to the Manual for Courts-Martial to govern military discipline in the Minnesota National Guard. This code can be found in Chapter 192A of the Minnesota Statutes.

§192A.035 purports to make the Military Code applicable to members of the National Guard everywhere stating:

Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

§192A.085 of the Military Code provides that nonjudicial punishment may not be imposed if the accused, before punishment is imposed, demands trial by court-martial, except when the person is embarked on a vessel.

§192A.11 of the Military Code provides that if an accused objects to trial by summary court-martial, then a special or general court will be impaneled to try the case. Summary courts may not try officers.

Minnesota, pursuant to §192A.15, has created a Military Judge System, which the statute states shall consist of at least two military judges and necessary staff. A military judge must be a commissioned member of the National Guard who has been a member of Minnesota Bar for six years, who has been a member of the judge advocate general corps for not less than three years, and who is certified by the state judge advocate.

Trial counsel and defense counsel must be detailed for each special or general court-martial. They must be members of the bar of the highest court of the state or members of the bar of a federal court and must be certified as competent by the state judge advocate.

§192A.345 appears to make the state judge advocate the final appeal authority. It requires him to review the opinion of the appropriate staff judge advocate pursuant to regulations to be prescribed by the governor. The state judge advocate then takes final action and when necessary he instructs the convening authority to act in accordance with his opinion.

§192A.38 makes the final orders of a court-martial not subject to appeal. It states:

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 state, subject only to action upon a petition for a new trial [filed within two years with the Governor and based on newly discovered evidence or fraud on the court-martial] as provided in section 192A.365.

The Military Code of Minnesota was adopted in 1963 and appears to be a model military code since the last section of the code indicates that the code shall be construed to make uniform the law of those states that enact it.

MISSOURI:

Captain Barbara A. Branigan, MOANG Staff Judge Advocate made the following comments when answering the inquiries in the survey:

1. In 1984, Chapter 40 Revised Missouri Statutes, was enacted, providing for the Missouri Code of Military Justice for the State Military Forces of Missouri, which includes the National Guard as part of the organized militia...

2. Presently, the Missouri Code of Military Justice (MCMJ) has not been fully implemented. The Missouri Manual for Courts-Martial (MMCM) was signed into law by executive order of the Governor in 1986. Knowing all aspects of judicial and nonjudicial punishment could not be properly effected during scheduled inactive

and active duty for training, we asked for an opinion of the Attorney General into whether, aside from state emergency duty call by the Governor, we have a status of state active duty. Finding no such status is allowed under existing law, a bill is now [January 15, 1988] pending, and passage is hoped for this session. With state active duty other than at the call of the Governor, trial and defense counsels will be able to prepare for courts-martial between drill weekends, and actions under the code will not be limited to that which can be accomplished during the federally-paid periods of training duty.

3. As above, no nonjudicial punishment has been effected under our Code. Administrative actions, e.g., reprimands, reduction/demotion in grade, and separation, remain available under federal regulations and procedures.

NEBRASKA:

Chapter 55 of the Revised Statutes of Nebraska is known as the Nebraska Code of Military Justice (§'55-401 to 55-480).

The code is made applicable to all "members of the military forces of Nebraska not in the active service of the United States and who are under orders to be in active service to the state..." (§55-403). The code is "applicable in all places where military forces are present with any personnel who are on orders to be in the active service of the state" (§55-406).

§55-410 provides that:

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the State of Nebraska summarily to apprehend a deserter from the Nebraska National Guard or a member of the military forces absent without leave and deliver him into the custody of the Nebraska National Guard.

A member may not receive nonjudicial punishment if, prior to the imposition of the punishment, he demands trial by court-martial (§55-416).

§55-417 provides that courts-martial shall consist of a military judge and at least three members or a military judge alone if requested, in writing, by the accused. The jurisdiction of these courts-martial exceeds the federal

statutory limitations by permitting up to six months confinement at hard labor and forfeitures or detentions of pay for up to six months (§55-418).

Military judges shall be commissioned officers of the National Guard or retired officers of the reserve components of the armed forces of the United States who are members of the bar of the Supreme Court of Nebraska and who are certified as qualified by the State Judge Advocate (§55-422). The same section permits the Adjutant General to order to active duty retired personnel of the United States Armed Forces to act as military judges.

The convening authority must detail qualified trial and defense counsel to each court-martial. These counsel must be judge advocates of the military forces who have been graduated from an accredited and licensed to practice law in Nebraska or be members of the bar of a federal court or licensed to practice in another state and must be certified competent by the State Judge Advocate (§55-423).

Nebraska provides a Court of Military Review consisting of three members, serving five year terms, who are appointed by the Adjutant General. The members are either civilians or commissioned officers of the military forces, who would not have a conflict of interest, who are attorneys licensed to practice law in Nebraska (§55-441). The judges, who are paid fifty dollars per day and expenses when acting for the court (§55-442), receive from the State Judge Advocate the record of trial, review the actions of the convening authority, and make recommendations as to the proper disposition of the case. The State Judge Advocate then orders the convening authority to take final action in accordance with the decision of the Court of Military Review (§55-443).

Decisions of the Court of Military Review are appealable to the Nebraska Supreme Court (§55-445). No sentence of a court-martial may be executed until approved by the Governor (§55-446).

At any time within one year after approval by the convening authority of a court-martial sentence, the accused may petition the State Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court (§55-447).

NEVADA:

Title 36 of the Nevada Revised Statutes entitled Military Affairs and Civil Emergencies contains Chapter 412 which is called State Militia.

§412.262 entitled "Territorial applicability of Nevada Code of Military Justice" makes the Code applicable throughout the state of Nevada and to all persons subject to the code while they are

going to, serving, or returning from service outside the state. It also permits courts to be held when the Nevada National Guard is serving outside of the state.

In Nevada all judge advocates and legal officers must be commissioned members of the Nevada National Guard and must be licensed to practice law in Nevada (§412.264).

Nonjudicial punishment may not be imposed on an accused who, prior to the imposition of that punishment, demands trial by court-martial (§412.286).

Summary courts may try enlisted members of the National Guard, not Warrant Officers and Commissioned Officers, who do not, prior to the trial, object to the summary court. If there is an objection, then the accused must be tried by a special or general court-martial (§412.314)

The special and general courts-martial have the same jurisdiction, composition, powers, forms and procedures as those of the active forces (§412.304) except for the punishments which are limited by the provisions of 32 U.S.C. §§326-333.

For special and general courts-martial, the convening authority shall request the state judge advocate to detail a military judge (§412.334).

For special and general courts-martial, the convening authority shall detail trial and defense counsel who shall be members of the bar of the highest court of a state or of the federal courts (§412.336).

The Code provides for appeals or review of the record to be made by the convening authority. If the convening authority is the Governor than his action on the record is final (§412.432 1.). In all cases involving a general court the convening authority shall forward the record to the state judge advocate for review.

The Code provides for boards of review at §412.432 8. which reads:

The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the Nevada National Guard, each of whom must be a member of the State Bar of Nevada. Each board of review shall review the record of any trial by special court-martial, including a sentence to a bad-conduct discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section.

A petition for a new trial is limited to those cases where the court-martial sentence includes dismissal, dishonorable discharge or a bad-conduct discharge and must be filed with the Governor within two years of the approval by the convening authority and can only be on the grounds of newly discovered evidence or fraud on the court-martial (§412.442).

§412.448 provides that the proceedings, findings, and sentences of a court-martial are final and conclusive. Orders publishing the proceedings of a court-martial and all action taken pursuant to those proceedings are binding on all departments, courts, agencies and officers of the state, except for the right to petition for a new trial.

NEW YORK:

Article VII of Title 130 of the New York statutes contains the Code of Military Justice for the New York National Guard.

§130.5. Territorial applicability of the code provides:

This code shall be applicable in all places within the state. It shall also apply to all persons subject to this code while serving without the state and while going to and returning from such service without the state in like manner and to the same extent as while such persons are serving within the state.

It appears that the latest revision of the Code of Military Justice deletes the previously effective provision that an accused may refuse nonjudicial punishment and demand a court-martial. §130.15 states:

(b) Under such regulations as may be issued pursuant to this chapter, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, and the categories of commanding officers authorized to exercise such powers [and the applicability of this section to an accused on active state duty who demands trial by court-martial.

The punishments that may be levied by the various types of court-martial are limited by the Congressional limitation found in 32 U.S.C. 326-333. The jurisdiction of the summary court is limited so that officers, warrant officers, and any accused who objects to trial by summary court may not be tried by that type of court-martial (§130.20).

Military judges shall be detailed to general courts-martial and may be detailed to special courts-martial by the convening

authority. Military judges shall be commissioned officers of a force of the organized militia or persons on the state reserve list who are members of the bar of New York and who are certified to be qualified for judicial duty by the state judge advocate. Military judges shall be detailed by the convening authority after they are designated by the state judge advocate. Judges are responsible directly to the state judge advocate to eliminate the possibility of command influence (§130.26)

Trial and defense counsel shall be appointed by the convening officer for each general or special court-martial. Any person appointed as a trial or defense counsel in a general court-martial shall be a member of the New York bar. In the case of a special court-martial, the Code of Military Law requires that the trial and defense counsel have the same qualifications, without setting out those qualifications (§130.27 (c)).

§130.65 provides for a board of military review to be established by the state judge advocate. The board shall be composed of at least three officers, members of the New York Bar, of the organized militia or on the state reserve list or state retired list. All cases where the sentence extends to the dismissal of a commissioned officer, includes a dishonorable of bad-conduct discharge, or any confinement and any case in which the accused's right to appellate review has not been waived or an appeal has not been withdrawn, shall be referred to the board of military review. The board may act only with respect to the findings and sentence as approved by the convening authority. It may approve the sentence and in considering the record, it may weigh the evidence, judge credibility of witnesses, and determine controverted questions of fact. The action of the board shall be subject to the approval of the chief of staff of the Governor. The state judge advocate shall instruct the convening officer to take action in accordance with the decision of the board of military review.

All cases decided by the board of military review and approved by the Governor's chief of staff shall be forwarded to the Governor for final review (§130.66). The Governor may review the finding of the court-martial on the same basis as the board of military review, both law and facts.

The finality of court-martial orders is provided by the following statement in §130.74:

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 state of New York subject only to action upon a petition for a new trial as provided in section 130.71 of this article and to action by the chief of staff to the governor as

provided in section 130.72 of this article, and authority of the governor."

NORTH DAKOTA:

Col Murray G. Sagsveen, Staff Judge Advocate, North Dakota Army National Guard provided these comments:

1. Attached is a copy of Section 37-01-03 and Chapter 37-09 of the North Dakota Century Code [which basically makes the regulations applicable to the army applicable to the N.D. National Guard courts-martial as far as powers and procedures are concerned].

