

House Bill 98

By: Representatives Coomer of the 14th, Caldwell of the 131st, Atwood of the 179th, Meadows of the 5th, Holcomb of the 81st, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated,
 2 relating to appellate practice, so as to provide for direct appeals and appeals requiring an
 3 application for appeals to the appellate courts on matters pertaining to courts-martial; to
 4 amend Chapter 2 of Title 38 of the Official Code of Georgia Annotated, relating to military
 5 affairs, so as to repeal and reenact Article 5, the "Georgia Code of Military Justice"; to
 6 provide for an effective date and applicability; to repeal conflicting laws; and for other
 7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
 11 appellate practice, is amended in subsection (a) of Code Section 5-6-34, relating to
 12 judgments and rulings deemed directly appealable, by deleting "and" at the end of paragraph
 13 (11), by replacing the period with "; and" at the end of paragraph (12), and by adding a new
 14 paragraph to read as follows:

15 "(13) All decisions, judgments, or orders of the court-martial review panel pursuant to
 16 Code Section 38-2-1067, except for decisions, judgments, or orders pertaining to the
 17 petition of a new trial as provided for in Code Section 38-2-1073."

18 **SECTION 2.**

19 Said article is further amended in subsection (a) of Code Section 5-6-35, relating to cases
 20 requiring application for appeal, by deleting "and" at the end of paragraph (11), by replacing
 21 the period with a semicolon at the end of paragraph (12), and by adding two new paragraphs
 22 to read as follows:

23 "(13) Appeals from decisions of the Court of Appeals affirming a finding of guilty or
 24 sentence, in whole or in part, from a general or special court-martial case pursuant to
 25 Code Section 38-2-1067; and

26 (14) Appeals from decisions of the court-martial review panel affirming the denial of a
 27 petition for a new trial pursuant to Code Section 38-2-1067."

28 **SECTION 3.**

29 Chapter 2 of Title 38 of the Official Code of Georgia Annotated, relating to military affairs,
 30 is amended by repealing in its entirety Article 5, the "Georgia Code of Military Justice," and
 31 enacting a new article to read as follows:

32 "ARTICLE 5

33 Part 1

34 38-2-1000.

35 This article shall be known and may be cited as the 'Georgia Code of Military Justice.'

36 38-2-1001.

37 As used in this article, the term:

38 (1) 'A state' means any one of the several states of the United States, the District of
 39 Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin
 40 Islands.

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

44 (3) 'Apprehend' means take into custody.

45 (4) 'Apprehended' means taken into custody.

46 (5) 'Apprehension' means being taken into custody.

47 (6) 'Arrest' means custodial restraint not imposed as punishment for an offense.

48 (7) 'Arrest in quarters' means confinement or custodial restraint within quarters.

49 (8) 'Cadet,' 'candidate,' or 'midshipman' means a person enrolled in or attending a state
 50 military academy, regional training institute, or any other formal education program for
 51 the purpose of becoming a commissioned officer in the organized militia.

52 (9) 'Classified information' means:

53 (A) Any information or material that has been determined by an official of the United
 54 States or of a state, pursuant to law, an executive order, or regulation, to require
 55 protection against unauthorized disclosure for reasons of national or state security; or

56 (B) Any restricted data as provided for in the Atomic Energy Act of 1954, 42 U.S.C.
 57 Section 2014(y).

58 (10) 'Commander' or 'commanding officer' means a commissioned officer of the
 59 organized militia who is in charge when administering nonjudicial punishment under Part
 60 3 of this article, including, but not limited to, the Governor and the adjutant general.

61 (11) 'Confinement' means physical restraint.

62 (12) 'Convening authority' means the person convening the court, a commissioned officer
 63 commanding such court on an interim basis, or a successor in command to the convening
 64 authority.

65 (13) 'Day' means calendar day; provided, however, that day shall not be synonymous
 66 with unit training assembly except when used to calculate forfeiture punishments for
 67 nonactive duty members of the Georgia National Guard when performing unit training
 68 assemblies. Any punishment authorized by this article which is measured in terms of
 69 days shall, when served in a status other than annual field training, be construed to mean
 70 succeeding duty days.

71 (14) 'Enlisted member' means a person in an enlisted grade.

72 (15) 'Judge advocate' means a commissioned officer of the organized militia who is a
 73 member in good standing of the State Bar of Georgia, and:

74 (A) Is certified or designated as a judge advocate in the judge advocate general's corps
 75 of the army, air force, navy, or marine corps, or a reserve component of one of these;
 76 or

77 (B) Is certified as a nonfederally recognized judge advocate, under regulations
 78 promulgated pursuant to Part 1 of Article 2 of this chapter, by the state judge advocate
 79 as competent to perform such military justice duties required by this article.

80 (16) 'Military court' means a court-martial or court of inquiry.

81 (17) 'Military judge' means an official of a general or special court-martial detailed as
 82 provided in Code Section 38-2-1026, including, but not limited to, law officers appointed
 83 under this article.

84 (18) 'Military offense' means an offense prescribed under Part 10 of this article, except
 85 an offense as provided in Code Sections 38-2-1079 and 38-2-1111.

86 (19) 'Officer' means a commissioned or warrant officer.

87 (20) 'Organized militia' means the National Guard of this state as provided for by Title
 88 32 of the United States Code, the Georgia Naval Militia, and any other military force
 89 organized under the constitution and laws of this state when not in a status subjecting
 90 such force or forces to exclusive jurisdiction under Chapter 47 of Title 10 of the United
 91 States Code.

92 (21) 'Record,' when used in connection with the proceedings of a court-martial, means:

93 (A) An official written transcript, written summary, or other writing relating to the
 94 proceedings; or

95 (B) An official audiotape, videotape, digital image or file, or similar material from
 96 which sound, or sound and visual images, depicting the proceedings may be
 97 reproduced.

98 (22) 'Senior force commander' means the commander of the same force of the organized
 99 militia as the accused, including the assistant adjutant general for army, the assistant
 100 adjutant general for air, and the commanding officer of the State Defense Force.

101 (23) 'Staff judge advocate' means the judge advocates recommended by the state judge
 102 advocate and appointed by the deputy adjutant general for army, the deputy adjutant
 103 general for air, or the commanding officer of the State Defense Force.

104 (24) 'State active duty' means full-time duty in the organized militia under an order of
 105 the Governor or otherwise issued by authority of law and paid by funds of this state,
 106 including travel to and from such duty.

107 (25) 'State judge advocate' means the judge advocate recommended by the adjutant
 108 general and appointed by the Governor.

109 (26) 'States' means the several states of the United States, the District of Columbia, the
 110 Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

111 (27) 'Superior commissioned officer' means a commissioned officer superior in rank or
 112 command.

113 38-2-1002.

114 (a) This article shall apply to all members of the organized militia at all times and in all
 115 places when not serving as provided for by Title 10 of the United States Code.

116 (b)(1) Subject matter jurisdiction under this article shall be established if a nexus exists
 117 between a military offense or nonmilitary offense and the organized militia. When a
 118 member is in a status as provided for by Title 32 of the United States Code or on state
 119 active duty, a rebuttable presumption exists that such nexus is established.

120 (2) Courts-martial shall have primary jurisdiction of a military offense.

121 (3) A proper civilian court shall have primary jurisdiction of a nonmilitary offense when
 122 such act or omission violates both this article and local civilian criminal law, foreign or
 123 domestic. In such case, a court-martial may be initiated only after the civilian authority
 124 has declined to prosecute or dismissed such charge; provided, however, that jeopardy has
 125 not attached.

126 (4) Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory
 127 crimes shall be determined by the underlying offense.

128 38-2-1003.

129 (a) Each person discharged from the organized militia who is later charged with having
130 fraudulently obtained such discharge shall be, subject to Code Section 38-2-1043, subject
131 to trial by court-martial on that charge and is, after apprehension, subject to this article
132 while in custody under the direction of the organized militia for that trial. Upon conviction
133 of such charge, such person shall be subject to trial by court-martial for all offenses under
134 this article committed prior to the fraudulent discharge.

135 (b) No person who has deserted from the organized militia shall be relieved from
136 amenability to the jurisdiction of this article by virtue of a separation from any later period
137 of service.

138 38-2-1004.

139 Reserved.

140 38-2-1005.

141 (a) This article shall be applicable at all times and in all places, provided that either the
142 person subject to this article is in a duty status or, if not in a duty status, that there is a
143 nexus between the act or omission constituting an offense under this article and the
144 efficient functioning of the organized militia. Such grant of military jurisdiction shall
145 neither preclude nor limit civilian jurisdiction over an offense except where the prohibition
146 of double jeopardy is concerned.

147 (b) Courts-martial and courts of inquiry may be convened and held in units of the
148 organized militia while those units are serving outside of this state with the same
149 jurisdiction and powers as to persons subject to this article as if such proceedings were held
150 inside this state, and offenses committed outside this state may be tried and punished under
151 this article either inside or outside this state.

152 38-2-1006.

153 (a) The Governor, on the recommendation of the adjutant general, shall appoint a judge
154 advocate of the organized militia who shall be the state judge advocate. To be eligible for
155 such appointment, a judge advocate shall be a member in good standing of the State Bar
156 of Georgia and shall have been a member of the State Bar of Georgia for not less than ten
157 years and shall have not less than five years of continuous service in the army or air
158 National Guard of this state. The state judge advocate shall serve as the primary legal
159 advisor to the adjutant general and shall serve as the judge advocate on the joint staff. The
160 state judge advocate shall command the Office of the State Judge Advocate and shall have

161 authority for assignment, placement, and billeting of all judge advocates in the organized
 162 militia.

163 (b) The deputy adjutant general for army, the deputy adjutant general for air, and the
 164 commanding officer of the State Defense Force, on the recommendation of the state judge
 165 advocate, shall each appoint a staff judge advocate for the Army National Guard, a staff
 166 judge advocate for the Air National Guard, and a staff judge advocate for the State Defense
 167 Force, respectively. Such staff judge advocates shall serve as the respective primary legal
 168 advisors to the assistant adjutant general for army, the assistant adjutant general for air, and
 169 the commanding officer of the State Defense Force.

170 (c) The state judge advocate, or his or her assistants, shall make frequent inspections in the
 171 field in supervision of the administration of military justice in the organized militia.

172 (d) Convening authorities shall at all times communicate directly with their judge
 173 advocates in matters relating to the administration of military justice. The judge advocate
 174 of any command shall be entitled to communicate directly with the judge advocate of a
 175 superior or subordinate command or with the state judge advocate.

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

179 Part 2

180 38-2-1007.

181 (a) Any person authorized by this article or Chapter 47 of Title 10 of the United States
 182 Code, or by regulations issued under either, to apprehend persons subject to this article, any
 183 marshal of a court-martial appointed pursuant to the provisions of this article, and any
 184 peace officer or civil officer having authority to apprehend offenders under the laws of the
 185 United States or of a state, may do so upon probable cause that an offense has been
 186 committed and that the person apprehended committed it.

187 (b) Commissioned officers, warrant officers, petty officers, and noncommissioned officers
 188 shall have authority to quell quarrels, frays, and disorders among persons subject to this
 189 article and to apprehend persons subject to this article who take part therein.

190 (c) If an offender is apprehended outside this state, the offender's return to this state shall
 191 be in accordance with normal extradition procedures or by reciprocal agreement.

192 (d) No person authorized by this article to apprehend persons subject to this article, or the
 193 place where such offender is confined, restrained, held, or otherwise housed, shall require
 194 payment of any fee or charge for so receiving, apprehending, confining, restraining,
 195 holding, or otherwise housing a person except as otherwise provided by law.

196 38-2-1008.

197 Reserved.

198 38-2-1009.

199 (a) An enlisted member may be ordered into arrest or confinement by any commander in
200 the grade of O-4 or above by an order, oral or written, delivered in person or through any
201 other person who is subject to this article. A commander in the grade of O-4 or above may
202 authorize commissioned officers, warrant officers, petty officers, or noncommissioned
203 officers to order enlisted members of the commanding officer's command, or subject to the
204 commanding officer's authority, into arrest or confinement.

205 (b) A commissioned officer, a warrant officer, or a civilian subject to this article or to trial
206 thereunder may be ordered into arrest or confinement only by a commanding officer in the
207 grade of O-6 or above to whose authority the person is subject by an order, oral or written,
208 delivered in person or by another commissioned officer. The authority to order such
209 persons into arrest or confinement shall not be delegated.