2. Serious offenses are handled by civil authorities. The nonjudicial punishment process is used for most minor offenses.

3. A military court was apparently used in 1912. See State ex rel. Poole v. Peake, 135 N.W. 197 (N.D. 1912). I have not been involved with the imposition of military punishment, above the level of nonjudicial punishment, in the North Dakota Army National Guard.

4. North Dakota has not, at least, during the last 20 years, conducted any special or general courts-martial in state status.

...

6. We are concerned about jurisdictional problems related to out-of-state training...

Section 37-01-03 of the North Dakota Century Code provides the basic statutory framework for military justice in North Dakota. It states:

37-01-03. Articles of uniform code of military justice applicable in state--Regulations governing--Punishment for offenses while on duty. The articles of uniform code of military justice governing the armed forces of the United States, now or hereafter in effect, are part of this title so far as the same are applicable and not modified by any provision of this title. A person who commits an offense while on duty may be tried by a court-martial lawfully appointed even after such duty has terminated,

and if found guilty, the accused must be punished according to the articles of uniform code of military justice and rules and regulations governing the armed forces of the United States within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the person alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve such charge, in his discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Whenever reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, such reference shall be deemed to include the military service of this state. The intent of this title and of all laws of the state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all laws of this state shall be construed to effect this purpose.

OHIO:

Comments from LtCol Keith A. Savidge, a Military Judge in the Ohio National Guard state:

Ohio has a very fine and workable state military justice system. The only drawbacks to our code are the limitations on penalties in peacetime, R.C. 5924.147 [which are the limitations contained in 32 U.S.C. 326-333]. The fines set for them need to be increased. Furthermore, Ohio needs to adopt a system of appellate review. We have recently activated the Board of Review for appeals (see R.C. 5924.65(H)) to help alleviate this problem.

OKLAHOMA:

Major Robert K. Borst, OKANG Staff Judge Advocate provided the following comments:

Oklahoma does have its own code of military justice located at 44 O.S. 2101-3113.

The Oklahoma Code of Military Justice is primarily concerned with military offenses, however, it would extend to some civil offenses thorough its general article, section 3045. This section, however, does exclude murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault, burglary or housebreaking which are left to the civil courts. The offenses covered by the code are handled either by nonjudicial punishment or court-martial depending upon the severity of the offense. Most of our actions are for absence without leave or insubordination.

Summary and special courts-martial are used quite often, especially during annual training. Courts-martial are almost exclusively the province of the Army Guard; the Air Guard has conducted no courts-martial in recent memory and administered only a few non-judicial punishments. Most Air Guard matters are handled administratively.

I do not know the exact numbers [of special or general courts] but would guess that at least two special courts-martial are conducted during annual training. General courts-martial are rare. Summary courts-martial are more frequent and probably number five or so per year.

No one has ever appealed a verdict beyond that which is provided for in the code.

The Oklahoma Code of Military Justice states at section 2105 that it is extra territorial. In fact, most of the courts-martial listed above occurred while the respective units were out of state. This gives me some problems conceptually but it has never been challenged.

RHODE ISLAND:

Title 30, Chapter 13 of the General Laws of Rhode Island contain the Rhode Island Code of Military Justice which regulates military justice for the Rhode Island state military forces.

The jurisdictional applicability of the Code is in the form of a standard long-arm statute contained in §30-13-5 which states:

Territorial applicability of the code.--(a)
This code applies throughout the state. It

also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and coming from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

Nonjudicial punishment is regulated by §30-13-15 which contains a provision allowing the accused to refuse nonjudicial punishment and providing for trial by court-martial instead.

Appeals from courts-martial are directed to the state judge advocate who may impanel a board of review composed of not less than three commissioned officers of the state military forces who are members of the bar of the highest court of the state. Boards of review have the same powers of review as the state judge advocate.

Final decisions on punishments by courts-martial are binding on all state departments, courts, agencies, and officers of the state.

§30-13-76 states that no person may be tried by court-martial unless the military offense occurred while the person was in duty status.

SOUTH CAROLINA:

Major Sidney S. Riggs, III, SCARNG Staff Judge Advocate sent the following comments in addition to copies of the Code of Military Justice passed in 1984 and amendments from 1985:

Uniquely military offenses are handled pursuant to the Code of Military Justice. Offenses with a civil equivalent may be handled either by our Military Justice System or our Civil Justice System. A determination is made on a case-by-case basis.

Military punishment above the level of non-judicial punishment has been imposed in this state. We are in the process of conducting a Special Court-Martial at this

time [January 25, 1988], which will be the first under the present Code of Military Justice. Obviously, there have been no appeals of Special or General Courts-Martial to date.

The jurisdictional problem envisioned in your sixth question is addressed in Section 25-1-2430 of the Code of Military Justice [typical long-arm jurisdiction provision]. There has been no judicial test of this provision.

TEXAS:

Title 4 of the Texas Codes which is the Government Code that applies to the Executive Branch contains Chapter 432, the Texas Code of Military Justice.

It is made applicable to all members of the Texas National Guard wherever they are. §432.004 states:

(a) This chapter applies in all places and to all persons otherwise subject to this chapter while they are serving outside the state and while they are going to and returning from service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this chapter as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

§432.021 provides that except when the accused is attached to or embarked in a vessel, punishment may not be imposed on an accused who has, prior to the imposition of punishment, has demanded trial by court-martial in lieu of nonjudicial punishment.

In general, the Texas Military Code appears to provide for more severe nonjudicial punishment than other states. For example, nonjudicial punishment in Texas imposed by a field grade officer may range up to 30 days correctional custody, 45 days extra duty (two hours per day), or 60 days restriction.

The Court stated that the Texas Code of Military Justice specifically states that it applies out of state and supports this with references to 32 U.S.C. 502-505 which describes the types of training that are authorized for the National Guard and with a reference to Strassheim v. Daily, 221 U.S. 280, 31 S.Ct. 558, 55 L.Ed. 735 (1911) which holds, in pertinent part:

Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the state should succeed in getting him within its power.

This case had to do with Michigan's attempt to extradite Strassheim as a fugitive from justice from Illinois and the case was based on an application for a writ of habeas corpus.

To me, at least, this case does not seem to be dispositive of the question of the extraterritorial application of a state's military justice code.

UTAH:

LtCol Barrie A. Vernon, Utah NG Judge Advocate made the following comments in responding to the inquiries made in the survey:

For many years, Utah law contained a provision which merely adopted by reference all of the punitive laws and administrative rules found in the Federal Uniform Code of Military Justice.

Because of decisions of the Utah Supreme Court, we were unwilling to enforce laws that had not been adopted and codified by the legislature. As a result, our discipline system consisted only of non-judicial punishment for minor offenses and administrative discharges for serious misconduct.

This system was very unsatisfactory in that it did not enable our commanders to properly discipline the members of their unit. One specific problem we encountered was that some members of the Guard wanted a discharge to avoid fulfilling their enlistment contracts.

In order to remedy this inequity, we have introduced into this session of the Utah

The court-martial penalties are limited by 32 U.S.C. 326-333, and summary courts may not try officers.

For general courts the convening authority, the Governor or the Adjutant General shall, and for special courts the convening authority may, detail a military judge to preside. The judge must be a commissioned officer of the state military forces, a member of the bar of a federal court, a member of the bar of the highest court of Texas, and certified to be qualified as a military judge by the state judge advocate general. (§432.045)

The convening authority of each court-martial shall detail trial counsel and defense counsel. Trial counsel or defense counsel for a general court-martial shall be a graduate of an accredited law school, a member of the bar of a federal court or of the highest court of a state, and certified as competent to perform his duties by the state judge advocate general.

Perhaps the most interesting feature of the Texas Military Code is found in §432.109 which requires the review of all records of special and general courts-martial by the Texas Court of Military Review. This Court consists of five members who are appointed by the adjutant general upon the recommendation of the state judge advocate for terms of six years. These judges must be members of the Texas Bar, members of a federal bar, graduates of accredited law schools, active or retired commissioned officers of the Texas National Guard or of the armed forces of the United States, must have actively practiced for five years and have at least five years experience as a staff judge advocate, judge advocate, or legal officer. Judges of the Texas Court of Military Appeals are paid compensation equal to the compensation appropriated by the legislature for judges of the Texas Courts of Appeals, plus actual expenses. The Court reviews cases, renders opinions, and directs actions by the convening authority in accordance with the opinion.

The final orders published by the courts-martial are made binding on the state's departments, courts, agencies, and officers except that the accused may petition the state judge advocate for a new trial based on newly discovered evidence or if a fraud has been committed on the court-martial.

In an opinion of the Texas Court of Military Appeals (Vernon v. State, No. 77-1 (1978)), the Court apparently addressed the question of the extraterritorial application of the Texas Code of Military Justice in answering the accused's first assignment of error which stated: "The Texas Code of Military Justice has no extraterritorial jurisdiction." The Court, in its finding of facts stated that the epithet that was the act of disrespect to a superior commissioned officer was uttered while the accused was outside the state.

Legislature, which runs until the end of February, the attached legislation.

It consists of some long-needed changes to Title 39 [of the Utah Code Annotated], which concerns the Utah National Guard, and also creates a new chapter 6 in that title creating a system of military courts equivalent to a state inferior (misdemeanor) court to be conducted as a special court martial on active duty.

The punitive articles which we have adopted are the classic military offenses such as AWOL, desertion, disobedience and insubordination but we have not adopted any felony offenses. We feel that these offenses will be better prosecuted by the appropriate County Attorney who has concurrent jurisdiction over the misdemeanors also.

This proposed code provides for extraterritorial and in-state jurisdiction over Guard members performing only under Title 32 of the U.S. Code. This includes part-time members and full-time members (AGR) on state active duty or Title 32 training.

When our Guard members are mobilized or go out of the country, they are under Title 10 of the U.S. Code and are covered by the UCMJ.

VIRGINIA:

Title 44 of the Code of Virginia Annotated, Military and Emergency Laws, Chapter 1, Military Laws of Virginia, incorporates "the Manual for Courts-Martial, United States, including by not limited to the Uniform Code of Military Justice as now existing or subsequently amended...except where in conflict with other provisions of this Chapter" into the laws of Virginia.

§44-40 limits court-martial subject jurisdiction to purely military offenses and those other criminal offenses that have not been prosecuted in the civil courts, stating: "However, should a person commit an offense punishable under the criminal laws of Virginia, then prosecution under the criminal laws shall bar prosecution under this chapter."

The chapter then limits courts-martial punishments as provided for in 32 U.S.C. 326-333 by Congress. A commissioned officer may not be tried by a summary or a special court-martial.

§44-40.1 provides that "[a]ll members of the Virginia National Guard are subject to the military laws of Virginia when under orders to be present for duty, not in federal service." This section has been interpreted to mean that the Virginia Code of Military Justice applies to all members of the National Guard no matter where they are located, even if they are in another state, when they are in purely state-status or when they are training in Title 32 status. VaARNGR 27-7/VaANGR 111-1 provides in paragraph 1-5 that:

Courts-martial may be convened and held in units of the Virginia National Guard while serving without the State with the same jurisdiction over persons and offenses and powers as though held within the State; it is not material that the offense was committed without the State. Punishment may be imposed wherever the court-martial is convened. Courts-martial will not be convened outside the Commonwealth, for other than purely military offenses without the prior approval of the Adjutant General of Virginia.

§44-46.1 provides that military judges may be designated and certified by the Adjutant General, on a case-by-case basis, to preside over courts-martial and that they shall be commissioned officers in the National Guard, assigned as legal officers, and admitted to practice law somewhere. This would seem to exclude active duty judge advocates who might be detailed to preside at National Guard courts-martial as an additional duty.

Review of court-martial sentences is contemplated to the Adjutant General only "except for sentences of dismissal from the service or dishonorable discharge" which "shall also be subject to review by the Governor...."

The implementing regulation, cited above, contemplates that an accused may refuse non-judicial punishment and then shall be tried by court-martial. VaARNGR 27-7/VaANGR 111-1 provides in paragraph 2-10, c. (2) for "the request by the accused of a reasonable time, normally 24 hours (ADT) or one UTA period to decide whether to demand trial by court-martial and to gather matters in defense, extenuation, and/or mitigation."

VaARNGR 27-7/VaANGR 111-1 provides in paragraph 4-4 that "an accused may not be tried by summary court-martial if he objects to such a trial, regardless of whether he was first offered nonjudicial punishment."

VaARNGR 27-7/VaANGR 111-1 does not provide for a general court-martial. Probably because if the conduct is sufficiently serious as to constitute a felony, then it would be tried by civil authorities.

WASHINGTON:

LtCol Kevin Ryan, Staff Judge Advocate provided the following answers to the survey:

1. Our state does have a state military code of justice which applies to the Washington National Guard whenever it is serving pursuant to the call of the governor or under Title 32 of the United States Code...

2. A review of the punitive articles contained in the Washington military code (Chapter 38.38, RCW) will disclose that most of the acts punishable are of a military nature. Regardless, generally the offenses, if they are minor, are handled through non-judicial punishment (RCW 38.38.132) otherwise, a summary court-martial is conducted. At present, these summary courts-martial are conducted with a lawyer serving as a military judge and legally qualified trial and defense counsel. To my knowledge, there have only been two or three special courts-martial conducted in this state and only one general court-martial. That court-martial was conducted in 1981 and involved an officer who had negligently crashed a helicopter in California, killing an individual.

3. The Guard in Washington conducts approximately 40 to 50 courts-martial a year. Almost exclusively, these involve cases of prolonged absence without leave. However, occasionally the charges include disobedience of orders, disrespect, or other military related offenses such as negligent destruction of government property. To my knowledge, all of the courts-martial have been imposed for incidents occurring while the Guard was serving under Title 32 of the United States Code. In other words, in a state controlled status. To my knowledge, there have been no courts-martial when the Guard has been in a purely state status at the call of the governor.

...

5. No verdicts of these special or general courts-martial have been appealed. The general court-martial was resolved partly as a

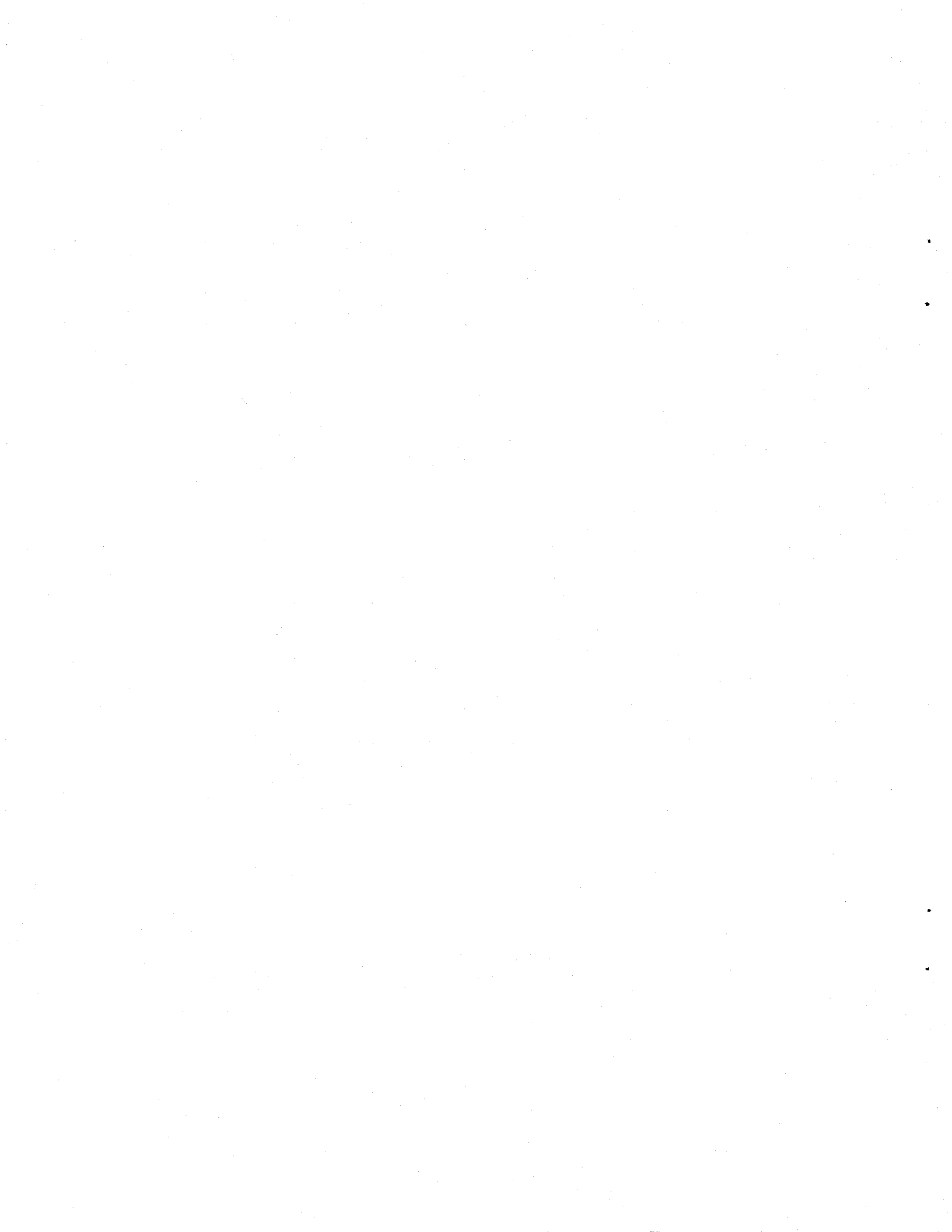
result of a plea bargaining between the trial counsel and defense counsel before the matter was submitted to a panel of officers for sentencing purposes.

6. As to jurisdictional problems, there have been relatively few incidents requiring disciplinary action when Guard soldiers have been in other states serving as individuals at schools or other training functions. When a Guard unit has traveled to another state for unit training, and disciplinary issues arise, these have been handled by the unit command and JAG officers have been dispatched to assist as necessary. There have been one or two incidents in the last few years where soldiers or airmen have been charged with military infractions while away in another state at school and have been returned to the state of Washington for disciplinary action. Primarily these infractions have been handled through nonjudicial punishment and administrative sanctions without employing courts-martial proceedings.

WYOMING:

§19-2-601, which follows, is the basis statute which governs military justice in Wyoming.

§19-2-601. Military courts generally. The military courts of this state are general courts-martial, special courts-martial and summary courts-martial, and are constituted and have cognizance of the same subjects and possess like powers as similar courts provided by the laws and regulations governing the armed forces of the United States, as limited by federal law and regulations applying to the national guard not in federal service. The court shall, as far as practicable, follow the forms and modes of procedure prescribed for the similar courts except that the word "governor" shall be substituted for the word "president" whenever appearing in those laws and regulations. The prosecution in general, special or summary court-martial of the militia of this state shall be in the name of the state. The governor, upon advice of the state military board, shall promulgate or publish regulations covering military courts not inconsistent with the constitution and laws of this state.



APPENDIX D

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

Short Title: Military Justice Code.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT A CODE OF MILITARY JUSTICE FOR THE NORTH CAROLINA
3 NATIONAL GUARD.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a
6 new Chapter to read:

7 "Chapter 127C.

8

9 Military Justice Code.

10

11

ARTICLE I.

12

13

GENERAL PROVISIONS

14

15 "§ 127C-1. Definitions for this Chapter.--As used in this
16 Chapter, unless the context required otherwise:

17

(1) 'Accuser' means a person who signs and swears to
18 charges, any person who directs that charges

1 nominally be signed and sworn to by another, or any
2 other person who has an interest other than an
3 official interest in the prosecution of the
4 accused.

5 (2) 'Active state duty' means full-time duty, including
6 annual training, in the active military service of
7 the state under an order of the Governor issued
8 under authority vested in the Governor by law, and
9 includes travel to and from such duty. The term
10 'active state duty' also includes all personnel of
11 the North Carolina National Guard performing full-
12 time military duty for periods of 180 days or more
13 under Title 32 U.S.C. 502 (f).

14 (3) 'Commanding officer' includes only commissioned
15 officers.

16 (4) 'Commissioned officer' includes a commissioned
17 warrant officer.

18 (5) 'Component' includes the Army National Guard, the
19 Air National Guard and other military forces
20 organized under the laws of this State.

21 (6) 'Convening authority' includes, in addition to the
22 person who convened the court, a commissioned
23 officer commanding for the time being, or a
24 successor in command.

25 (7) 'Duty status other than active state duty' means
26 and includes any periods of drill and such other
27 training or service, other than active state duty,
28 as may be required under state or federal laws,
29 regulations or orders, and includes travel to and
30 from such duty.

31 (8) 'Enlisted member' means a person in an enlisted
32 grade.