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

211 (d) This article shall not limit the authority of persons authorized to apprehend offenders
212 to secure the custody of an alleged offender until proper authority may be notified.

213 (e) The Governor, or the adjutant general under delegation by the Governor, may by
214 written order, or regulations issued pursuant to Part 1 of Article 2 of this chapter, further
215 limit who may order the arrest or confinement of members.

216 38-2-1010.

217 Any person subject to this article who is charged with an offense under this article shall be
218 ordered into arrest or confinement by the adjutant general, as circumstances may require.
219 When any person subject to this article is placed in arrest or confinement prior to trial,
220 immediate steps shall be taken to inform him or her of the specific wrong of which he or
221 she is accused, and diligent steps shall be taken to try him or her or to dismiss the charges
222 and release him or her.

223 38-2-1011.

224 Confinement and imprisonment other than in a guard house, whether prior to, during, or
225 after trial by a military court, shall be executed in jails or correctional institutions
226 designated by the Governor, or by the adjutant general under delegation by the Governor,
227 for that purpose.

228 38-2-1012.

229 No member of the organized militia shall be placed in confinement in immediate
230 association with enemy prisoners.

231 38-2-1013.

232 No person, while being held for trial or awaiting a verdict, shall be subjected to punishment
233 or penalty other than arrest or confinement upon the charges pending against him or her,
234 nor shall the arrest or confinement imposed upon such person be any more rigorous than
235 the circumstances require to insure his or her presence and the safety of others, but he or
236 she may be subjected to minor punishment during such period for infractions of discipline.
237 Any person placed in confinement while being held for trial or awaiting a verdict shall be
238 given administrative credit for such time to offset any sentence subsequently imposed.

239 38-2-1014.

240 (a) A person who is subject to this article and accused of an offense against civil authority
241 shall be delivered, upon request, to the civil authority for trial or confinement.

242 (b) When delivery under this article is made to any civil authority of a person undergoing
243 sentence of a court-martial, and the delivery, if followed by conviction in a civil tribunal,
244 interrupts the execution of the sentence of the court-martial, the offender, after having
245 answered to the civil authorities for the offense, shall, upon the request of competent
246 military authority, be returned to the place of original custody for the completion of his or
247 her sentence.

248 Part 3

249 38-2-1015.

250 (a) Under such regulations as may be prescribed by the Governor pursuant to Part 1 of
251 Article 2 of this chapter, or the adjutant general under delegation by the Governor, any
252 commanding officer may impose disciplinary punishments for minor offenses without the
253 intervention of a court-martial pursuant to this Code section. A commanding officer's
254 authority under this Code section shall not be delegated.

255 (b) As provided for by subsection (a) of this Code section, any commanding officer may
256 impose upon enlisted members of such commanding officer's command one or more of the
257 following punishments:

258 (1) An admonition;

259 (2) A reprimand;

- 260 (3) The withholding of privileges for not more than six months, whether or not such
 261 withholding is for consecutive months;
- 262 (4) Restitution;
- 263 (5) The forfeiture of pay of not more than seven-day's pay;
- 264 (6) A reduction by one grade of a member in the grade of E-4 and below;
- 265 (7) Extra duties, including, but not limited to, fatigue duties, for not more than 14 days,
 266 whether or not such days are consecutive; and
- 267 (8) Restriction to certain specified limits, with or without suspension from duty, for not
 268 more than 14 days, whether or not such days are consecutive.
- 269 (c) As provided for by subsection (a) of this Code section, any commanding officer in the
 270 grade of O-4 or above may impose upon enlisted members of such commanding officer's
 271 command one or more of the following punishments:
- 272 (1) Any punishment authorized in paragraphs (1) through (4) of subsection (b) of this
 273 Code section;
- 274 (2) The forfeiture of not more than one-half of one month's pay per month for two
 275 months;
- 276 (3) A reduction by one grade of a member in the grade of E-6 and below;
- 277 (4) Extra duties, including, but not limited to, fatigue duties, for not more than 45 days,
 278 whether or not such days are consecutive; and
- 279 (5) Restriction to certain specified limits, with or without suspension from duty, for not
 280 more than 60 days, whether or not such days are consecutive.
- 281 (d) As provided for by subsection (a) of this Code section, any commanding officer in the
 282 grade of O-6 or above may impose upon enlisted members of such commanding officer's
 283 command one or more of the following punishments:
- 284 (1) Any punishment authorized in paragraphs (1), (2), (4), and (5) of subsection (c) of
 285 this Code section; and
- 286 (2) A reduction by one grade of a member in the grade of E-7 and below.
- 287 (e) As provided for by subsection (a) of this Code section, the adjutant general or an
 288 officer of a general or flag rank in command may impose one or more of the following
 289 punishments:
- 290 (1) Upon officers of such officer's command:
- 291 (A) Any punishment authorized in paragraphs (1), (2), and (5) of subsection (c) of this
 292 Code section; and
- 293 (B) Arrest in quarters for not more than 30 days, whether or not such days are
 294 consecutive; and
- 295 (2) Upon enlisted members of the officer's command:

296 (A) Any punishment authorized in paragraph (1) of subsection (d) of this Code section;
297 and
298 (B) A reduction by one grade.

299 (f) Whenever any of the punishments provided for by this Code section are combined to
300 run consecutively, the total length of the combined punishment shall not exceed the
301 authorized duration of the longest punishment in the combination, and there shall be an
302 apportionment of punishments such that no single punishment in the combination exceeds
303 its authorized length under this Code section.

304 (g) The officer who imposes punishment under this Code section, or such officer's
305 successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or
306 amount of the punishment and restore all rights, privileges, and property affected. Such
307 officer may also:

308 (1) Mitigate reduction in grade to forfeiture of pay;
309 (2) Mitigate arrest in quarters to restriction; or
310 (3) Mitigate extra duties to restriction.

311 The mitigated punishment shall not be for a greater period than the punishment mitigated.
312 When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall
313 not be greater than the amount that could have been imposed initially under this Code
314 section by the officer who imposed the punishment mitigated.

315 (h) A person punished under this Code section who considers the punishment unjust or
316 disproportionate to the offense may through the proper channel appeal to the next superior
317 authority within 30 days after the punishment is either announced or sent to the accused,
318 as the commander may determine. The appeal shall be promptly forwarded and decided,
319 but the person punished may in the meantime be required to undergo the punishment
320 adjudged. The superior authority shall exercise the same powers with respect to the
321 punishment imposed as may be exercised under subsection (g) of this Code section by the
322 officer who imposed the punishment. Before acting on an appeal from a punishment, the
323 authority who is to act on the appeal may refer the case to a judge advocate for
324 consideration and advice.

325 (i) The imposition and enforcement of disciplinary punishment under this Code section for
326 any act or omission shall not be a bar to trial by court-martial or a civilian court of
327 competent jurisdiction for a serious crime or offense growing out of the same act or
328 omission and not properly punishable under this Code section; but the fact that a
329 disciplinary punishment has been enforced may be shown by the accused upon trial and,
330 when so shown, it shall be considered in determining the measure of punishment to be
331 adjudged in the event of a finding of guilty.

332 (j) Whenever a punishment of forfeiture of pay is imposed under this Code section, the
 333 forfeiture may apply to pay accruing before, on, or after the date that punishment is
 334 imposed.

335 (k) Regulations issued pursuant to Part 1 of Article 2 of this chapter may prescribe the
 336 form of records to be kept of proceedings under this Code section and may prescribe that
 337 certain categories of those proceedings shall be in writing.

338 (l) No member has the right to decline nonjudicial punishment under this Code section and
 339 to demand any type of court-martial.

340 Part 4

341 38-2-1016.

342 There shall be three kinds of courts-martial in each of the forces of the organized militia:

343 (1) General courts-martial, which shall consist of:

344 (A) A military judge and not less than six members; or

345 (B) Only a military judge, if, before the court is assembled, the accused, knowing the
 346 identity of the military judge and after consultation with defense counsel, requests
 347 orally on the record or in writing a court composed of only a military judge and the
 348 military judge approves;

349 (2) Special courts-martial, which shall consist of:

350 (A) A military judge and not less than six members; or

351 (B) Only a military judge, if one has been detailed to the court, and the accused under
 352 the same conditions as those provided for in subparagraph (B) of paragraph (1) of this
 353 Code section so requests; and

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

355 38-2-1017.

356 Each force of the organized militia has court-martial jurisdiction over all members of the
 357 particular force of the organized militia who are subject to this article. The Georgia
 358 National Guard and the Georgia Air National Guard shall have court-martial jurisdiction
 359 over all members subject to this article.

360 38-2-1018.

361 Subject to Code Section 38-2-1017, general courts-martial shall have jurisdiction to try
 362 persons subject to this article for any offense made punishable by this article, and shall,
 363 under such limitations as the Governor may prescribe pursuant to Part 1 of Article 2 of this

364 chapter, adjudge any one or more of the following punishments not otherwise forbidden
 365 by this article:

- 366 (1) Confinement for a period of not more than ten years;
 367 (2) Restriction to specified limits for not more than six months;
 368 (3) Dismissal, dishonorable discharge, or bad conduct discharge;
 369 (4) Forfeiture of all or a portion of pay and allowances;
 370 (5) Restitution;
 371 (6) Reduction to the lowest or any intermediate pay grade of enlisted persons;
 372 (7) A reprimand; and
 373 (8) No punishment.

374 38-2-1019.

375 Subject to Code Section 38-2-1017, special courts-martial shall have jurisdiction to try
 376 persons subject to this article for any offense made punishable by this article, and shall,
 377 under such limitations as the Governor, or the adjutant general by delegation of the
 378 Governor, may prescribe by regulations issued pursuant to Part 1 of Article 2 of this
 379 chapter, adjudge any one or more of the following punishments not otherwise forbidden
 380 by this article:

- 381 (1) Confinement for a period of not more than one year;
 382 (2) Restriction to specified limits for not more than six months;
 383 (3) Bad conduct discharge;
 384 (4) Forfeiture of all or a portion of pay and allowances for not more than one year;
 385 (5) Restitution;
 386 (6) Reduction to the lowest or any intermediate pay grade of enlisted persons;
 387 (7) A reprimand; and
 388 (8) No punishment.

389 38-2-1020.

390 (a) Subject to Code Section 38-2-1017, summary courts-martial shall have jurisdiction to
 391 try persons subject to this article, except for officers, cadets, candidates, and midshipmen,
 392 for any offense made punishable by this article under such limitations as the Governor, or
 393 the adjutant general by delegation of the Governor, may prescribe by regulations issued
 394 pursuant to Part 1 of Article 2 of this chapter.

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

399 such limitations as the Governor, or the adjutant general by delegation of the Governor,
 400 may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter, adjudge
 401 any one or more of the following punishments not otherwise forbidden by this article:

402 (1) Confinement for a period of not more than one month;

403 (2) Restriction to specified limits for not more than two months;

404 (3) Forfeiture of all or a portion of pay and allowances for not more than 60 days;

405 (4) Restitution;

406 (5) Reduction of no more than two grades of enlisted persons;

407 (6) A reprimand; and

408 (7) No punishment.

409 38-2-1021.

410 Reserved.

411 Part 5

412 38-2-1022.

413 (a) General courts-martial may be convened by the Governor.

414 (b) If the Governor is the accuser, the general court-martial shall be convened by the Chief
 415 Justice of the Supreme Court of Georgia.

416 (c) For administrative purposes other than the actual convening of a general court-martial,
 417 the adjutant general shall be considered the general court-martial convening authority.

418 38-2-1023.

419 (a) Special courts-martial may be convened by the Governor, the adjutant general, the
 420 deputy adjutant general for army, or the deputy adjutant general for air.

421 (b) If any such officer as provided for in subsection (a) of this Code section is an accuser,
 422 the special court-martial shall be convened by superior competent authority and may in any
 423 case be convened by such superior authority if considered desirable by such authority.

424 38-2-1024.

425 (a) Summary courts-martial may be convened by:

426 (1) Any person authorized to convene a special court-martial under subsection (a) of
 427 Code Section 38-2-1023; or

428 (2) Any commander in the grade of O-6 or above.

429 (b) If any such officer as provided for in subsection (a) of this Code section is an accuser,
430 the summary court-martial shall be convened by superior competent authority and may in
431 any case be convened by such superior authority if considered desirable by such authority.
432 (c) The Governor, or the adjutant general by delegation of the Governor, may, by written
433 order, further limit who may convene actions under this Code section.