33 (9) 'Grade' means a step or degree, in a graduated
34 scale of office or military rank, that is

- 1 established and designated as a grade by law or
2 regulation.
- 3 (10) 'Judge advocate' means the State Judge Advocate or
4 an Assistant State Judge Advocate.
- 5 (11) 'May' is used in a permissive sense. However, the
6 words 'no person...' mean that no person is
7 required, authorized or permitted to do the act
8 prescribed.
- 9 (12) 'Military' refers to any or all of the armed
10 forces.
- 11 (13) 'Military court' means a court-martial, a court of
12 inquiry or a provost court.
- 13 (14) 'Military judge' means an official of a general or
14 special court-martial detailed in accordance with
15 G.S. 127C-29.
- 16 (15) 'Officer' means commissioned or warrant officer.
- 17 (16) 'Organized militia' means the National Guard of the
18 state, as defined in section 101(3) of title 32,
19 United States Code, and the North Carolina National
20 Guard Reserve.
- 21 (17) 'Rank' means the order of precedence among members
22 of the armed forces.
- 23 (18) 'Record', when used in connection with the
24 proceedings of a court-martial, means:
- 25 a. An official written transcript, written
26 summary or other writing relating to the
27 proceedings; or
- 28 b. An official audiotape, videotape or similar
29 material from which sound or sound and visual
30 images depicting the proceedings may be
31 reproduced.
- 32 (19) 'Shall' is used in an imperative sense.
- 33 (20) 'State Judge Advocate' means the commissioned
34 officer responsible for supervising the

1 administration of the military justice in the
2 organized militia.

3 (21) 'Superior commissioned officer' means a
4 commissioned officer superior in rank or command.
5

6 "§ 127C-2. Persons subject to this Chapter.--The following
7 persons who are not in federal service are subject to this
8 Chapter:

9 (1) Members of the organized militia.

10 (2) All other persons lawfully ordered to duty in or
11 with the organized militia, from the dates they are
12 required by the terms of the order of other
13 directive to obey the same.
14

15 "§ 127C-3. Jurisdiction.--(a) Personal Jurisdiction.

16 (1) Each person discharged from the organized militia
17 who is later charged with having fraudulently
18 obtained the discharge of the person is, subject to
19 G.S. 127C-46, subject to trial by court-martial on
20 that charge and is after apprehension subject to
21 this Chapter while in the custody of the military
22 for that trial. Upon conviction of that charge the
23 person is subject to trial by court-martial for all
24 offenses under this Chapter submitted before the
25 fraudulent discharge.

26 (2) No person who has deserted from the organized
27 militia may be relieved from amenability to the
28 jurisdiction of this Chapter by virtue of a
29 separation from any later period of service.

30 (b) Territorial Jurisdiction.

31 (1) This Chapter applies throughout the state. It also
32 applies to all persons otherwise subject, and while
33 they are going to and returning from such service
34 outside the state, in the same manner and to the

1 same extent as if they were serving inside the
2 state.

3 (2) Courts-martial and courts of inquiry may be
4 convened and held in units of the organized militia
5 while those units are serving outside the state
6 with the same jurisdiction and powers as to persons
7 subject to this Chapter as if the proceedings were
8 held inside the state; and offenses committed
9 outside the state may be tried and punished either
10 inside or outside the state.

11

12 "§ 127C-4. Dismissal of commissioned officer.--(a) If any
13 commissioned officer dismissed by order of the Governor makes a
14 written application for trial by court-martial, setting forth
15 under oath that the officer has been wrongfully dismissed, the
16 Governor, as soon as practicable shall convene a general court-
17 martial to try that officer on the charges on which the officer
18 was dismissed. A court-martial so convened has jurisdiction to
19 try the dismissed officer on those charges, and the officer shall
20 be considered to have waived the right to plead any statute of
21 limitations applicable to any offense with which the officer is
22 charged. The court-martial may, as part of its sentence,
23 adjudged, as finally approved or affirmed, does not include
24 dismissal, the Adjutant General shall substitute for the
25 dismissal ordered by the Governor a form of discharge authorized
26 for administrative issue.

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

32 (c) If a discharge is substituted for a dismissal under this
33 Chapter, the Governor alone may reappoint the officer to such
34 commissioned grade and with such rank as, in the opinion of the
35 Governor, that former officer would have attained had the officer

not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(d) If an officer is discharged from the organized militia by administrative action or by board proceedings under law, or is dropped from the rolls by order of the Governor, the officer has no right to trial under this section.

"§ 127C-5. Judge advocates and legal officers.--(a) The Governor, on the recommendation of the Adjutant General, shall appoint an officer of the organized militia as State Judge Advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the State Bar of North Carolina for at least five years.

(b) The Adjutant General may appoint as many Assistant State Judge Advocates as the Adjutant General deems necessary, which Assistant State Judge Advocates shall be officers of the organized militia and members of the State Bar of North Carolina.

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

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

(e) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in any case, may

later act as staff judge advocate or legal officer to any reviewing authority on the same case.

ARTICLE II.

APPREHENSION AND RESTRAINT

"§ 127C-6. 'Apprehension' defined; quelling of disorders.--(a) 'Apprehension' is the taking of a person into custody.

(b) Any person authorized by this Chapter, or by military department regulations issued pursuant to this Chapter, any marshal of a court-martial appointed pursuant to the provisions of this Chapter, and any peace officer authorized to apprehend persons subject to this Chapter by law may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers and noncommissioned officers may quell quarrels, frays, and disorders among persons subject to this Chapter and may apprehend persons subject to this Chapter who take part in quarrels, frays, and disorders.

"§ 127C-7. Apprehension of deserters.--Any civil officer having authority to apprehend offenders under the laws of the United State or of a state, territory, commonwealth or possession, or the District of Columbia, may summarily apprehend a deserter from the organized militia and deliver the deserter into the custody of the organized militia. If an offender is apprehended outside the state, the return of the offender to the area must be in accordance with normal extradition procedures or reciprocal agreements.

"§ 127C-8. Imposition of restraint; 'arrest' and 'confinement' defined.--(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing the person

to remain within certain specified limits. Confinement is the physical restraint of a person.

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

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority the officer is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order these persons apprehended or into arrest or confinement may not be delegated.

(d) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(e) Nothing in this section shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

"§ 127C-9. Restraint of persons charged with offenses; notice of charges; speedy disposition.--(a) Any person subject to this Chapter charged with an offense under this Chapter may be ordered into arrest or confinement, as circumstances may require. When charged only with an offense normally tried by a summary court-martial, that person shall not ordinarily be placed in confinement.

(b) When any person subject to this Chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him person.

"§ 127C-10. Place of confinement.--Confinement other than in a guard house, whether before, during or after trial by a military court, shall be executed in civil jails, penitentiaries, or prisons designated by the Governor or by any persons the Governor may authorize to act.

"§ 127C-11. Reports and receiving of prisoners.--(a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under G.S. 127C-10, may refuse to receive or keep any prisoner committed to the charge of the person, when the committing person furnishes a statement, signed by the committing person, of the offense charged against the prisoner.

(b) Every commander of a guard, master-at-arms, warden, keeper, or officer of a city or county jail, or of any other jail, penitentiary, or prison designated under G.S. 127C-10, to whose charge a prisoner is committed shall, within 24 hours after that commitment, or as soon as the person is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

"§ 127C-12. Punishment prohibited before trial.--A person, while being held for trial, may not be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed be any more rigorous than the circumstances required to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

"§ 127C-13. Delivery of offenders to civil authorities; redelivery to military authority.--(a) Under military department regulations issued pursuant to this Chapter, a person on active state duty subject to this Chapter who is accused of an offense

against civil authority may be delivered, upon request by a civil authority, to that civil authority for trial.

(b) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial pursuant to subsection (a) of this section, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the civil offense shall, upon the request of competent military authority, be returned to military custody for the completion of the court-martial sentence of the offender.

"§ 127C-14. Confinement pending trial for failure to appear.--When an accused person shall have been arrested for failure to appear before a court-martial for trial, the military judge, the president of a court-martial, or a summary court officer to whom the charges have been referred for trial may issue, subject to the prior approval of the State Judge Advocate, a commitment for confinement of that such person pending trial. No person shall be kept in confinement pending trial longer than seven days.

ARTICLE III.

NONJUDICIAL PUNISHMENT

"§ 127C-15. Imposition and enforcement of disciplinary punishment without court-martial.--(a) The Governor, may, by rule, impose limitations on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which a case may be referred. Punishment may not be imposed upon any member of the organized

militia under this section if the member has, before the imposition of that punishment demanded trial by court-martial in lieu of the punishment. The Governor may issue rules regulating the suspension of punishments authorized by this section. Subject to rules issued by the Governor, the Governor, the Adjutant General, or an officer of a general rank in command may delegate powers under this section to a principal assistant who is a member of the organized militia.

(b) Subject to subsection (a) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses, without the intervention of a court-martial:

(1) Upon officers of the command:

(A) Restriction to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty or drill days, the punishment to be completed within 90 days of the date punishment was imposed.

(B) If imposed by the Governor, the Adjutant General, or an officer of a general rank in command:

(i) Arrest in quarters for not more than 15 consecutive duty or drill days, the punishment to be completed within 90 days of the date punishment was imposed.

(ii) Forfeiture of pay of not more than two-thirds of one month's pay for three months.

(2) Upon other military personnel of the command:

(A) Forfeiture of pay of not more than two-thirds of one month's pay for three months.

(B) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing

the reduction or any officer subordinate to the one who imposes the reduction;

- (C) Extra duties, including fatigue or other duties, not to exceed two hours per day, including holidays, for not more than 15 consecutive duty or drill days, the punishment to be completed within 90 days of the date punishment was imposed;
- (D) Restriction to certain specified limits, with or without suspension from duty, for not more than 15 consecutive duty or drill days, the punishment to be completed within 90 days of the date punishment was imposed; or
- (E) If imposed by an officer of the grade of major or above:
 - (i) Forfeiture of pay of not more than two-thirds of one month's pay for two months;
 - (ii) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;
 - (iii) The punishment authorized under subdivision (C); or
 - (iv) The punishment authorized under subdivision (D).

(c) No two or more of the punishments of arrest in quarters, extra duties, and restriction may be combined to run consecutively if the maximum punishment is imposed for each. When any of those punishments are combined to run consecutively, there must be an apportionment.

(d) An officer in charge of a unit may impose on enlisted members assigned to the unit any of the punishments authorized under subdivisions (A), (B), (C) and (D) of subdivision (2) of subsection (b) of this section pursuant to regulations issued by the Governor.

(e) The officer who imposes the punishments authorized by subsection (b) of this section, or a successor in command, may, at any time, suspend probationally a reduction in grade or a forfeiture imposed under subsection (b) of this section, whether or not executed. In addition, that officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights privileges and property affected. The officer may also mitigate reduction in grade to forfeiture of pay. When mitigating an arrest in quarters to restriction or extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(f) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channels, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may still be required to undergo the punishment adjudged pending the appeal. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (e) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (1) Arrest in quarters for more than seven days;
- (2) Forfeiture of pay of more than two-thirds of one month's pay for one month; or

- (3) Reduction of one or more pay grades from the fourth or a higher pay grade

the authority who is to act on the appeal shall refer the case to a staff judge advocate or legal officer for consideration and advice, and may refer the case upon appeal from any punishment imposed under subsection (b) of this section.

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

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

(i) The Governor may issue rules prescribing the form of records to be kept of proceedings under this section and may also order that certain categories of those proceedings shall be in writing.

§127C-16. Reserved.

ARTICLE IV.

COURTS-MARTIAL JURISDICTION

"§ 127C-17. Courts-martial of organized militia not in federal service; composition.--(a) In the organized militia not in federal service, there are general, special and summary courts-martial constituted like similar courts of the Army and Air Force. They have the jurisdiction and powers, except as to

punishment, and shall follow the forms and procedures provided for those courts as far as applicable, except as otherwise provided in this Chapter.

(b) The three kinds of courts-martial shall be constituted as follows:

- (1) General courts-martial, consisting of:
 - (A) A military judge and not less than five members; or
 - (B) A military judge alone, if before the court is assembled, the accused, knowing the identity of the military judge, and after consultation with defense counsel, requests orally on the record, or in writing, a court composed only of a military judge and the military judge approves.
- (2) Special courts-martial, consisting of:
 - (A) Not less than three members; or
 - (B) A military judge and not less than three members; or
 - (C) A military judge alone, if one has been detailed to the court, and the accused under the same conditions prescribed in subdivision (B) of subdivision (1) of this subsection requests trial by judge alone.
- (3) Summary courts-martial, consisting of one commissioned officer.

"§ 127C-18. Jurisdiction of courts-martial of each component.--Each component of the organized militia has court-martial jurisdiction over all persons subject to this Chapter. The exercise of jurisdiction by one component over personnel of another component shall be in accordance with military department rules issued by the Governor.

"§ 127C-19. Jurisdiction of general courts-martial.--Subject to G.S. 127C-18, general courts-martial have jurisdiction to try persons subject to this Chapter for any offense made punishable by this Chapter and may, subject to rules issued by the Governor, may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than two hundred dollars (\$200.00);
- (2) Forfeiture of pay and allowances;
- (3) Dishonorable discharge, bad conduct discharge, or dismissal;
- (4) Reprimand;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of these punishments.

"§ 127C-20. Jurisdiction of special courts-martial.--(a) Subject to G.S. 127C-18, special courts-martial shall have jurisdiction to try persons, except officers, for any offense for which they may be punished under this Chapter.

(b) A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than one hundred dollars (\$100.00) for a single offense.

"§ 127C-21. Jurisdiction of summary courts-martial.--(a) Subject to G.S. 127C-18, summary courts-martial have jurisdiction to try persons subject to this Chapter, except officers, for any offense made punishable by this Chapter.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if the person objects thereto, unless the person has been permitted to refuse punishment under G.S. 127C-15 and has elected to refuse the punishment. If objection to trial by summary court-martial is made by an accused who has not been permitted to

refuse punishment under G.S. 127C-16, trial shall be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than twenty-five dollars (\$25.00) for a single offense, to forfeiture of pay and allowances and to reduction of a noncommissioned officer to the ranks.

"§ 127C-22. Sentences of dismissal, bad conduct discharge, or dishonorable discharge to be approved by Governor.--In the organized militia not in federal service, no sentence of dismissal, bad conduct discharge, or dishonorable discharge may be executed until it is approved by the Governor.

"§ 127C-23. When complete record of proceedings and testimony required.--A dishonorable discharge, bad conduct discharge, or dismissal shall not be adjudged by any court-martial unless a complete record has been made of the proceedings and testimony before the court.

"§ 127C-24. Authorized sentence of general or special court-martial after declaration of war prior to jurisdiction of United States Code of Military Justice.--A general or special court-martial convened for the trial of a person charged with committing an offense after the declaration of a war or national emergency, and before the time when the person is brought under the jurisdiction of the United States Uniform Code of Military Justice, (Chapter 47, Title 10, United States Code), may, upon conviction, adjudge any punishment that may be appropriate, except that it may not exceed that authorized for a similar offense by the United States Uniform Code of Military Justice.

ARTICLE V.

APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

"§ 127C-25. Convening general courts-martial.--In the organized militia not in federal service, general courts-martial may be convened by the Governor or the Adjutant General.

"§ 127C-26. Convening special courts-martial.--In the organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any officer authorized to convene a special court-martial is an accuser, the court shall be convened by superior competent authority.

"§ 127C-27. Convening summary courts-martial.--(a) In the organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene a summary court-martial.

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

"§ 127C-28. Who may serve on courts-martial.--(a) Any commissioned officer of the organized militia is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before the court for trial.

(b) Any warrant officer of the organized militia is eligible to serve on general and special courts-martial for the trial of

any person, other than a commissioned officer, who may lawfully be brought before the court for trial.

- (c) (1) Any enlisted member of the organized militia who is not a member of the same unit as the accused, is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before the court for trial, only if, before the conclusion of a session called by the military judge under G.S. 127C-42, prior to trial or, in the absence of a pretrial session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on the court. After the request, the accused may not be tried by a general or special court-martial that does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If enlisted members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.
- (2) As used in this section, the word "unit" means any regularly organized body of the organized militia not larger than a company, a squadron, or a corresponding body.
- (d) (1) No person subject to this Chapter shall be tried by a court-martial with any member junior in rank or grade to the accused.
- (2) When convening a court-martial, the convening authority shall detail those members of the organized militia that the convening authority

considers, best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the organized militia is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. The convening authority may delegate any authority under this subsection to the State Judge Advocate or designee.

"§ 127C-29. Detail of military judge.--(a) The authority convening a general court-martial shall, and, subject to rules issued by the Governor, the authority convening a special court-martial may, detail a military judge to the court. A military judge shall preside over each open session of the court-martial to which the judge has been detailed.

(b) A military judge shall be a commissioned officer of the organized militia, a commissioned officer of the active armed forces of the United States, or of the ready reserve component of the armed forces of the United States, or who is a member of the State Bar of North Carolina, or a member of the bar of a federal court, and who is certified to be qualified for such duty by the State Judge Advocate.

(c) The military judge of a general or special court-martial shall be designated by the State Judge Advocate, or designee, for detail by the convening authority.

(d) To insure the independence of the judiciary from command influence, military judges shall be under the command of the State Judge Advocate, and with the exception of the Adjutant General and the Governor, no convening authority or any member of the staff of the convening authority shall prepare or review any

report concerning the effectiveness, fitness, or efficiency of a military judge which relates to performance as a military judge.

(e) No person is eligible to act as a military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as a counsel in the same case.

(f) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may the military judge vote with members of the court.

"§ 127C-30. Detail of trial counsel and defense counsel.--(a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and the assistants that the convening authority considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may later act as trial counsel, assistant trial counsel or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may later act in the same case for the defense, and no person who has acted for the defense may later act in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court martial must be:

- (1) A person who is a member of the State Bar of North Carolina, or a member of the bar of a federal court; and
- (2) Certified as competent to perform such duties by the State Judge Advocate.

(c) In the case of a special court-martial:

- (1) If the trial counsel is qualified to act as counsel before a general court martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

- (2) If the trial counsel is a member of the State Bar of North Carolina, the defense counsel detailed by the convening authority must have the same qualifications.

"§ 127C-31. Detail or employment of reporters and interpreters.--Under rules issued by the Governor, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings and the testimony taken before that court. The convening authority of a military court may detail or employ interpreters who shall interpret for the court.

"§ 127C-32. Absent and additional members; effect of absences on the trial.--(a) No member of a general or special court-martial shall be absent or excused after the court has been assembled for the trial of the accused except for physical disability, as a result of a challenge, or by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge alone, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the military judge, the accused, and the counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge alone, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced, unless a verbatim record of the

testimony of previously examined witnesses or a stipulation of previous testimony is read to the court in the presence of the military judge, if any, the accused and the counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge alone is unable to proceed with the trial because of physical disability, as a result of a challenge or for other good cause, the trial shall proceed, subject to any applicable conditions of G.S. 127C-17 after the detail of a new military judge as if no evidence had previously been introduced unless a verbatim record of the evidence previously introduced or a stipulation of previous testimony is read in court in the presence of the new military judge, the accused and the counsel for both sides.

ARTICLE VI.

PRETRIAL PROCEDURE

"§ 127C-33. Charges and specifications.--(a) Charges and specifications shall be signed under oath by a person subject to this Chapter before a person authorized to administer oaths and shall state:

- (1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; ;and
- (2) That they are true in fact to the best of the signer's knowledge and belief.

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

"§ 127C-34. Compulsory self-incrimination and immaterial and degrading evidence prohibited.--(a) No person subject to this Chapter may compel any other person to incriminate himself or to

answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Chapter may interrogate, or request any statement from, an accused or a person suspected of a an offense without first informing the him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Chapter may compel another to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue being tried and the evidence may tend to degrade him.

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

"§ 127C-35. Investigation.--(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation has been made of all the matters set forth. This investigation shall include an inquiry into to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation about the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges and of the right to be represented at that investigation by counsel. Upon request, the accused shall be represented by civilian counsel if provided by the accused, or by military counsel selected by the accused, if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation a full opportunity shall be given to the accused to cross-examine witnesses, if they are available, and to present anything in his

own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses when requested to do so by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy of the statement shall be given to the accused.

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

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

"§ 127C-36. Forwarding of charges.--When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, the officer shall report in writing to that person the reasons for delay.

"§ 127C-37. Advice of State Judge Advocate; reference for trial; formal corrections. (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the State Judge Advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless the

convening authority has been advised in writing by the State Judge Advocate that:

- (1) The specification alleges an offense under this Chapter;
- (2) The specification is warranted by the evidence indicated in the report of investigation, if any, under G.S. 127C-35; and
- (3) A court-martial has jurisdiction over the accused and the offense.

(b) The advice of the State Judge Advocate under subsection (a) of this section with respect to a specification under a charge shall include a written and signed statement by the State Judge Advocate:

- (1) Expressing conclusions with respect to each matter set forth in subsection (a) of this section; and
- (2) Recommending action that the convening authority take regarding the specification.

(c) If the specification is referred for trial, the recommendation of the State Judge Advocate shall accompany the specification.