434 38-2-1025.

435 (a) For purposes of this Code section, the term 'unit' means any regularly organized body
436 of the organized militia not larger than a company, a squadron, a division of the naval
437 militia, or a body corresponding to one of them.

438 (b) Any commissioned officer of the organized militia shall be eligible to serve on all
439 courts-martial for the trial of any person who is subject to this article.

440 (c) Any warrant officer of the organized militia shall be eligible to serve on general and
441 special courts-martial for the trial of any person who is subject to this article, other than a
442 commissioned officer.

443 (d) Any enlisted member of the organized militia who is not a member of the same unit
444 as the accused shall be eligible to serve on general and special courts-martial for the trial
445 of any enlisted member who is subject to this article, but such enlisted member shall serve
446 as a member of a court only if, before the conclusion of a session called by the military
447 judge under Code Section 38-2-1039 prior to trial or, in the absence of such a session,
448 before the court is assembled for the trial of the accused, the accused personally has
449 requested orally on the record or in writing that enlisted members serve on it. After such
450 a request, the accused shall not be tried by a general or special court-martial the
451 membership of which does not include enlisted members in a number comprising at least
452 one-third of the total membership of the court, unless eligible enlisted members cannot be
453 obtained on account of physical conditions or military exigencies. If such members cannot
454 be obtained, the court shall be assembled and the trial held without such enlisted members,
455 but the convening authority shall make a detailed written statement, to be appended to the
456 record, stating why such number of enlisted members could not be obtained.

457 (e) No person who is subject to this article shall be tried by a court-martial any member
458 of which is junior to the accused in rank or grade.

459 (f) When convening a court-martial, the convening authority shall detail as members
460 thereof such members of the organized militia as, in the convening authority's opinion, are
461 best qualified for the duty by reason of age, education, training, experience, length of
462 service, and judicial temperament. No member of the organized militia shall be eligible
463 to serve as a member of a general or special court-martial when that member is the accuser,
464 a witness, or has acted as investigating officer or as counsel in the same case.

465 (g) Before a court-martial is assembled for the trial of a case, the convening authority may
466 excuse a member of the court from participating in the case. The convening authority may
467 delegate the authority under this subsection to a judge advocate or to any other principal
468 assistant.

469 38-2-1026.

470 (a) A military judge shall be detailed to each general and special court-martial by the
471 authority convening a general or special court-martial. The military judge shall preside
472 over each open session of the court-martial to which the military judge has been detailed.

473 (b) A military judge shall be:

474 (1) An active or retired commissioned officer of the organized militia or state military
475 force of a state or of the armed forces of the United States or a reserve component
476 thereof;

477 (2) A member in good standing of the bar of the highest court of a state or a member of
478 the bar of a federal court for at least five years; and

479 (3) Certified as qualified for duty as a military judge by the judge advocate general of
480 the army, air force, or navy and the state judge advocate.

481 (c) In the instance when a military judge is not a member of the bar of the highest court
482 of this state, the military judge shall be deemed admitted pro hac vice, subject to filing a
483 certificate with the state judge advocate setting forth such qualifications as provided for in
484 subsection (b) of this Code section.

485 (d) The military judge of a general or special court-martial shall be designated by the state
486 judge advocate, or a designee, for detail by the convening authority. Neither the convening
487 authority nor any primary staff member of the convening authority shall prepare or review
488 any report concerning the effectiveness, fitness, or efficiency of the military judge so
489 detailed, which relates to performance of duty as a military judge.

490 (e) Whenever possible, the military judge of a general or special court-martial shall be of
491 the same branch of service as the accused.

492 (f) No person shall be eligible to act as military judge in a case if that person is the accuser
493 or a witness or has acted as investigating officer or a counsel in the same case.

494 (g) The military judge of a court-martial shall not consult with the members of the court
495 except in the presence of the accused, trial counsel, and defense counsel and shall not vote
496 with the members of the court.

497 (h) If no person who meets the qualifications to serve as military judge under this Code
498 section is readily available in the sole discretion of the state judge advocate, a law officer
499 shall be appointed. A law officer may serve in place of a military judge provided he or she

500 meets the qualifications as provided for in paragraphs (1) and (2) of subsection (b) of this
501 Code section and is approved for such service, in writing, by the state judge advocate.

502 38-2-1027.

503 (a)(1) For each general and special court-martial the convening authority shall detail a
504 trial counsel and such assistants as appropriate.

505 (2) For each general and special court-martial, if the United States Army Trial Defense
506 Services or a similar entity exists, such entity shall detail defense counsel and such
507 assistants as are appropriate. If no appropriate such entity exists, the convening authority
508 shall detail defense counsel and such assistants as are appropriate.

509 (3) No person who has acted as investigating officer, military judge, a witness, or court
510 member in any case may act later as trial counsel, assistant trial counsel, or, unless
511 expressly requested by the accused, as defense counsel or assistant or associate defense
512 counsel in the same case. No person who has acted for the prosecution may act later in
513 the same case for the defense nor may any person who has acted for the defense act later
514 in the same case for the prosecution.

515 (b) Except as provided in subsection (c) of this Code section, trial counsel or defense
516 counsel detailed for a general or special court-martial shall be a judge advocate.

517 (c) In the instance where a defense counsel is not a member of the bar of the highest court
518 of this state, the defense counsel shall be deemed admitted pro hac vice, subject to filing
519 a certificate with the military judge setting forth the qualifications that counsel is:

520 (1) A commissioned officer of the organized militia or state military force of a state or
521 of the armed forces of the United States or a reserve component thereof;

522 (2) A member in good standing of the bar of the highest court of a state; and

523 (3) Certified as a judge advocate in the judge advocate general's corps of the army, air
524 force, navy, or the marine corps.

525 (d) Nothing in this Code section shall preclude the accused from hiring a civilian attorney
526 who is a member of the bar of this state or who has been admitted pro hac vice. Such
527 attorney shall serve the accused at no cost to a state or the federal government.

528 38-2-1028.

529 Under such regulations as may be prescribed by the Governor pursuant to Part 1 of Article
530 2 of this chapter, the convening authority of a general or special court-martial or court of
531 inquiry shall detail or employ qualified court reporters who shall record the proceedings
532 of and testimony taken before that court. Under like regulations, the convening authority
533 may detail or employ interpreters who shall interpret for the court.

534 38-2-1029.

535 (a) No member of a general or special court-martial shall be absent or excused after the
536 court has been assembled for the trial of the accused unless excused as a result of a
537 challenge, excused by the military judge for physical disability or other good cause, or
538 excused by order of the convening authority for good cause.

539 (b) Whenever a general court-martial, other than a general court-martial composed of a
540 military judge only, is reduced below six members, the trial shall not proceed unless the
541 convening authority details new members sufficient in number to provide not less than six
542 members. The trial shall proceed with the new members present after the recorded
543 evidence previously introduced before the members of the court has been read to the court
544 in the presence of the military judge, the accused, and counsel for both sides.

545 (c) Whenever a special court-martial, other than a special court-martial composed of a
546 military judge only, is reduced below six members, the trial shall not proceed unless the
547 convening authority details new members sufficient in number to provide not less than six
548 members. The trial shall proceed with the new members present as if no evidence had been
549 introduced previously at the trial, unless a verbatim record of the evidence previously
550 introduced before the members of the court or a stipulation thereof is read to the court in
551 the presence of the military judge, the accused, and counsel for both sides.

552 (d) If the military judge of a court-martial composed of a military judge only is unable to
553 proceed with the trial because of physical disability, as a result of a challenge, or for other
554 good cause, the trial shall proceed, subject to any applicable conditions of subparagraph
555 (B) of paragraphs (1) and (2) of Code Section 38-2-1016, after the detail of a new military
556 judge as if no evidence had previously been introduced, unless a verbatim record of the
557 evidence previously introduced or a stipulation thereof is read in court in the presence of
558 the new military judge, the accused, and counsel for both sides.

559 Part 6

560 38-2-1030.

561 (a) Charges and specifications shall be signed by a person subject to this article under oath
562 before a commissioned officer authorized by Code Section 38-2-1136 to administer oaths
563 and shall state:

564 (1) That the signer has personal knowledge of, or has investigated, the matters set forth
565 therein; and

566 (2) That the same are true in fact to the best of the signer's knowledge and belief.

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

570 38-2-1031.

571 (a) No person subject to this article shall compel any person to incriminate himself or
572 herself or to answer any question the answer to which may tend to incriminate him or her.

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

579 (c) No person subject to this article shall compel any person to make a statement or
580 produce evidence before any military court if the statement or evidence is not material to
581 the issue and may tend to degrade him or her.

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

585 38-2-1032.

586 (a) No charge or specification shall be referred to a general court-martial for trial until a
587 thorough and impartial investigation of all the matters set forth therein has been made
588 unless such investigation has been waived in writing by the accused after consultation with
589 his or her defense counsel. Such investigation shall include inquiry as to the truth of the
590 matter set forth in the charges, consideration of the form of charges, and a recommendation
591 as to the disposition which should be made of the case in the interest of justice and
592 discipline.

593 (b) The accused shall be advised of the charges against him or her and of the right to be
594 represented at the investigation provided for by subsection (a) of this Code section by
595 counsel. The accused has the right to be represented at such investigation as provided in
596 Code Section 38-2-1038 and in regulations prescribed under that Code section. At such
597 investigation, full opportunity shall be given to the accused to cross-examine witnesses
598 against him or her, if they are available, and to present anything relevant he or she may
599 desire in his or her own behalf, either in defense or mitigation, and the investigating officer
600 shall examine available relevant witnesses requested by the accused. If the charges are
601 forwarded after the investigation, they shall be accompanied by a statement of the

602 substance of the testimony taken on both sides and a copy thereof shall be given to the
603 accused.

604 (c) If an investigation of the subject matter of an offense has been conducted before the
605 accused is charged with the offense, and if the accused was present at the investigation and
606 afforded the opportunities for representation, cross-examination, and presentation
607 prescribed in subsection (b) of this Code section, no further investigation of that charge
608 shall be necessary under this Code section unless it is demanded by the accused after he or
609 she is informed of the charge. A demand for further investigation shall entitle the accused
610 to recall witnesses for further cross-examination and to offer any new relevant evidence in
611 the accused's own behalf.

612 (d) If evidence adduced in an investigation under this Code section indicates that the
613 accused committed an uncharged offense, the investigating officer may investigate the
614 subject matter of that offense without the accused having first been charged with the
615 offense if the accused is:

616 (1) Present at the investigation;

617 (2) Informed of the nature of each uncharged offense investigated; and

618 (3) Afforded the opportunities for representation, cross-examination, and presentation
619 prescribed in subsection (b) of this Code section.

620 (e) The requirements of this Code section shall be binding on all persons administering this
621 article, but failure to follow them shall not constitute jurisdictional error.

622 38-2-1033.

623 When a person is held for trial by general court-martial, the commanding officer shall,
624 within three days after the accused is ordered into arrest or confinement, forward the
625 charges, together with the investigation and allied papers, to the person exercising general
626 court-martial jurisdiction.

627 38-2-1034.

628 (a) Before directing the trial of any charge by general or special court-martial, the
629 convening authority shall refer it to the staff judge advocate of the service of the accused
630 for consideration and advice. The convening authority shall not refer a specification under
631 a charge to a general or special court-martial for trial unless the convening authority has
632 been advised in writing by the staff judge advocate of the service of the accused that:

633 (1) The specification alleges an offense under this article;

634 (2) The specification is warranted by the evidence indicated in the report of investigation
635 as provided for under Code Section 38-2-1032, if there is such a report; and

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

637 (b) The advice of the staff judge advocate under subsection (a) of this Code section with
 638 respect to a specification under a charge shall include a written and signed statement by the
 639 staff judge advocate:

640 (1) Expressing conclusions with respect to each matter set forth in subsection (a) of this
 641 Code section; and

642 (2) Recommending action that the convening authority take regarding the specification.
 643 If the specification is referred for trial, the recommendation of the staff judge advocate
 644 shall accompany the specification.

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

649 38-2-1035.

650 The trial counsel shall serve or cause to be served upon the accused a copy of the charges.
 651 No person shall, against his or her objection, be brought to trial before a general
 652 court-martial case within a period of five days after the service of charges upon him or her,
 653 or before a special court-martial case within a period of three days after the service of
 654 charges upon him or her.