(d) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and any changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

"§ 127C-38. Service of charges.--The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be based. The accused may not, over his objection, be brought to trial or be required to participate in person or through counsel in a session called by the military judge under G.S. 127C-42 in a general court-martial within a period of five days after the service of the charges upon the accused, or before a

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

ARTICLE VII

TRIAL PROCEDURE

"§ 127C-39. Procedural regulations.--The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor through military department regulations, which shall, as far as possible, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State, but which may not be contrary to or inconsistent with this Chapter.

"§ 127C-40. Unlawfully influencing action of court.--(a) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the commander's staff, may censure, reprimand, or admonish the court or any member, military judge, or counsel, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of the court's or the member's functions in the conduct of the proceeding. No person subject to this Chapter may attempt to coerce, by any unauthorized means, or influence the action of the court-martial or any other military tribunal or any member, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to judicial acts of the authority.

(b) The provisions of subsection (a) of this section do not apply to:

- (1) General instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a

command in the substantive and procedural aspects of courts-martial; or

- (2) To statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(c) In the preparation of an effectiveness, fitness, or efficiency report or of any other report or document used in whole or in part for the purpose of determining whether a member of the organized militia is qualified to be advanced in grade, or used in determining the assignment or transfer of a member of the organized militia, or used in determining whether a member should be retained on active duty, no person subject to this Chapter may, in preparing the report:

- (1) Consider or evaluate the performance of duty of any such member as a member of a court-martial; or
- (2) Give a less favorable rating or evaluation of any member of the organized militia because of the zeal with which that member, as counsel, represented any accused before a court-martial.

"§ 127C-41. Duties of trial counsel and defense counsel.--(a) The trial counsel of a general or special court-martial shall prosecute in the name of the State of North Carolina and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in the his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under G.S. 127C-30. Should the accused have counsel of the his own selection, the defense counsel and assistant defense counsel, if any, who were detailed, shall, if the accused desires, act as associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

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

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when qualified to be a trial counsel as required by G.S. 127C-30, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when qualified to be the defense counsel as required by G.S. 127C-30, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

"§ 127C-42. Sessions.--(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to G.S. 127C-38, call the court into session without the presence of the members for the purpose of:

- (1) Hearing and determining motions, defenses, or objections which are capable of determination without trial of the issues raised by a plea of not guilty;
- (2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this Chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;
- (3) If permitted by rules of the Governor, holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which may be performed by the military judge under this Chapter or under rules prescribed pursuant to G.S. 127C-39 and which does not require the presence of the members of the court.

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

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

"§ 127C-43. Continuances.--The military judge or the President of a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for as long a time, and as often, as may appear to be just.

"§ 127C-44. Challenges.--(a) The military judge and members of a general or special court-martial may be challenged for cause by the accused or the trial counsel for reasons stated to the court. The military judge or, if none, the court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

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

"§ 127C-45. Oaths.--(a) The military judge, interpreters, and in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

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

"§ 127C-46. Statute of limitation. (a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this section, a person charged with desertion in time of peace or the offense punishable under G.S. 127C-114 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under G.S. 127C-15.

(c) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under G.S. 127C-15 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under G.S. 127C-15.

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

"§ 127C-47. Former jeopardy. (a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial for purposes of subsection (a) of this section.

"§ 127C-48. Pleas of accused.--(a) If an accused, arraigned before a court-martial, makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

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

"§ 127C-49. Opportunity to obtain witnesses and evidence.--(a) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such military department regulations as the Governor may prescribe.

(b) The military judge, the President of a court-martial, or a summary court officer may:

- (1) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;
- (2) Issue subpoenas duces tecum and other subpoenas;
- (3) Enforce by attachment the attendance of witnesses and the production of books and papers; and
- (4) Sentence for refusal to be sworn or to answer, as provided in contempt actions before civil courts of the State.

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

"§ 127C-50. Refusal to appear or testify.--(a) Any person not subject to this Chapter, is guilty of an offense against the State when he:

- (1) Has been duly subpoenaed to appear as a witness before a court-martial, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before a court, commission, or board;
- (2) Has been duly paid or tendered the fees and mileage of a witness pursuant to G.S. 7A-314; and
- (3) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce.

(b) Any person who commits an offense described in subsection (a) of this section shall be tried in the district court of the county where the offense occurred. Upon conviction, a person violating subsection (a) of this section shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than six months, or both.

(c) The district attorney of the county in which the offense occurred, upon certification of the facts by the military court, court of inquiry or board, shall prosecute any person who commits the offense described in subsection (a) of this section.

"§ 127C-51. Contempts.--A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of one hundred dollars (\$100.00), or both.

"§ 127C-52. Depositions.--(a) At any time after charges have been signed, as provided in G.S. 127C-32, any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, the convening authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

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

(c) Depositions may be taken before, and authenticated by, any military or civil officer authorized by the law to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape or similar material, may be played as evidence before any military court or commission, in any proceeding before any court-martial or in any proceeding before a court of inquiry, if it appears:

- (1) That the witness resides or is beyond the State in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of hearing;
- (2) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or
- (3) That the present whereabouts of the witness is unknown.

"§ 127C-53. Admissibility of records of courts of inquiry.--(a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of this evidence.

(b) Testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Testimony may also be read in evidence before a court of inquiry or a military board.

"§ 127C-54. Voting and rulings.--(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the President, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the President of a court-martial without a military judge, shall rule upon all questions of law and all interlocutory questions, arising during the proceedings. Any ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the President of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. The military judge, or the President of a court-martial without a military judge, may change a ruling at any time during the trial. Unless the ruling is final, if any member objects, the court shall be cleared and closed and the question decided by a voice vote as provided in G.S. 127C-55 beginning with the junior in rank.

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

- (1) That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt;
- (2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;
- (3) That if there is a reasonable doubt as to the degree of guilt, the findings must be in a lower degree as to which there is no reasonable doubt; and
- (4) That the burden of proof is to establish the guilt of the accused beyond reasonable doubt is upon the State.

(4) Subsections (a), (b), and (c) of this section do not apply to a court-martial composed of a military judge only. In those cases the military judge shall determine all questions of law and fact arising during the proceedings, and, if the accused is convicted, adjudge an appropriate sentence. The military judge deciding the case alone shall make a general finding and shall, in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact are included.

"§ 127C-55. Number of votes required.--(a) No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

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

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

"§ 127C-56. Court to announce action.--A court-martial shall announce its findings and sentence to the parties as soon as determined.

"§ 127C-57. Record of trial.--(a) Each general court-martial shall keep a separate record of the proceedings of the trial of

each case brought before it and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge, by reason of death, disability or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of death, disability or absence.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by the regulations the Governor may prescribe.

(c) A complete record of the proceedings and testimony shall be prepared (i) in each general court-martial case in which the sentence adjudged includes a dismissal, a bad conduct discharge, or a dishonorable discharge and (ii) in each special court-martial case in which the sentence adjudged includes a dishonorable discharge.

(d) In all other court-martial cases the record shall contain any matters prescribed by regulations of the Governor.

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

ARTICLE VIII.

SENTENCES.

"§ 127C-58. Cruel and unusual punishments prohibited.-- Punishment by flogging, or by branding, marking or tattooing on the body, or by any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this Chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

"§ 127C-59. Punishments limited.--(a) The punishments which a court-martial may direct for an offense may not exceed limits prescribed by this Chapter.

(b) Unless otherwise provided in a regulation prescribed by the Governor or Adjutant General, a court-martial sentence of an enlisted member in a pay grade above E-1 reduces that member to pay grade E-1, effective on the date on which the sentence is approved by the convening authority, when the sentence includes a dishonorable discharge, a bad conduct discharge, or dismissal.

(c) If the sentence of a member who is reduced in pay grade under subsection (b) of this section is set aside, disapproved or as finally approved does not include any punishment described in subsection (b) of this section, the rights and privileges of which the member was deprived of because of that reduction shall be restored and the member shall be entitled to the increased pay and allowances for the period the reduction was in effect.

"§ 127C-60. Effective date of sentence.--(a) Whenever a sentence of a court-martial, as lawfully adjudged and approved, includes a forfeiture of pay or allowances, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

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

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

"§ 127C-61. Execution of confinement.--(a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the organized militia or in any jail, penitentiary, or prison designated for that purpose. Persons confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the State.

(b) The keepers, officers, and wardens of jails, penitentiaries, or prisons designated by the Governor shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for receiving or confining a person.

"§ 127C-62. Confinement as alternative to fine.--In the organized militia not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine.

ARTICLE IX.

REVIEW OF COURTS-MARTIAL

"§ 127C-63. Approval and execution or suspension of sentence.--Except as provided in G.S. 127C-22 and G.S. 127C-68, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved. The convening authority shall approved the sentence or any part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence as approved.

"§ 127C-64. Initial review and action on trial record.--(a) After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command or by the Governor.

(b) The convening authority shall refer the record of each general court-martial to the State Judge Advocate, who shall submit a written opinion about the record to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

"§ 127C-65. Reconsideration and revision of court's ruling.--(a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

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

(1) For reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(2) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this Chapter; or

(3 For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

"§ 127C-66. Rehearings.--(a) If the convening authority disapproves the findings and sentence of a court-martial the convening authority may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. The convening authority shall state the reasons for a disapproval of the findings of the court. If the convening authority disapproves the findings and sentence and does not order a rehearing, the convening authority shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members who were 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 the accused was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

"§ 127C-67. Approval by convening authority.--In acting on the findings and sentence of a court-martial, the convening authority may approve only findings of guilty, and the sentence or any part or amount of the sentence, as the convening authority finds correct in law and fact and determines should be approved. Unless the convening authority indicates otherwise, approval of the sentence is approval of the findings and sentence.

"§ 127C-68. Review of records; disposition.--(a) If the convening authority is the Governor, action by the Governor on the review of any record of trial is final.

(b) In all other cases not covered by subsection (a) of this section, if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate of the State force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate shall then be sent to the State Judge Advocate for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate of the appropriate force of the organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by the Governor.

(d) The State Judge Advocate shall personally review the record of trial in each case sent to the State Judge Advocate for review as provided under subsection (b) of this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate shall be limited to questions of jurisdiction.

(e) The State Judge Advocate shall personally take final action in any case to be reviewed by the State Judge Advocate.

(f) In a case reviewable by the State Judge Advocate under this section, the State Judge Advocate may act only with respect to the findings and sentence as approved by the convening authority. The State Judge Advocate may affirm only the findings of guilty, and the sentence or any part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record the State Judge Advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the State Judge Advocate sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the State Judge Advocate sets aside the findings and sentence and does not order

a rehearing, the State Judge Advocate shall order that the charges be dismissed.

(g) In a case reviewable by the State Judge Advocate under this section, he shall instruct the convening authority to act in accordance with his decision on the review. If the State Judge Advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the State Judge Advocate may dismiss the charges.