655 Part 7

656 38-2-1036.

657 Pretrial, trial, and post-trial procedures, including, but not limited to, modes of proof, for
 658 courts-martial cases arising under this article and for courts of inquiry shall be prescribed
 659 by the Governor, or the adjutant general by delegation of the Governor, by regulations
 660 issued pursuant to Part 1 of Article 2 of this chapter, or as otherwise provided by law,
 661 which shall apply the principles of law generally recognized in military criminal cases in
 662 the courts of the armed forces but which may not be contrary to or inconsistent with this
 663 article.

664 38-2-1037.

665 (a) No authority convening a general, special, or summary court-martial nor any other
 666 commanding officer or officer serving on the staff thereof may censure, reprimand, or
 667 admonish such court or any member, the military judge, counsel, or witness thereof with
 668 respect to the findings or sentence adjudged by the court or with respect to any other
 669 exercise of its or his or her functions in the conduct of the proceedings. No person subject

670 to this article shall attempt to coerce or, by any unauthorized means, influence the action
 671 of a court-martial or court of inquiry or any member thereof in reaching the findings or
 672 sentence in any case or the action of any convening, approving, or reviewing authority with
 673 respect to their judicial acts.

674 (b) Subsection (a) of this Code section shall not apply with respect to:

675 (1) General instructional or informational courses in military justice if such courses are
 676 designed solely for the purpose of instructing members of a command in the substantive
 677 and procedural aspects of courts-martial; or

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

680 (c) In the preparation of an effectiveness, fitness, or efficiency report, or any other report
 681 or document used in whole or in part for the purpose of determining whether a member of
 682 the organized militia is qualified to be advanced in grade, of determining the assignment
 683 or transfer of a member of the organized militia, or of determining whether a member of
 684 the organized militia should be retained on active status, no person subject to this article
 685 shall, in preparing any such report:

686 (1) Consider or evaluate the performance of duty of any such member as a member of
 687 a court-martial or witness therein; or

688 (2) Give a less favorable rating or evaluation of any counsel of the accused because of
 689 zealous representation before a court-martial.

690 38-2-1038.

691 (a) The trial counsel of a general or special court-martial shall be a member in good
 692 standing of the State Bar of Georgia and shall prosecute in the name of this state and shall,
 693 under the direction of the court, prepare the record of the proceedings.

694 (b)(1) The accused shall have the right to be represented in defense before a general or
 695 special court-martial or at an investigation under Code Section 38-2-1032 as provided for
 696 in this subsection.

697 (2) The accused may be represented by civilian counsel at the provision and expense of
 698 the accused.

699 (3) Except as otherwise provided in this Code section, the accused shall be represented
 700 by:

701 (A) Military counsel as provided for under Code Section 38-2-1027; or

702 (B) Military counsel of the accused's own selection if such counsel is reasonably
 703 available as determined under paragraph (7) of this subsection.

704 (4) If the accused is represented by civilian counsel, military counsel detailed or selected
 705 under paragraph (3) of this subsection shall act as associate counsel if requested in

706 writing by the accused; provided, however, that if no such request in writing is made,
 707 military counsel detailed under paragraph (3) of this subsection shall be excused.

708 (5) Except as provided under paragraph (6) of this subsection, if the accused is
 709 represented by military counsel of his or her own selection under subparagraph (b)(3)(B)
 710 of this Code section, any military counsel detailed under subparagraph (b)(3)(A) of this
 711 Code section shall be excused.

712 (6) The accused shall not be entitled to be represented by more than one military counsel;
 713 provided, however, that the person authorized under regulations prescribed under Code
 714 Section 38-2-1027 to detail counsel, in such person's sole discretion:

715 (A) May detail additional military counsel as assistant defense counsel; and

716 (B) If the accused is represented by military counsel of the accused's own selection
 717 under subparagraph (b)(3)(B) of this Code section, may approve a request from the
 718 accused that military counsel detailed under subparagraph (b)(3)(A) of this Code
 719 section act as associate defense counsel.

720 (7) The staff judge advocate of the same force of the accused shall determine whether
 721 the military counsel selected by an accused is reasonably available.

722 (c) In any court-martial proceeding resulting in a conviction, the defense counsel may:

723 (1) Forward for attachment to the record of proceedings a brief of such matters as
 724 counsel determines should be considered in behalf of the accused on review, including
 725 any objection to the contents of the record which such counsel considers appropriate;

726 (2) Assist the accused in the submission of any matter under Code Section 38-2-1060;
 727 and

728 (3) Take other action as authorized by this article.

729 38-2-1039.

730 (a) At any time after the service of charges which have been referred for trial to a
 731 court-martial composed of a military judge and members, the military judge shall, subject
 732 to Code Section 38-2-1035, call the court into session without the presence of the members
 733 for the purpose of:

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

736 (2) Hearing and ruling upon any matter which may be ruled upon by the military judge
 737 under this article, whether or not the matter is appropriate for later consideration or
 738 decision by the members of the court;

739 (3) Holding the arraignment and receiving the pleas of the accused; and

740 (4) Performing any other procedural function which does not require the presence of the
 741 members of the court under this article.

742 (b) The proceedings as provided for by subsection (a) of this Code section shall be
743 conducted in the presence of the accused, the defense counsel, and the trial counsel and
744 shall be made a part of the record. Such proceedings shall be conducted notwithstanding
745 the number of court members and without regard to Code Section 38-2-1029.

746 (c) When the members of a court-martial deliberate or vote, only the members shall be
747 present. All other proceedings, including, but not limited to, any other consultation of the
748 members of the court with counsel or the military judge, shall be made a part of the record
749 and shall be in the presence of the accused, the defense counsel, the trial counsel, and the
750 military judge.

751 38-2-1040.

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

755 38-2-1041.

756 (a)(1) The military judge and members of a general or special court-martial may be
757 challenged by the accused or the trial counsel for cause stated to the court. The military
758 judge, if one, or the court shall determine the relevancy and validity of challenges for
759 cause and shall not receive a challenge to more than one person at a time. Challenges by
760 the trial counsel shall ordinarily be presented and decided before those by the accused are
761 offered.

762 (2) If exercise of a challenge for cause reduces the court below the minimum number of
763 members required by Code Section 38-2-1016, all parties shall, notwithstanding Code
764 Section 38-2-1029, either exercise or waive any challenge for cause then apparent against
765 the remaining members of the court before additional members are detailed to the court;
766 provided, however, that preemptory challenges shall not be exercised at such time.

767 (b)(1) Each accused and the trial counsel are entitled initially to one preemptory
768 challenge of members of the court. The military judge shall not be challenged except for
769 cause.

770 (2) If exercise of a preemptory challenge reduces the court below the minimum number
771 of members required by Code Section 38-2-1016, the parties shall, notwithstanding Code
772 Section 38-2-1029, either exercise or waive any remaining preemptory challenge, not
773 previously waived, against the remaining members of the court before additional
774 members are detailed to the court.

775 (3) Whenever additional members are detailed to the court, and after any challenges for
776 cause against such additional members are presented and decided, each accused and the

777 trial counsel are entitled to one peremptory challenge against members not previously
 778 subject to peremptory challenge.

779 38-2-1042.

780 (a) Before performing their respective duties, military judges, general and special
 781 courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take
 782 an oath or affirmation to perform their duties faithfully. The form of such oath or
 783 affirmation, the time and place of the taking thereof, the manner of recording the same, and
 784 whether the oath or affirmation shall be taken for all cases in which such duties are to be
 785 performed or for a particular case, shall be as prescribed in regulations issued pursuant to
 786 Part 1 of Article 2 of this chapter or as provided by law. Such regulations shall provide that
 787 an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or
 788 defense counsel may be taken at any time by any judge advocate or other person certified
 789 or designated to be qualified or competent for the duty, and if such an oath or affirmation
 790 is taken, it need not again be taken at the time the judge advocate or other person is detailed
 791 to that duty.

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

793 38-2-1043.

794 (a) A person charged with desertion or absence without leave in time of armed conflict or
 795 war, whether or not declared, or with aiding the enemy or with mutiny shall be tried and
 796 punished at any time without limitation.

797 (b) Except as otherwise provided in this article, a person charged with any offense shall
 798 not be liable to be tried by court-martial or punished under Code Section 38-2-1015 if the
 799 offense was committed more than three years before the receipt of sworn charges and
 800 specifications by an officer exercising court-martial jurisdiction over the command or
 801 before the imposition of punishment under Code Section 38-2-1015.

802 (c) Periods in which the accused is absent without authority or fleeing from justice shall
 803 be excluded in computing the period of limitation prescribed in this Code section.

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

808 (e)(1) If charges or specifications are dismissed as defective or insufficient for any cause
 809 and the period of limitation prescribed by this Code section:

810 (A) Has expired; or

811 (B) Will expire within 180 days after the date of dismissal of the charges and
812 specifications,

813 trial and punishment under new charges and specifications shall not be barred by the
814 period of limitation prescribed by this Code section if the conditions specified in
815 paragraph (2) of this subsection are met.

816 (2) The conditions provided for by paragraph (1) of this subsection shall be that the new
817 charges and specifications shall:

818 (A) Be received by an officer exercising summary court-martial jurisdiction over the
819 command within 180 days after the dismissal of the charges or specifications; and

820 (B) Allege the same acts or omissions that were alleged in the dismissed charges or
821 specifications or allege acts or omissions that were included in the dismissed charges
822 or specifications.

823 38-2-1044.

824 (a) No person shall, without his or her consent, be tried a second time for the same offense.

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

828 (c) A proceeding which, after the introduction of evidence but before a finding, is
829 dismissed or terminated by the convening authority or on motion of the prosecution for
830 failure of available evidence or witnesses without any fault of the accused shall be a trial
831 in the sense of this Code section.

832 38-2-1045.

833 (a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty
834 sets up matter inconsistent with the plea, or if it appears that the accused has entered the
835 plea of guilty improvidently or through lack of understanding of its meaning and effect or
836 if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record,
837 and the court shall proceed as though the accused had pleaded not guilty.

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

844 38-2-1046.

845 The trial counsel, the defense counsel, and the summary court-martial officer shall have
846 equal opportunity to obtain witnesses and other evidence as prescribed by regulations
847 issued pursuant to Part 1 of Article 2 of this chapter.

848 38-2-1046.1.

849 (a) Military courts are empowered to issue all process and mandates necessary and proper
850 to carry into full effect the powers vested in the courts. The courts shall have power to issue
851 subpoenas for the attendance of witnesses and subpoenas for the production of
852 documentary evidence and to enforce by attachment attendance of witnesses and
853 production of books, records, and other documentary evidence.

854 (b) Such process and mandates may be issued by military judges, summary courts-martial,
855 provost courts, the president of other military courts, and boards of officers; may be
856 directed to and may be executed by any sheriff, the marshals of the military court, or any
857 peace officer; and shall be in such form as may be prescribed by regulations issued
858 pursuant to Part 1 of Article 2 of this chapter.

859 (c) It shall be the duty of all officers to whom process or mandate may be so directed to
860 execute the same and make return of their acts thereunder according to the requirements
861 of the same. Except as otherwise specifically provided in this article, no such officer shall
862 demand or require payment of any fee or charge of any nature for receiving, executing, or
863 returning any process or mandate or for any services in connection therewith.

864 38-2-1047.

865 (a) Any person not subject to this article who:

866 (1) Has been duly subpoenaed to appear as a witness or to produce books and records
867 before a court-martial or court of inquiry or before any military or civil officer designated
868 to take a deposition to be read in evidence before such court;

869 (2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed
870 to witnesses attending a criminal court of this state; and

871 (3) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify
872 or to produce any evidence which that person may have been legally subpoenaed to
873 produce

874 shall be punished by the military court in the same manner as a criminal court of this state.

875 (b) The fees and mileage of witnesses shall be advanced or paid out of the appropriations
876 for the compensation of witnesses or other appropriate funds.

877 38-2-1048.

878 (a) A military judge may punish for contempt any person who uses any menacing word,
879 sign, or gesture in his or her presence, or who disturbs the proceedings of the military court
880 by any riot or disorder.

881 (b) A person subject to this article may be punished for contempt by confinement not to
882 exceed 30 days or a fine of \$1,000.00, or both.

883 (c) A person not subject to this article may be punished for contempt by a military court
884 in the same manner as a criminal court of this state.