(h) The State Judge Advocate may order one or more boards of review each composed of not less than three commissioned officers of the organized militia, each of whom must be a member of the State Bar of North Carolina. Each board of review shall review the record of any trial by special court-martial referred to it by the State Judge Advocate. Boards of review have the same authority on review as the State Judge Advocate has under this section.

"§ 127C-69. Error of law; lesser included offense.--(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

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

"§ 127C-70. Review counsel.--(a) Upon the final review of a sentence of a general court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate or legal officer, as the case may be, and before the State Judge Advocate.

(b) Upon the request of an accused entitled to be so represented, the State Judge Advocate shall appoint a lawyer who is a member of the organized militia and who has the qualifications prescribed in G.S. 127C-30, if available, to represent the accused before the reviewing authority, before the

staff judge advocate or legal officer, as the case may be, and before the State Judge Advocate, in the review of cases specified in subsection (a) of this section.

(3) An accused entitled to be represented, may be represented at his own expense by civilian counsel before the reviewing authority, before the staff judge advocate or legal officer, as the case may be, and before the State Judge Advocate.

"§ 127C-71. Vacation of suspension.--(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a dishonorable discharge, or of any general court-martial sentence, the officer having court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the Governor in cases involving a general court-martial sentence and to the commanding officer of the force of the organized militia of which the probationer is a member in all other cases covered by subsection (a) of this section. If the Governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

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

"§ 127C-72. Petition for new trial.--At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal or dishonorable discharge, the accused may petition the Governor for a new trial

on ground of newly discovered evidence or fraud on the court-martial.

"§ 127C-73. Remission and suspension.--(a) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

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

"§ 127C-74. Restoration.--(a) Under military department regulations prescribed by the Governor, all rights, privileges and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon the new trial or rehearing.

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

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

"§ 127C-75. Finality of proceedings, findings and sentences.--The proceedings, findings and sentences of court-martial as reviewed and approved, as required by this Chapter, and all dismissals and discharges carried into execution under sentences by court-martial following review and approval, as required by this Chapter, are final and conclusive. Orders publishing the proceedings of court-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies and officers of the state, subject only to action upon a petition for a new trial as provided in G.S. 127C-72.

"§ 127C-75A. Trial De Novo.--Any accused convicted by a court-martial may appeal to the superior court for trial de novo. Notice of appeal may be given orally in open court, or to the trial counsel in writing within 10 days of entry of judgment.

ARTICLE X.

PUNITIVE PROVISIONS

"§ 127C-76. When persons may be tried or punished.--No person may be tried or punished for any offense provided for in this Article, unless it was committed while the person was in a duty status, or during a period of time in which the person was under lawful orders to be in a duty status.

"§ 127C-77. Principals.--Any person subject to this Chapter who (i) commits an offense punishable by this chapter, or aids, abets, counsels, commands or procures its commission or (ii) causes an act to be done which if directly performed by the person would be punishable by this Chapter is a principal.

"§ 127C-78. Accessory after fact.--Any person subject to this Chapter who, knowing that an offense punishable by this Chapter

has been committed, receives, comforts, or assists the offender in order to hinder or prevent the apprehension, trial, or punishment of the offender shall be punished as a court-martial may direct.

"§ 127C-79. Conviction of lesser included offense.--An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in it.

"§ 127C-80. Attempts.--(a) An act done with specific intent to commit an offense under this Chapter, amounting to more than mere preparation and tending even though failing to effect its commission, is an attempt to commit that offense.

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

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

"§ 127C-81. Conspiracy.--Any person subject to this Chapter who conspires with any other person to commit an offense under this Chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

"§ 127C-82. Solicitation.--(a) Any person subject to this Chapter who solicits or advises another or others to desert in violation of G.S. 127C-85 or sedition in violation of G.S. 127C-94 shall be punished as a court-martial may direct.

Any person subject to this Chapter who solicits or advises another or others to commit an act of misbehavior before the

enemy in violation of G.S. 127C-99 or sedition in violation of G.S. 127C-94 shall be punished as a court-martial may direct.

"§ 127C-83. Fraudulent enlistment, appointment or separation.--Any person who: (i) procures the person's own enlistment or appointment in the organized militia by knowingly false representation deliberate concealment as to qualifications for that enlistment or appointment and receives pay or allowances thereunder or (ii) procures the person's own separation from the organized militia by knowingly false representation or deliberate concealment as to eligibility for that separation shall be punished as a court-martial may direct.

"§ 127C-84. Unlawful enlistment, appointment or separation.--Any person subject to this Chapter who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to the person to be ineligible for that enlistment, appointment or separation because it is prohibited by law, regulation or order shall be punished as a court-martial may direct.

"§ 127C-85. Desertion.--(a) Any member of the organized militia who:

- (1) Without authority goes or remains absent from the unit, organization or place of duty of the member with intent to remain away therefrom permanently;
- (2) Quits the unit, organization or place of duty of the member with intent to avoid hazardous duty or to shirk important service; or
- (3) Without being regularly separated from one of the forces of the organized militia enlists or accepts an appointment in the same or another one of the forces of the organized militia without fully disclosing the fact that the member has not been regularly separated;

is guilty of desertion.

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

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

"§ 127C-86. Absence without leave.--Any person subject to this Chapter who, without authority: (i) fails to go to the appointed place of duty of the person at the time prescribed; (ii) goes from that place; or (iii) is absent from the unit, organization or place of duty at which the person is required to be at the time prescribed shall be punished as a court-martial may direct.

"§ 127C-87. Failure to make required move.--Any person subject to this Chapter who through neglect or design misses the movement of a ship, aircraft or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct.

"§ 127C-88. Contempt toward officials.--Any commissioned officer subject to this Chapter who, while on duty, uses contemptuous words against the President, the Governor or the General Assembly, or the Governor or legislature of any state, territory, commonwealth, or possession in which that officer may be serving, shall be punished as a court-martial may direct.

"§ 127C-89. Disrespect toward superior commissioned officer.--Any person subject to this Chapter who behaves with disrespect toward a superior commissioned officer shall be punished as a court-martial may direct.

"§ 127C-90. Assaulting or willfully disobeying superior commissioned officer.--Any person subject to this Chapter who: (i) strikes a superior commissioned officer or draws or lifts up any weapon or offers any violence against the officer while the officer is in the execution of office or who (ii) willfully disobeys a lawful command of a superior commissioned officer shall be punished as a court-martial may direct.

"§ 127C-91. Insubordinate conduct toward warrant officer or noncommissioned officer.--Any warrant officer or enlisted member who: (i) strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of office; (ii) willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or (iii) treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of office shall be punished as a court-martial may direct.

"§ 127C-92. Failure to obey order or regulation.--Any person subject to this Chapter who: (i) violates or fails to obey any lawful general order or regulation; (ii) having knowledge of any other lawful order issued by a member of the organized militia, which it is the duty of the person to obey, fails to obey the order; or (iii) is derelict in the performance of duties shall be punished as a court-martial may direct.

"§ 127C-93. Cruelty and maltreatment.--Any person subject to this Chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to the orders of the person shall be punished as a court-martial may direct.

"§ 127C-94. Mutiny or sedition.--(a) Any person subject to this Chapter who:

- (1) With intent to usurp or override lawful military authority refuses, in concert with another, 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 another, revolt, violence or other disturbance against that authority is guilty of sedition;
- (3) Fails to do the utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform a 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) 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.

"§ 127C-95. Resistance, breach of arrest and escape.--Any person subject to this Chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

"§ 127C-96. Releasing prisoner without proper authority.--Any person subject to this Chapter 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, whether or not the prisoner was committed in strict compliance with law.

"§ 127C-97. Unlawful detention.--Any person subject to this Chapter who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

"§ 127C-98. Noncompliance with procedural rules.--Any person subject to this Chapter who: (i) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Chapter or (ii) knowingly and intentionally fails to enforce or comply with any provision of this Chapter regulating the proceedings before, during or after trial of an accused shall be punished as a court-martial may direct.

"§ 127C-99. Misbehavior before enemy.--Any person subject to this Chapter 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 the duty of the person to defend;
- (3) Through disobedience, neglect or intentional misconduct endangers the safety of any such command, unit, place or military property;
- (4) Casts away arms or ammunition;
- (5) Is guilty of cowardly conduct;
- (6) Quits a 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 organized militia;
- (8) Willfully fails to do the utmost to encounter, engage, capture or destroy any enemy troops, combatants, vessels, aircraft or any other thing, which it is the duty of the person 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 this State or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

"§ 127C-100. Subordinate compelling surrender.--Any person subject to this Chapter who compels or attempts to compel the commander of any force of the organized militia of this State or any other state to give it up to an enemy or to abandon it, or who strikes the colors or flag to any enemy without proper authority shall be punished as a court-martial may direct.

"§ 127C-101. Improper use of countersign.--Any person subject to this Chapter who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to the knowledge of the person, the person was authorized and required to give, shall be punished as a court-martial may direct.

"§ 127C-102. Forcing safeguard.--Any person subject to this Chapter who forces a safeguard shall be punished as a court-martial may direct.

"§ 127C-103. Captured or abandoned property.--(a) All persons subject to this Chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

(b) Any person subject to this Chapter who:

- (1) Fails to carry out the duties prescribed in subsection (a) of this section;
- (2) Buys, sells, trades or in any way deals in or disposes of, captured or abandoned property, whereby the person receives or expects any profit, benefit or a advantage to self or another directly or indirectly connected with self; or
- (3) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

"§ 127C-104. Aiding enemy.--Any person subject to this Chapter who: (i) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things or (ii) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly shall be punished as a court-martial may direct.

"§ 127C-105. Misconduct as prisoner.--Any person subject to this Chapter who, while in the hands of the enemy in time of war: (i) for the purpose of securing favorable treatment by the captors of the person acts without proper authority in a manner contrary to law, custom or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners or (ii) while in a position of authority over such persons maltreats maltreats them without justifiable cause shall be punished as a court-martial may direct.

"§ 127C-106. False official statement.--Any person subject to this Chapter, who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

"§ 127C-107. Loss, damage, destruction or wrongful disposition of military property.--Any person subject to this Chapter who, without proper authority (i) sells or otherwise disposes of; (ii) willfully or through neglect damages, destroys or loses; or (iii) willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of any military property of the United States or of the State, shall be punished as a court-martial may direct.

"§ 127C-108. Waste, spoilage or destruction of property other than military.--Any person subject to this Chapter who, while in a duty status, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or the state shall be punished as a court-martial may direct.

"§ 127C-109. Improper hazarding of vessel.--(a) Any person subject to this Chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the Armed Forces of the United States or of the organized militia shall be punished as a court-martial may direct.