885 38-2-1049.

886 (a) At any time after charges have been signed as provided for in Code Section 38-2-1030,
887 the military judge or summary court-martial officer, with approval of the state judge
888 advocate, may allow a party to take oral or written depositions for good cause.

889 (b) The party at whose instance a deposition is to be taken shall give to every other party
890 reasonable written notice of the time and place for taking the deposition, and such party
891 may attend and participate in the deposition.

892 (c) Depositions shall be taken before and authenticated by any military or civil officer
893 authorized by the laws of this state or by the laws of the place where the deposition is taken
894 to administer oaths.

895 (d) A duly authenticated deposition taken upon reasonable notice to the other parties, so
896 far as otherwise admissible under the rules of evidence, may be read in evidence or, in the
897 case of audiotape, videotape, digital image or file, or similar material, may be played in
898 evidence before any military court, if it appears that:

899 (1) The witness resides or is beyond a state in which the court is ordered to sit, or beyond
900 100 miles from the place of trial or hearing;

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

904 (3) The present whereabouts of the witness are unknown.

905 38-2-1050.

906 (a) In any case not extending to the dismissal of a commissioned officer, the sworn
907 testimony, contained in the duly authenticated record of proceedings of a court of inquiry,
908 of a person whose oral testimony cannot be obtained may, if otherwise admissible under
909 the rules of evidence, be read in evidence by any party before a court-martial if the accused
910 was a party before the court of inquiry and if the same issue was involved or if the accused
911 consents to the introduction of such evidence.

912 (b) In any case extending to the dismissal of a commissioned officer, the sworn testimony,
913 contained in the duly authenticated record of proceedings of a court of inquiry, of a person
914 whose oral testimony cannot be obtained may, if otherwise admissible under the rules of
915 evidence, be read in evidence only by the defense.

916 (c) Such testimony as provided for in subsections (a) and (b) of this Code section may be
917 read in evidence before a court of inquiry in like manner as provided for in subsections (a)
918 and (b) of this Code section.

919 38-2-1050.1.

920 (a) It shall be an affirmative defense in a trial by court-martial that, at the time of the
921 commission of the acts constituting the offense, the accused, as a result of a severe mental
922 disease or defect, was unable to appreciate the nature and quality or the wrongfulness of
923 his or her acts in accordance with Code Section 38-2-1076.2. Mental disease or defect
924 shall not otherwise constitute a defense.

925 (b) The accused has the burden of proving the defense as provided for by subsection (a)
926 of this Code section by clear and convincing evidence.

927 (c) Whenever lack of mental responsibility of the accused with respect to an offense is
928 properly at issue, the military judge shall follow the procedures set forth in Code Section
929 17-7-131.

930 38-2-1051.

931 (a) Voting by members of a general or special court-martial on the findings and on the
932 sentence shall be by secret written ballot. The junior member of the court shall count the
933 votes. The count shall be checked by the president who shall forthwith announce the result
934 of the ballot to the members of the court.

935 (b) The military judge shall rule upon all questions of law and all interlocutory questions
936 arising during the proceedings. Any such ruling made by the military judge upon any
937 question of law or any interlocutory question other than the factual issue of mental
938 responsibility of the accused shall be final and shall constitute the ruling of the court;
939 provided, however, that the military judge may change the ruling at any time during the
940 trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared
941 and closed and the question decided by a voice vote as provided in Code Section
942 38-2-1052, beginning with the member junior in rank.

943 (c) Before a vote is taken on the findings, the military judge shall, in the presence of the
944 accused and counsel, instruct the members of the court as to the elements of the offense and
945 charge them that:

946 (1) The accused must be presumed to be innocent until his or her guilt is established by
 947 legal and competent evidence beyond reasonable doubt;

948 (2) In the case being considered, if there is a reasonable doubt as to the guilt of the
 949 accused, the doubt must be resolved in favor of the accused and the accused must be
 950 acquitted;

951 (3) If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower
 952 degree as to which there is no reasonable doubt; and

953 (4) The burden of proof to establish the guilt of the accused beyond a reasonable doubt
 954 is upon the state.

955 (d) Subsections (a), (b), and (c) of this Code section shall not apply to a court-martial
 956 composed of a military judge only. The military judge of such a court-martial shall
 957 determine all questions of law and fact arising during the proceedings and, if the accused
 958 is convicted, adjudge an appropriate sentence. The military judge of such a court-martial
 959 shall make a general finding and shall in addition, on request, find the facts specially. If
 960 an opinion or memorandum of decision is filed, it shall be sufficient if the findings of fact
 961 appear therein.

962 38-2-1052.

963 (a) No person shall be convicted of an offense, except:

964 (1) As provided in Code Section 38-2-1045;

965 (2) By the vote of two-thirds of the members;

966 (3) By a summary court-martial officer; or

967 (4) If a court-martial is composed of a military judge only, by decision of the military
 968 judge.

969 (b) If two-thirds of the members of a court-martial composed of members do not vote for
 970 a conviction, the accused shall be acquitted.

971 (c)(1) All questions other than the questions provided for under subsections (a) and (b)
 972 of this Code section to be decided by the members of a general or special court-martial
 973 shall be determined by a majority vote; provided, however, that a determination to
 974 reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing
 975 it, shall be made by any lesser vote which indicates that the reconsideration is not
 976 opposed by the number of votes required for that finding or sentence.

977 (2) A tie vote on a challenge shall disqualify the member challenged.

978 (3) A tie vote on a motion relating to the question of the sanity of the accused shall be
 979 a determination against the accused.

980 (4) A tie vote on a question other than the questions provided for under paragraphs (2)
 981 and (3) of this subsection shall be a determination in favor of the accused.

982 38-2-1053.

983 A court-martial shall announce its findings and sentence to the parties as soon as
984 determined.

985 38-2-1054.

986 (a) Each general and special court-martial shall keep a separate record of the proceedings
987 in each case brought before it, and the record shall be authenticated by the signature of the
988 military judge. If the record cannot be authenticated by the military judge by reason of his
989 or her death, disability, or absence, it shall be authenticated by the signature of the trial
990 counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of
991 his or her death, disability, or absence. In a court-martial consisting of only a military
992 judge, the record shall be authenticated by the court reporter under the same conditions
993 which would impose such a duty on a member under this subsection.

994 (b)(1) A complete verbatim record of the proceedings and testimony shall be prepared
995 in each general and special court-martial case resulting in a conviction.

996 (2) In all court-martial cases other than as provided for by paragraph (1) of this
997 subsection, the record shall contain such matters as may be prescribed by regulations
998 issued pursuant to Part 1 of Article 2 of this chapter.

999 (c) Each summary court-martial shall keep a separate record of the proceedings in each
1000 case, and the record shall be authenticated in the manner as may be prescribed by
1001 regulations issued pursuant to Part 1 of Article 2 of this chapter.

1002 (d) A copy of the record of the proceedings of each general and special court-martial shall
1003 be given to the accused as soon as it is authenticated.

1004 Part 8

1005 38-2-1055.

1006 Punishment by flogging or by branding, marking, or tattooing on the body or any other
1007 cruel or unusual punishment shall not be adjudged by a court-martial or inflicted upon any
1008 person subject to this article. The use of irons, single or double, except for the purpose of
1009 safe custody, is prohibited.

1010 38-2-1056.

1011 (a) The punishment which a court-martial may direct for an offense shall not exceed such
1012 limits as prescribed by this article, but in no instance shall a sentence exceed more than ten
1013 years for a military offense nor shall a sentence of death be adjudged. A conviction by
1014 general court-martial of any offense for which an accused may receive a sentence of

1015 confinement for more than one year shall be a felony offense. Except for convictions by
1016 a summary court-martial, all other convictions shall be misdemeanors. Any conviction by
1017 a summary court-martial shall not be a criminal conviction.

1018 (b) The limits of punishment for violations of this article prescribed herein shall be the
1019 lesser of the sentences prescribed by the manual for courts-martial of the United States in
1020 effect on January 1, 2015, if such manual contains the offense, and any regulations or
1021 manual for courts-martial adopted in this state pursuant to Code Section 38-2-1036, but in
1022 no instance shall any punishment exceed that authorized by this article.

1023 38-2-1057.

1024 (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes
1025 a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture
1026 shall apply to pay or allowances becoming due on or after the date the sentence is approved
1027 by the convening authority. No forfeiture shall extend to any pay or allowances accrued
1028 before that date.

1029 (b) Any period of confinement included in a sentence of a court-martial shall begin to run
1030 from the date the sentence is adjudged by the court-martial, but periods during which the
1031 sentence to confinement is suspended or deferred shall be excluded in computing the
1032 service of the term of confinement.

1033 (c) All sentences of courts-martial, except as provided for by subsections (a) and (b) of this
1034 Code section, shall be effective on the date ordered executed.

1035 38-2-1057.1.

1036 (a) On application by an accused who is under sentence to confinement that has not been
1037 ordered executed, the convening authority or, if the accused is no longer under that person's
1038 jurisdiction, the person exercising general court-martial jurisdiction over the command to
1039 which the accused is currently assigned may, in that person's sole discretion, defer service
1040 of the sentence to confinement. Such deferment shall terminate when the sentence is
1041 ordered executed. Such deferment may be rescinded at any time by the person who granted
1042 it or, if the accused is no longer under that person's jurisdiction, by the person exercising
1043 general court-martial jurisdiction over the command to which the accused is currently
1044 assigned.

1045 (b)(1) In any case in which a court-martial sentences an accused as provided for in
1046 paragraph (2) of this subsection to confinement, the convening authority shall defer the
1047 service of the sentence to confinement, without the consent of the accused, until after the
1048 accused has been permanently released to the organized militia by a state, the United
1049 States, or a foreign country referred to in that paragraph.

1050 (2) Paragraph (1) of this subsection shall apply to a person subject to this article who:
 1051 (A) While in the custody of a state, the United States, or a foreign country is
 1052 temporarily returned by that state, the United States, or a foreign country to the
 1053 organized militia for trial by court-martial; and
 1054 (B) After the court-martial, is returned to that state, the United States, or a foreign
 1055 country under the authority of a mutual agreement or treaty, as the case may be.
 1056 (3) As used in this subsection, the term 'state' shall include the District of Columbia and
 1057 any commonwealth, territory, or possession of the United States.
 1058 (c) In any case in which a court-martial sentences an accused to confinement and the
 1059 sentence to confinement has been ordered executed, but in which review of the case under
 1060 Code Section 38-2-1067 is pending, the adjutant general may defer further service of the
 1061 sentence to confinement while that review is pending.

1062 38-2-1058.

1063 (a) A sentence of confinement adjudged by a court-martial, whether or not the sentence
 1064 includes discharge or dismissal, and whether or not the discharge or dismissal has been
 1065 executed, shall be carried into execution by confinement in any place authorized by this
 1066 article. Persons so confined shall be subject to the same discipline and treatment as persons
 1067 regularly confined or committed to that place of confinement.
 1068 (b) The omission of hard labor as a sentence authorized under this article shall not deprive
 1069 a confinement facility from employing it, if it otherwise is within the authority of that
 1070 facility to do so.
 1071 (c) No place of confinement shall require payment of any fee or charge for so receiving
 1072 or confining a person except as otherwise provided by law.

1073 38-2-1058.1.

1074 (a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved
 1075 by the convening authority, that includes:
 1076 (1) A dishonorable or bad conduct discharge; or
 1077 (2) Confinement
 1078 shall reduce that member to pay grade E-1, effective on the date of that approval.
 1079 (b) If the sentence of a member who is reduced in pay grade under subsection (a) of this
 1080 Code section is set aside or disapproved, or, as finally approved, does not include any
 1081 punishment named in paragraphs (1) and (2) of subsection (a) of this Code section, the
 1082 rights and privileges of which the person was deprived because of that reduction shall be
 1083 restored, including, but not limited to, pay and allowances.

1084 38-2-1058.2.

1085 (a)(1) A court-martial sentence as provided for in paragraph (2) of this subsection shall
1086 result in the forfeiture of pay, or of pay and allowances, due that member during any
1087 period of confinement or parole. Such forfeiture pursuant to this Code section shall take
1088 effect on the date determined under Code Section 38-2-1057 and may be deferred as
1089 provided by that Code section. The pay and allowances forfeited shall be all pay and
1090 allowances due that member during such period.