(b) Any person subject to this Chapter who negligently hazards or suffers to be hazarded any vessel of the Armed Forces of the United States or of the organized militia shall be punished as a court-martial may direct.

"§ 127C-110. Driving while drunk.--Any person subject to this Chapter who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

"§ 127C-111. Drunk on duty.--Any person subject to this Chapter, other than a sentinel or lookout who is found drunk on duty, shall be punished as a court-martial may direct.

"§ 127C-112. Sentinel or lookout drunk or sleeping on post; leaving before relief.--Any sentinel or lookout who is found drunk or sleeping upon post, or who leaves it before being regularly relieved shall be punished as a court-martial may direct.

"§ 127C-113. Malingering.--Any person subject to this Chapter who for the purpose of avoiding work duty or service in the organized militia: (i) feigns illness, physical disablement,

mental lapse or derangement or (ii) intentionally inflicts self-injury shall be punished as a court-martial may direct.

"§ 127C-114. Riot or breach of peace.--Any person subject to this Chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

"§ 127C-115. Stealing goods.--(a) Any person subject to this Chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

- (1) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it for personal use or to the use of any person other than the owner, steals that property and is guilty of larceny; or
- (2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it for personal use or to the use of any person other than the owner, is guilty of wrongful appropriation.

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

"§ 127C-116. Perjury.--Any person subject to this Chapter who in a judicial proceeding, or in a course of justice conducted under this Chapter, 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.

"§ 127C-117. Frauds against the government.--Any person subject to this Chapter:

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

- a. Makes any claim against the United States, the state or any officer thereof; or
 - b. Presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the state, or any officer thereof;
- (2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state or any officer thereof:
- a. Makes or uses any writing or other paper knowing it to contain any false or fraudulent statement;
 - b. Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or
 - c. Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;
- (3) Who, having charge, possession, custody, or control of any money or other property of the United States, or the State, furnished or intended for the Armed Forces of the United States or the organized militia or any force, knowingly delivers to any person having authority to receive it, any amount less than that for which he receives a certificate or receipt; or
- (4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the State furnished or intended for the Armed Forces of the United States or the organized militia or any force, makes or delivers to any person a writing without having full knowledge of the truth of the statements contained in it and with intent to defraud the United States or the State;

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

§ 127C-118. Reserved.

"§ 127C-119. Dueling; failure to report dueling.--Any person subject to this Chapter who fights or promotes or is concerned in or connives at fighting a duel or who having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct

"§ 127C-120. Provoking or reproachful words or gestures.--Any person subject to this Chapter who uses provoking or reproachful words or gestures toward any other person subject to this Chapter shall be punished as a court-martial may direct.

"§ 127C-121. Insufficient funds or credit.--(a) Any person subject to this Chapter who makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft or order in full upon its presentment shall be punished as a court-martial may direct when the person makes, draws or utters the check, draft or order: (i) for the procurement of any article or thing of value, with intent to defraud or (ii) for the payment of any past due obligation or for any other purpose with intent to deceive.

(b) The making, drawing, uttering or delivering by a maker or drawer of a check, draft or order for which payment is refused by the drawee because of insufficient fund of the maker or drawer in the drawee's possession or control is prima facie evidence of an intent to defraud or deceive and of a knowledge of insufficient funds in, or credit with, that bank or other depository unless the maker or drawer pays the holder the amount due within five

days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentments.

(c) As used in this section, "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

"§ 127C-122. Unlawful force or violence.--Any person subject to this Chapter who attempts or offers, with unlawful force or violence, to do bodily harm to another person, whether or not the attempt or offer is consummated is guilty of assault and shall be punished as court-martial may direct.

"§ 127C-123. Conduct unbecoming an officer.--Any commissioned officer who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct

"§ 127C-124. Conduct to the prejudice of good order and discipline; limits to jurisdiction of court-martial.--Though not specifically mentioned in this Chapter, all disorders and neglects to the prejudice of good order and discipline in the organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance shall not be taken of, and jurisdiction may not extend to felonies, jurisdiction of which is reserved to civilian criminal courts.

ARTICLE XI.

MISCELLANEOUS PROVISIONS

"§ 127C-125. Courts of inquiry.--(a) Courts of inquiry to investigate any matter may be convened by the Governor, or by any other person designated by the Governor, for that purpose,

whether or not the persons involved have requested such an inquiry.

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

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

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

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

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

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

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

"§ 127C-126. Redress of injuries to property.--(a) Whenever a complaint is made to any commanding officer that wilful damage has been done to the property of any person or that the property of any person has been wrongfully taken by members of the

organized militia, the officer may, subject to the military department regulations that the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by the officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c) of this section, on any disbursing officer for the payment by the disbursing officer to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military fund of the unit or units of the organized militia to which such offenders belonged.

(c) Any person subject to this Chapter who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in behalf of the person and to cross-examine those appearing against the person. The person has the right to appeal to the next higher commander.

"§ 127C-127. Execution of process and sentence.--In the organized militia not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the State. Where no provision is made for executing those processes and sentences, the process or sentence shall be executed by a United States Marshal or deputy marshal, who shall make a return to the military officer issuing the process or the court imposing the sentence, pursuant to section 333 of title 32, United States Code.

"§ 127C-128. Process of military courts.--(a) Military courts may issue all process necessary to carry into effect the powers vested in those courts. The courts may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when the courts are sitting within the State and the witnesses, books, and records sought are also located within the State.

(b) Process may be issued by summary courts-martial, provost courts, or the president or military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in the form as may be prescribed by military department regulations issued under this Chapter.

(c) All officers to whom process may be directed shall execute them and make return of their acts according to the requirements of those documents. Except as otherwise specifically provided in this Chapter, no officer may demand or require payment of any fee or charge for receiving, executing, or returning a process or for any service in connection with the process.

"§ 127C-129. Payment of fines and disposition thereof.--Fines may be paid to a military court or to an officer executing its process. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due the delinquent, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine and shall be paid over by the officer receiving it in like manner as provided for other fines and moneys collected under a sentence of a summary court-martial. A fine or penalty imposed by a military court upon an officer or enlisted man shall be paid by the officer collecting it within 30 days to the State Treasurer for disposition in accordance with law.

"§ 127C-130. Immunity for action of military courts.--No action or proceeding may be prosecuted against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process of a military courts.

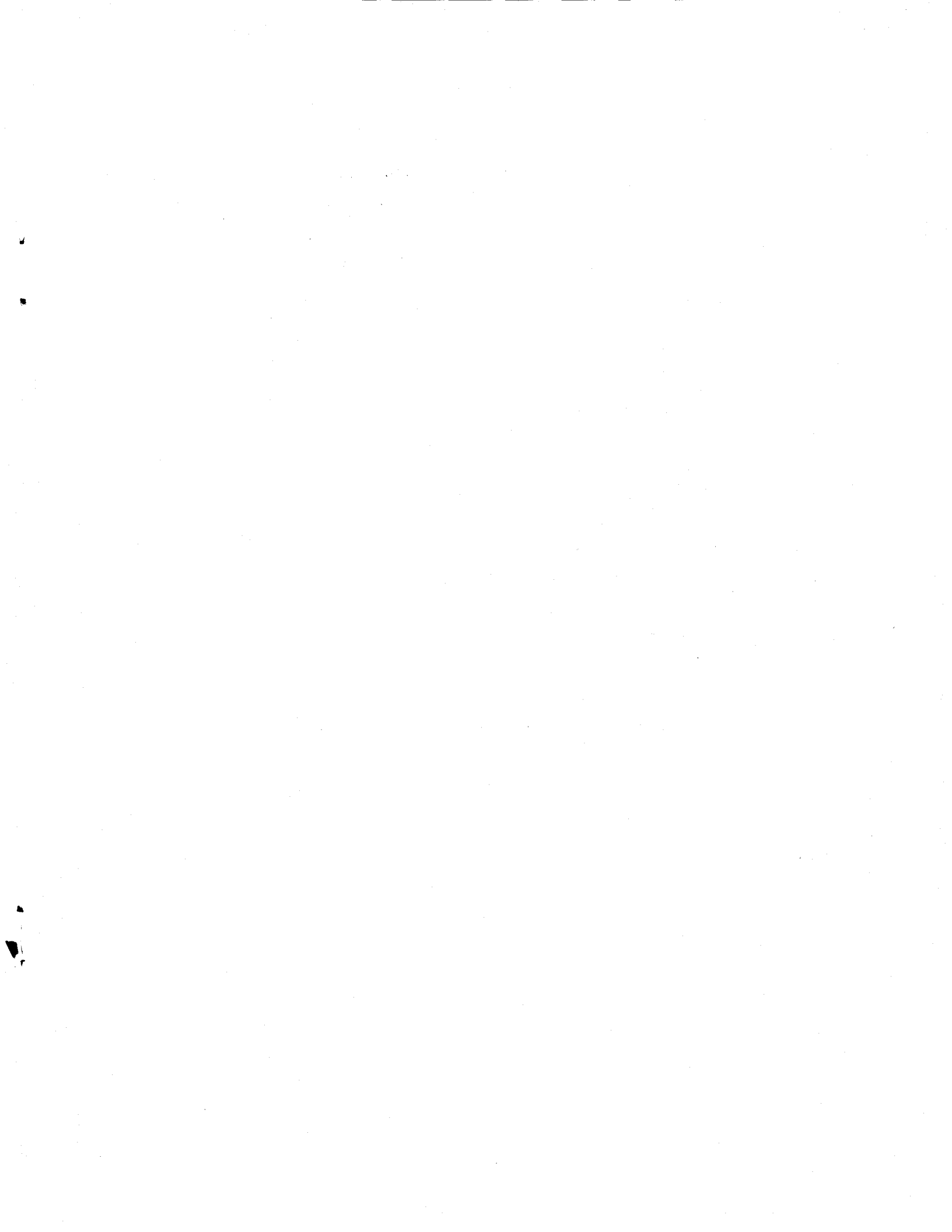
"§ 127C-131. Presumption of jurisdiction.--The jurisdiction of the military courts and boards established by this Chapter shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards or jurisdiction in any action or proceeding.

"§ 127C-132. Delegation of authority by Governor.--The Governor may delegate any authority vested in the Governor under this Chapter, and may provide for the subdelegation of any authority, except with respect to the power given the Governor by G.S. 127C-22 and G.S. 127C-25.

§ 127C-133. Payment of expenses.--The Adjutant General may pay all expenses incurred in the administration of State military justice from any fund appropriated to the State Military Department."

Sec. 2. G.S. 127A-47 through 127A-61 are repealed.

Sec. 3. This act shall become effective July 1, 1989.



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