1091 (2) A sentence covered by this subsection shall be any sentence that includes:

1092 (A) Confinement for more than six months; or

1093 (B) Confinement for six months or less and a dishonorable or bad conduct discharge
1094 or dismissal.

1095 (b) In a case involving an accused who has dependents, the convening authority or other
1096 person acting under Code Section 38-2-1060 may waive any or all of the forfeitures of pay
1097 and allowances required by subsection (a) of this Code section for a period not to exceed
1098 six months. Any amount of pay or allowances that, except for a waiver under this
1099 subsection, would be forfeited shall be paid, as the convening authority or other person
1100 taking action directs, to the dependents of the accused.

1101 (c) If the sentence of a member who forfeits pay and allowances under subsection (a) of
1102 this Code section is set aside or disapproved or, as finally approved, does not provide for
1103 a punishment referred to in paragraph (2) of subsection (a) of this Code section, the
1104 member shall be paid the pay and allowances which the member would have been paid,
1105 except for the forfeiture, for the period during which the forfeiture was in effect.

1106 Part 9

1107 38-2-1059.

1108 (a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an
1109 error of law unless the error materially prejudices the substantial rights of the accused.

1110 (b) Any reviewing authority with the power to approve or affirm a finding of guilty may
1111 approve or affirm, instead, so much of the finding as includes a lesser included offense.

1112 38-2-1060.

1113 (a) The findings and sentence of a court-martial shall be reported promptly to the
1114 convening authority after the announcement of the sentence.

1115 (b)(1) The accused may submit to the convening authority matters for consideration by
1116 the convening authority with respect to the findings and the sentence. Any such
1117 submission shall be in writing. Except in a summary court-martial case, such a

1118 submission shall be made within 30 days after the accused has been given an
1119 authenticated record of the trial and, if applicable, the recommendation of the staff judge
1120 advocate of the service of the accused under subsection (d) of this Code section. In a
1121 summary court-martial case, such a submission shall be made within 30 days after the
1122 sentence is announced.

1123 (2) If the accused shows that additional time is required for the accused to submit such
1124 matters as provided for in paragraph (1) of this subsection, the convening authority or
1125 other person taking action under this Code section, for good cause, may extend the
1126 applicable period under paragraph (1) of this subsection for not more than an additional
1127 60 days.

1128 (3) In a summary court-martial case, the accused shall be promptly provided a copy of
1129 the record of trial for use in preparing the submission as provided for by paragraph (1)
1130 of this subsection.

1131 (4) The accused may waive the right to make a submission to the convening authority
1132 as provided for by paragraph (1) of this subsection. Such a waiver shall be made in
1133 writing and may not be revoked. For the purposes of paragraph (2) of subsection (c) of
1134 this Code section, the time within which the accused may make a submission under this
1135 subsection shall be deemed to have expired upon the submission of such a waiver to the
1136 convening authority.

1137 (c)(1) The authority under this Code section to modify the findings and sentence of a
1138 court-martial is a matter of command prerogative involving the sole discretion of the
1139 convening authority. If it is impractical for the convening authority to act, the convening
1140 authority shall forward the case to a person exercising general court-martial jurisdiction
1141 who may take action under this Code section.

1142 (2) Action on the sentence of a court-martial shall be taken by the convening authority
1143 or by another person authorized to act under this Code section. Such action may be taken
1144 only after consideration of any matters submitted by the accused under subsection (b) of
1145 this Code section or after the time for submitting such matters expires, whichever is
1146 earlier. The convening authority or other person taking such action, in that person's sole
1147 discretion, may approve, disapprove, commute, or suspend the sentence in whole or in
1148 part.

1149 (3) Action on the findings of a court-martial by the convening authority or other person
1150 acting on the sentence shall not be required; provided, however, that such person, in the
1151 person's sole discretion may:

1152 (A) Dismiss any charge or specification by setting aside a finding of guilty thereto; or

1153 (B) Change a finding of guilty to a charge or specification to a finding of guilty to an
1154 offense that is a lesser included offense of the offense stated in the charge or
1155 specification.

1156 (d) Before acting under this Code section on any general or special court-martial case in
1157 which there is a finding of guilt, the convening authority or other person taking action
1158 under this Code section shall obtain and consider the written recommendation of the staff
1159 judge advocate of the service of the accused. The convening authority or other person
1160 taking action under this Code section shall refer the record of trial to the staff judge
1161 advocate, and the staff judge advocate shall use such record in the preparation of the
1162 recommendation. The recommendation of the staff judge advocate shall include such
1163 matters as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this
1164 chapter and shall be served on the accused, who may submit any matter as provided for by
1165 subsection (b) of this Code section. Failure to object in the response to the
1166 recommendation or to any matter attached to the recommendation shall waive the right to
1167 object thereto.

1168 (e)(1) The convening authority or other person taking action under this Code section, in
1169 the person's sole discretion, may order a proceeding in revision or a rehearing.

1170 (2) A proceeding in revision as provided for by paragraph (1) of this subsection may be
1171 ordered if there is an apparent error or omission in the record or if the record shows
1172 improper or inconsistent action by a court-martial with respect to the findings or sentence
1173 that can be rectified without material prejudice to the substantial rights of the accused.
1174 In no case, however, may a proceeding in revision:

1175 (A) Reconsider a finding of not guilty of any specification or a ruling which amounts
1176 to a finding of not guilty;

1177 (B) Reconsider a finding of not guilty of any charge, unless there has been a finding
1178 of guilty under a specification laid under that charge, which sufficiently alleges a
1179 violation of this article; or

1180 (C) Increase the severity of the sentence unless the sentence prescribed for the offense
1181 is mandatory.

1182 (3) A rehearing may be ordered by the convening authority or other person taking action
1183 under this Code section if that person disapproves the findings and sentence and states
1184 the reasons for disapproval of the findings. If such person disapproves of the findings
1185 and sentence and does not order a rehearing, that person shall dismiss the charges. A
1186 rehearing as to the findings shall not be ordered where there is a lack of sufficient
1187 evidence in the record to support such findings. A rehearing as to the sentence shall be
1188 ordered if the convening authority or other person taking action under this subsection
1189 disapproves the sentence.

1190 38-2-1061.

1191 (a) In each case subject to appellate review under this article, the accused may file with the
 1192 convening authority a statement expressly withdrawing the right of the accused to such
 1193 appeal. Such a withdrawal shall be signed by both the accused and his or her defense
 1194 counsel and shall be filed in accordance with appellate procedures as provided by law.

1195 (b) The accused may withdraw an appeal at any time in accordance with appellate
 1196 procedures as provided by law.

1197 38-2-1062.

1198 (a)(1) In a trial by court-martial in which a punitive discharge may be adjudged, the state
 1199 may appeal the following, other than a finding of not guilty with respect to the charge or
 1200 specification by the members of the court-martial or by a judge in a bench trial so long
 1201 as it is not made in reconsideration:

1202 (A) An order or ruling of the military judge which terminates the proceedings with
 1203 respect to a charge or specification;

1204 (B) An order or ruling which excludes evidence that is substantial proof of a fact
 1205 material in the proceeding;

1206 (C) An order or ruling which directs the disclosure of classified information;

1207 (D) An order or ruling which imposes sanctions for nondisclosure of classified
 1208 information;

1209 (E) A refusal of the military judge to issue a protective order sought by the state to
 1210 prevent the disclosure of classified information; and

1211 (F) A refusal by the military judge to enforce an order described in subparagraph (E)
 1212 of this paragraph that has previously been issued by appropriate authority.

1213 (2) An appeal of an order or ruling may not be taken unless the trial counsel provides the
 1214 military judge with written notice of appeal from the order or ruling within 72 hours of
 1215 the order or ruling. Such notice shall include a certification by the trial counsel that the
 1216 appeal is not taken for the purpose of delay and, if the order or ruling appealed is one
 1217 which excludes evidence, that the evidence excluded is substantial proof of a fact material
 1218 in the proceeding.

1219 (3) An appeal under this Code section shall be diligently prosecuted as provided by law.

1220 (b) An appeal under this Code section shall be forwarded to the court prescribed in Code
 1221 Section 38-2-1067. In ruling on an appeal under this Code section, such court may act only
 1222 with respect to matters of law.

1223 (c) Any period of delay resulting from an appeal under this Code section shall be excluded
 1224 in deciding any issue regarding denial of a speedy trial unless an appropriate authority

1225 determines that the appeal was filed solely for the purpose of delay with the knowledge that
1226 it was totally frivolous and without merit.

1227 38-2-1063.

1228 Each rehearing under this article shall take place before a court-martial composed of
1229 members who were not members of the court-martial which first heard the case. Upon a
1230 rehearing, the accused may not be tried for any offense of which the accused was found not
1231 guilty by the first court-martial, and no sentence in excess of or more severe than the
1232 original sentence may be approved, unless the sentence is based upon a finding of guilty
1233 of an offense not considered upon the merits in the original proceedings or unless the
1234 sentence prescribed for the offense is mandatory. If the sentence approved after the first
1235 court-martial was in accordance with a pretrial agreement and the accused at the rehearing
1236 changes a plea with respect to the charges or specifications upon which the pretrial
1237 agreement was based, or otherwise does not comply with the pretrial agreement, the
1238 approved sentence as to those charges or specifications may include any punishment not
1239 in excess of that lawfully adjudged at the first court-martial.

1240 38-2-1064.

1241 (a) Each general and special court-martial case in which there has been a finding of guilty
1242 shall be reviewed by the state judge advocate or his or her designee who shall be a judge
1243 advocate. The state judge advocate shall not review a case under this subsection if that
1244 person has acted in the same case as an accuser, investigating officer, member of the court,
1245 military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense;
1246 the state judge advocate shall assign review of such case to a designee who shall not have
1247 acted in the same case as an accuser, investigating officer, member of the court, military
1248 judge, or counsel, or has otherwise acted on behalf of the prosecution or defense. Such
1249 review of the state judge advocate or his or her designee shall be in writing and shall
1250 contain the following:

1251 (1) Conclusions as to whether:

1252 (A) The court had jurisdiction over the accused and the offense;

1253 (B) The charge and specification stated an offense; and

1254 (C) The sentence was within the limits prescribed as a matter of law;

1255 (2) A response to each allegation of error made in writing by the accused; and

1256 (3) If the case is sent for action under subsection (b) of this Code section, a
1257 recommendation as to the appropriate action to be taken and an opinion as to whether
1258 corrective action is required as a matter of law.

1259 (b) The record of trial and related documents in each case reviewed under subsection (a)
1260 of this Code section shall be sent for action to the adjutant general, if:
1261 (1) The judge advocate who reviewed the case recommends corrective action;
1262 (2) The sentence approved under Code Section 38-2-1060 extends to dismissal, a bad
1263 conduct or dishonorable discharge, or confinement for more than six months; or
1264 (3) Such action is otherwise required by regulations pursuant to Part 1 of Article 2 of this
1265 chapter.
1266 (c)(1) If a record of trial is sent to the adjutant general under subsection (b) of this Code
1267 section, the adjutant general may:
1268 (A) Disapprove or approve the findings or sentence, in whole or in part;
1269 (B) Remit, commute, or suspend the sentence in whole or in part;
1270 (C) Except where the evidence was insufficient at the trial to support the findings,
1271 order a rehearing on the findings or on the sentence, or both; or
1272 (D) Dismiss the charges.
1273 (2) If a rehearing is ordered by the adjutant general but the convening authority finds a
1274 rehearing impracticable, the convening authority shall dismiss the charges.
1275 (3) If the opinion of the state judge advocate, or designee, in the state judge advocate's,
1276 or designee's, review under subsection (a) of this Code section is that corrective action
1277 is required as a matter of law and if the adjutant general does not take action that is at
1278 least as favorable to the accused as that recommended by the judge advocate, the record
1279 of trial and action thereon shall be sent to the Governor for review and action as deemed
1280 appropriate.
1281 (d) The state judge advocate, or his or her designee who shall be a judge advocate, may
1282 review any case in which there has been a finding of not guilty of all charges and
1283 specifications. If the state judge advocate has acted in the same case as an accuser,
1284 investigating officer, member of the court, military judge, or counsel or has otherwise acted
1285 on behalf of the prosecution or defense, the state judge advocate may assign such case to
1286 a designee who has not acted in the same case as an accuser, investigating officer, member
1287 of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution
1288 or defense and who shall determine whether a review shall be conducted under this
1289 subsection. Such review of the state judge advocate or of his or her designee shall be
1290 limited to questions of subject matter jurisdiction.
1291 (e) The record of trial and related documents in each case reviewed under subsection (d)
1292 of this Code section shall be sent for action to the adjutant general; the adjutant general
1293 may:

1294 (1) When subject matter jurisdiction is found to be lacking, void the court-martial ab
1295 initio, with or without prejudice to the state, as the adjutant general deems appropriate;
1296 or
1297 (2) Return the record of trial and related documents to the state judge advocate or his or
1298 her designee for appeal by the state as provided by law.

1299 38-2-1065.

1300 Except as otherwise required by this article, all records of trial and related documents shall
1301 be transmitted and disposed of as prescribed by regulations issued pursuant to Part 1 of
1302 Article 2 of this chapter.

1303 38-2-1066.

1304 Reserved.

1305 38-2-1067.

1306 (a)(1) There shall be the court-martial review panel which shall hear appeals of decisions
1307 of a court-martial.

1308 (2) The Governor shall appoint five persons to serve as judges on the court-martial
1309 review panel. Four such judges shall be retired commissioned officers of the organized
1310 militia or state military force of a state or of the armed forces of the United States or a
1311 reserve component thereof and a member in good standing of the State Bar of Georgia.
1312 One such judge shall be a member in good standing of the State Bar of Georgia and shall
1313 not be a member, former member, or retired member of the organized militia or state
1314 military force of a state or of the armed forces of the United States or a reserve
1315 component thereof.

1316 (3) The Governor shall prescribe by regulations issued pursuant to Part 1 of Article 2 of
1317 this chapter the convening and administration of the court-martial review panel and the
1318 compensation provided to the judges of such panel.

1319 (b)(1) An appeal to the court-martial review panel shall only be made after action on the
1320 sentence of a court-martial by the convening authority or by another person authorized
1321 to take such action as provided for in Code Section 38-2-1060 or after a decision of the
1322 convening authority to deny a petition for a new trial as provided for by Code Section
1323 38-2-1073 or pursuant to Code Section 38-2-1062. Such appeals shall be made within
1324 30 days after such action or decision.

1325 (2) The court-martial review panel shall dispose of each appeal within 90 days of such
1326 appeal made thereto. The court-martial review panel shall deliver its decision to the state
1327 judge advocate and, within three days, the state judge advocate shall serve a copy of such

1328 decision to the accused by statutory overnight delivery. The decision of the court-martial
1329 review panel shall be final for purposes of an appeal to the Court of Appeals or the
1330 Supreme Court on the date that the state judge advocate mails the decision to the accused.

1331 (c) Each general and special court-martial case in which the court-martial review panel
1332 approves a finding of guilty or sentence, in whole or in part, shall be appealable to the
1333 Court of Appeals as provided for in Article 2 of Chapter 6 of Title 5. The appellate
1334 procedures to be followed shall be those provided by law for the appeal of cases thereto,
1335 except where such procedures conflict with this article.

1336 (d) Each general and special court-martial case in which the Court of Appeals affirms a
1337 finding of guilty or sentence, in whole or in part, and decisions by the court-martial review
1338 panel to affirm a decision by the convening authority to deny a motion for a new trial shall
1339 be appealable to the Supreme Court by application as provided for in Article 2 of Chapter
1340 6 of Title 5. The appellate procedures to be followed shall be those provided by law for
1341 the appeal of cases by application thereto, except where such procedures conflict with this
1342 article.

1343 38-2-1068.

1344 Reserved.

1345 38-2-1069.

1346 Reserved.

1347 38-2-1070.

1348 (a) The state judge advocate shall detail a judge advocate as appellate government counsel
1349 to represent the state in the review or appeal of cases provided for in Code Section
1350 38-2-1067 and before any federal court when requested to do so by the attorney general.
1351 Appellate government counsel shall be a member in good standing of the bar of the highest
1352 court of this state.

1353 (b) Upon an appeal by the state, the accused shall have the right to be represented by
1354 detailed military counsel before any reviewing authority and before any appellate court.

1355 (c) Upon an appeal by an accused, the accused shall have the right to be represented by
1356 military counsel before any reviewing authority.

1357 (d) Upon the request of an accused entitled to be so represented, the senior force judge
1358 advocate shall appoint a judge advocate to represent the accused in the review or appeal
1359 of cases specified in subsections (b) and (c) of this Code section.

1360 (e) An accused may be represented by civilian appellate counsel at no expense to the state.

1361 38-2-1071.

1362 (a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad
1363 conduct discharge and if the right of the accused to appellate review is not waived and an
1364 appeal is not withdrawn under Code Section 38-2-1061, that part of the sentence extending
1365 to dismissal or a dishonorable or bad conduct discharge shall not be executed until there
1366 is a final judgment as to the legality of the proceedings. A judgment as to the legality of
1367 the proceedings shall be final in such cases when review is completed by an appellate court
1368 as provided for in Code Section 38-2-1067 and is deemed final by the law of this state.

1369 (b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad
1370 conduct discharge and if the right of the accused to appellate review is waived or an appeal
1371 is withdrawn under Code Section 38-2-1061, that part of the sentence extending to
1372 dismissal or a dishonorable or bad conduct discharge shall not be executed until review of
1373 the case by the state judge advocate and any action on that review under Code Section
1374 38-2-1064 is completed. Any other part of a court-martial sentence may be ordered
1375 executed by the convening authority or other person acting on the case under Code Section
1376 38-2-1060 when so approved under that Code section.

1377 (c) The convening authority may suspend the execution of any sentence or part thereof.

1378 38-2-1072.

1379 (a) Before the vacation of the suspension of a special court-martial sentence, which as
1380 approved includes a bad conduct discharge, or of any general court-martial sentence, the
1381 officer having special court-martial jurisdiction over the probationer shall hold a hearing
1382 on an alleged violation of probation. The probationer shall be represented at the hearing
1383 by military counsel if the probationer so desires.

1384 (b) The record of the hearing and the recommendation of the officer having special
1385 court-martial jurisdiction shall be sent for action to the officer exercising general
1386 court-martial jurisdiction over the probationer. If the officer vacates the suspension, any
1387 unexecuted part of the sentence, except a dismissal, shall be executed subject to applicable
1388 restrictions in this article.

1389 (c) The suspension of any other sentence may be vacated by any authority competent to
1390 convene for the command in which the accused is serving or assigned a court of the kind
1391 that imposed the sentence.

1392 38-2-1073.

1393 (a) At any time within five years after approval by the convening authority of a
1394 court-martial sentence, the accused may petition the convening authority for a new trial.

1395 Some good reason, including but not limited to newly discovered evidence or fraud on the
1396 court-martial, must be shown as to why the petition should be granted.

1397 (b) The decision of the convening authority provided for under subsection (a) of this Code
1398 section shall be appealable as provided for under Code Section 38-2-1067.

1399 38-2-1074.

1400 (a) Any authority competent to convene, for the command in which the accused is serving
1401 or assigned, a court of the kind that imposed the sentence may remit or suspend any part
1402 or amount of the unexecuted part of any sentence, including, but not limited to, all
1403 uncollected forfeitures, other than a sentence approved by the Governor.

1404 (b) The Governor may, for good cause, substitute an administrative form of discharge for
1405 a discharge or dismissal executed in accordance with the sentence of a court-martial.

1406 38-2-1075.

1407 (a) Under such regulations as may be prescribed pursuant to this chapter, all rights,
1408 privileges, and property affected by an executed part of a court-martial sentence which has
1409 been set aside or disapproved, except an executed dismissal or discharge, shall be restored
1410 unless a new trial or rehearing is ordered and such executed part is included in a sentence
1411 imposed upon the new trial or rehearing.

1412 (b) If a previously executed sentence of dishonorable or bad conduct discharge is not
1413 imposed on a new trial, the Governor may substitute therefor a form of discharge
1414 authorized for administrative issuance unless the accused is to serve out the remainder of
1415 the accused's enlistment.

1416 (c) If a previously executed sentence of dismissal is not imposed on a new trial, the
1417 Governor may substitute therefor a form of discharge authorized for administrative issue,
1418 and the commissioned officer dismissed by that sentence may be reappointed by the
1419 Governor to such commissioned grade and with such rank as in the opinion of the
1420 Governor that former officer would have attained had the former officer not been
1421 dismissed. The reappointment of such a former officer shall be without regard to the
1422 existence of a vacancy and shall affect the promotion status of other officers only insofar
1423 as the Governor may direct. All time between the dismissal and the reappointment shall
1424 be considered as actual service for all purposes, including, but not limited to, the right to
1425 pay and allowances.

1426 38-2-1076.

1427 The appellate review of records of trial provided by this article, the proceedings, findings,
1428 and sentences of courts-martial as approved, reviewed, or affirmed as required by this

1429 article, and all dismissals and discharges carried into execution under sentences by
 1430 courts-martial following approval, review, or affirmation as required by this article shall
 1431 be final and conclusive. Orders publishing the proceedings of courts-martial and all action
 1432 taken pursuant to those proceedings shall be binding upon all departments, courts, agencies,
 1433 and officers of the United States and the states subject only to action upon a petition for a
 1434 new trial as provided in Code Section 38-2-1073 and to action under Code Section
 1435 38-2-1074.

1436 38-2-1076.1.

1437 Under regulations prescribed pursuant to Part 1 of Article 2 of this chapter, an accused who
 1438 has been sentenced by a court-martial shall be required to take leave pending completion
 1439 of action under this Code section if the sentence as approved under Code Section
 1440 38-2-1060 includes an unsuspended dismissal or an unsuspended dishonorable or bad
 1441 conduct discharge. The accused shall be required to begin such leave on the date on which
 1442 the sentence is approved under Code Section 38-2-1060 or at any time after such date, and
 1443 such leave shall be continued until the date on which action under this Code section is
 1444 completed or may be terminated at any earlier time.

1445 38-2-1076.2.

1446 Except as would be inconsistent with this article, the determination of lack of mental
 1447 capacity or mental responsibility shall be determined pursuant to the law of this state,
 1448 including, but not limited to, Code Sections 16-3-2 and 17-7-130 et seq.

1449 Part 10

1450 38-2-1077.

1451 Any person subject to this article who:

- 1452 (1) Commits an offense punishable by this article or aids, abets, counsels, commands,
 1453 or procures its commission; or
 1454 (2) Causes an act to be done which if directly performed by that person would be
 1455 punishable by this article
 1456 is a principal.

1457 38-2-1078.

1458 Any person subject to this article who, knowing that an offense punishable by this article
 1459 has been committed, receives, comforts, or assists the offender in order to hinder or prevent

1460 his or her apprehension, trial, or punishment shall be punished as a court-martial may
1461 direct.

1462 38-2-1079.

1463 An accused may be found guilty of an offense necessarily included in the offense charged
1464 or of an attempt to commit either the offense charged or an offense necessarily included
1465 therein.

1466 38-2-1080.

1467 (a) An act, done with specific intent to commit an offense under this article, amounting to
1468 more than mere preparation and tending, even though failing, to effect its commission is
1469 an attempt to commit that offense.

1470 (b) Any person subject to this article who attempts to commit any offense punishable by
1471 this article shall be punished as a court-martial may direct, unless otherwise specifically
1472 prescribed.

1473 (c) Any person subject to this article may be convicted of an attempt to commit an offense
1474 although it appears on the trial that the offense was consummated.

1475 38-2-1081.

1476 Any person subject to this article who conspires with any other person to commit an
1477 offense under this article shall, if one or more of the conspirators does an act to effect the
1478 object of the conspiracy, be punished as a court-martial may direct.

1479 38-2-1082.

1480 (a) Any person subject to this article who solicits or advises another or others to desert in
1481 violation of Code Section 38-2-1085 or mutiny in violation of Code Section 38-2-1094
1482 shall, if the offense solicited or advised is attempted or committed, be punished with the
1483 punishment provided for the commission of the offense; but, if the offense solicited or
1484 advised is not committed or attempted, the person shall be punished as a court-martial may
1485 direct.

1486 (b) Any person subject to this article who solicits or advises another or others to commit
1487 an act of misbehavior before the enemy in violation of Code Section 38-2-1099 or sedition
1488 in violation of Code Section 38-2-1094 shall, if the offense solicited or advised is
1489 committed, be punished with the punishment provided for the commission of the offense;
1490 but, if the offense solicited or advised is not committed, the person shall be punished as a
1491 court-martial may direct.

1492 38-2-1083.

1493 Any person who:

1494 (1) Procures his or her own enlistment or appointment in the organized militia by
 1495 knowingly false representation or deliberate concealment as to his or her qualifications
 1496 for that enlistment or appointment and receives pay or allowances thereunder; or

1497 (2) Procures his or her own separation from the organized militia by knowingly false
 1498 representation or deliberate concealment as to his or her eligibility for that separation
 1499 shall be punished as a court-martial may direct.

1500 38-2-1084.

1501 Any person subject to this article who effects an enlistment or appointment in or a
 1502 separation from the organized militia of any person who is known to him or her to be
 1503 ineligible for that enlistment, appointment, or separation because it is prohibited by law,
 1504 regulation, or order shall be punished as a court-martial may direct.

1505 38-2-1085.

1506 (a) Any member of the organized militia who:

1507 (1) Without authority goes or remains absent from his or her unit, organization, or place
 1508 of duty with intent to remain away therefrom permanently;

1509 (2) Quits his or her unit, organization, or place of duty with intent to avoid hazardous
 1510 duty or to shirk important service; or

1511 (3) Without being regularly separated from one of the organized militia, enlists or
 1512 accepts an appointment in the same or another one of the organized militia, or in one of
 1513 the armed forces of the United States, without fully disclosing the fact that the member
 1514 has not been regularly separated, or enters any foreign armed service except when
 1515 authorized by the United States

1516 shall be guilty of desertion.

1517 (b) Any commissioned officer of the organized militia who, after tender of his or her
 1518 resignation and before notice of its acceptance, quits his or her post or proper duties
 1519 without leave and with intent to remain away therefrom permanently shall be guilty of
 1520 desertion.

1521 (c) Any person found guilty of desertion or attempt to desert shall be punished by:

1522 (1) Confinement of not more than ten years or such other punishment as a court-martial
 1523 may direct if the offense is committed in time of war; or

1524 (2) Punishment as a court-martial may direct if the offense occurs at any time other than
 1525 in time of war.

1526 38-2-1086.

1527 Any person subject to this article who, without authority:

1528 (1) Fails to go to his or her appointed place of duty at the time prescribed;

1529 (2) Goes from his or her place of duty; or

1530 (3) Absents himself or herself or remains absent from his or her unit, organization, or
1531 place of duty at which the person is required to be at the time prescribed

1532 shall be punished as a court-martial may direct.

1533 38-2-1087.

1534 Any person subject to this article who through neglect or design misses the movement of
1535 a ship, aircraft, or unit with which the person is required in the course of duty to move shall
1536 be punished as a court-martial may direct.

1537 38-2-1088.

1538 Any commissioned officer who uses contemptuous words against the President, the Vice
1539 President, Congress, the Secretary of Defense, the secretary of a military department, the
1540 Secretary of Homeland Security, or the Governor or General Assembly shall be punished
1541 as a court-martial may direct.

1542 38-2-1089.

1543 Any person subject to this article who behaves with disrespect toward his or her superior
1544 commissioned officer shall be punished as a court-martial may direct.

1545 38-2-1090.

1546 Any person subject to this article who:

1547 (1) Strikes his or her superior commissioned officer or draws or lifts up any weapon or
1548 offers any violence against said superior commissioned officer while he or she is in the
1549 execution of his or her office; or

1550 (2) Willfully disobeys a lawful command of his or her superior commissioned officer
1551 shall be punished, if the offense is committed in time of war, by confinement of not more
1552 than ten years or such other punishment as a court-martial may direct, or if the offense is
1553 committed at any time other than a time of war, by such punishment as a court-martial may
1554 direct.

1555 38-2-1091.

1556 Any warrant officer or enlisted member who:

1557 (1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer while
 1558 that officer is in the execution of his or her office;
 1559 (2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer,
 1560 or petty officer; or
 1561 (3) Treats with contempt or is disrespectful in language or deportment toward a warrant
 1562 officer, noncommissioned officer, or petty officer while that officer is in the execution
 1563 of his or her office
 1564 shall be punished as a court-martial may direct.

1565 38-2-1092.

1566 Any person subject to this article who:

1567 (1) Violates or fails to obey any lawful general order or regulation;
 1568 (2) Having knowledge of any other lawful order issued by a member of the organized
 1569 militia, which it is his or her duty to obey, fails to obey the order; or
 1570 (3) Is derelict in the performance of his or her duties
 1571 shall be punished as a court-martial may direct.

1572 38-2-1093.

1573 Any person subject to this article who is guilty of cruelty toward, or oppression or
 1574 maltreatment of, any person subject to his or her orders shall be punished as a court-martial
 1575 may direct.

1576 38-2-1094.

1577 (a) Any person subject to this article who:

1578 (1) With intent to usurp or override lawful military authority, refuses, in concert with any
 1579 other person, to obey orders or otherwise do his or her duty or creates any violence or
 1580 disturbance shall be guilty of mutiny;
 1581 (2) With intent to cause the overthrow or destruction of lawful civil authority, creates,
 1582 in concert with any other person, revolt, violence, or other disturbance against that
 1583 authority shall be guilty of sedition; or
 1584 (3) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being
 1585 committed in his or her presence, or fails to take all reasonable means to inform his or her
 1586 superior commissioned officer or commanding officer of a mutiny or sedition which the
 1587 person knows or has reason to believe is taking place, shall be guilty of a failure to
 1588 suppress or report a mutiny or sedition.
 1589 (b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to
 1590 suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

1591 38-2-1095.

1592 Any person subject to this article who:

1593 (1) Resists apprehension;

1594 (2) Flees from apprehension;

1595 (3) Breaks arrest; or

1596 (4) Escapes from custody or confinement

1597 shall be punished as a court-martial may direct.

1598 38-2-1096.

1599 Any person subject to this article who, without proper authority, releases any prisoner

1600 committed to his or her charge, or who through neglect or design suffers any such prisoner

1601 to escape, shall be punished as a court-martial may direct, whether or not the prisoner was

1602 committed in strict compliance with law.

1603 38-2-1097.

1604 Any person subject to this article who, except as provided by law or regulation,

1605 apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

1606 38-2-1098.

1607 Any person subject to this article who:

1608 (1) Is responsible for unnecessary delay in the disposition of any case of a person
1609 accused of an offense under this article; or

1610 (2) Knowingly and intentionally fails to enforce or comply with any provision of this
1611 article regulating the proceedings before, during, or after trial of an accused

1612 shall be punished as a court-martial may direct.

1613 38-2-1099.

1614 Any person subject to this article who before or in the presence of the enemy:

1615 (1) Runs away;

1616 (2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or
1617 military property which it is his or her duty to defend;

1618 (3) Through disobedience, neglect, or intentional misconduct endangers the safety of any
1619 such command, unit, place, or military property;

1620 (4) Casts away his or her arms or ammunition;

1621 (5) Is guilty of cowardly conduct;

1622 (6) Quits his or her place of duty to plunder or pillage;

1623 (7) Causes false alarms in any command, unit, or place under control of the armed forces
 1624 of the United States or the organized militia;

1625 (8) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any
 1626 enemy troops, combatants, vessels, aircraft, or any other thing which it is his or her duty
 1627 so to encounter, engage, capture, or destroy; or

1628 (9) Does not afford all practicable relief and assistance to any troops, combatants,
 1629 vessels, or aircraft of the armed forces belonging to the United States or their allies, to
 1630 this state, or to a state, when engaged in battle
 1631 shall be punished as a court-martial may direct.

1632 38-2-1100.

1633 Any person subject to this article who compels or attempts to compel the commander of
 1634 any of the organized militia of this state, or of any of a state, place, vessel, aircraft, or other
 1635 military property or of any body of members of the armed forces, to give it up to an enemy
 1636 or to abandon it, or who strikes the colors or flag to an enemy without proper authority,
 1637 shall be punished as a court-martial may direct.

1638 38-2-1101.

1639 Any person subject to this article who in time of war discloses the parole or countersign to
 1640 any person not entitled to receive it or who gives to another, who is entitled to receive and
 1641 use the parole or countersign, a different parole or countersign from that which, to his or
 1642 her knowledge, the person was authorized and required to give, shall be punished as a
 1643 court-martial may direct.

1644 38-2-1102.

1645 Any person subject to this article who forces a safeguard shall be punished as a
 1646 court-martial may direct.

1647 38-2-1103.

1648 (a) All persons subject to this article shall secure all public property taken for the service
 1649 of the United States or this state or a state and shall give notice and turn over to the proper
 1650 authority without delay all captured or abandoned property in their possession, custody, or
 1651 control.

1652 (b) Any person subject to this article who:

1653 (1) Fails to carry out the duties prescribed in subsection (a);

1654 (2) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or
 1655 abandoned property, whereby the person receives or expects any profit, benefit, or

1656 advantage to himself or herself or another directly or indirectly connected with himself
1657 or herself; or
1658 (3) Engages in looting or pillaging
1659 shall be punished as a court-martial may direct.

1660 38-2-1104.

1661 Any person subject to this article who:

1662 (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other
1663 things; or

1664 (2) Without proper authority, knowingly harbors or protects or gives intelligence to, or
1665 communicates or corresponds with or holds any intercourse with the enemy, either
1666 directly or indirectly

1667 shall be punished as a court-martial may direct.

1668 38-2-1105.

1669 Any person subject to this article who, while in the hands of the enemy in time of war:

1670 (1) For the purpose of securing favorable treatment by his or her captors acts without
1671 proper authority in a manner contrary to law, custom, or regulation to the detriment of
1672 others of whatever nationality held by the enemy as civilian or military prisoners; or

1673 (2) While in a position of authority over such persons maltreats them without justifiable
1674 cause

1675 shall be punished as a court-martial may direct.

1676 38-2-1106.

1677 Reserved.

1678 38-2-1107.

1679 Any person subject to this article who, with intent to deceive, signs any false record, return,
1680 regulation, order, or other official document made in the line of duty, knowing it to be
1681 false, or makes any other false official statement made in the line of duty, knowing it to be
1682 false, shall be punished as a court-martial may direct.

1683 38-2-1108.

1684 Any person subject to this article who, without proper authority:

1685 (1) Takes, sells, or otherwise disposes of;

1686 (2) Willfully or through neglect damages, destroys, or loses; or

1687 (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or
 1688 wrongfully disposed of
 1689 any military property of the United States or of a state shall be punished as a court-martial
 1690 may direct.

1691 38-2-1109.

1692 Any person subject to this article who willfully or recklessly wastes, spoils, or otherwise
 1693 willfully and wrongfully takes, sells, destroys, or damages any property of another other
 1694 than military property of the United States or of a state shall be punished as a court-martial
 1695 may direct.

1696 38-2-1110.

1697 (a) Any person subject to this article who willfully and wrongfully hazards or suffers to
 1698 be hazarded any vessel of the armed forces of the United States or any organized militia
 1699 shall be punished as a court-martial may direct.

1700 (b) Any person subject to this article who negligently hazards or suffers to be hazarded any
 1701 vessel of the armed forces of the United States or the organized militia shall be punished
 1702 as a court-martial may direct.

1703 38-2-1111.

1704 Any person subject to this article who:

1705 (1) Drives, operates, or physically controls any vehicle, aircraft, or vessel in a reckless
 1706 or wanton manner or while impaired by a substance as described in subsection (b) of
 1707 Code Section 38-2-1112.1; or

1708 (2) Drives, operates, or is in actual physical control of any vehicle, aircraft or vessel
 1709 while drunk or when the alcohol concentration in the person's blood is equal to or exceeds
 1710 0.08 grams of alcohol per 100 milliliters of blood, as shown by chemical analysis, within
 1711 three hours after such operation or control, or the person's breath is equal to or exceeds
 1712 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis, within
 1713 three hours after such operation or control
 1714 shall be punished as a court-martial may direct.

1715 38-2-1112.

1716 Any person subject to this article, other than a sentinel or lookout, who is found drunk on
 1717 duty shall be punished as a court-martial may direct.

1718 38-2-1112.1.

1719 (a) Any person subject to this article who wrongfully uses, possesses, manufactures,
 1720 distributes, imports into the customs territory of the United States, exports from the United
 1721 States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the
 1722 control of the armed forces of the United States or of the organized militia a substance
 1723 described in subsection (b) of this Code section shall be punished as a court-martial may
 1724 direct.

1725 (b) The substances provided for by subsection (a) of this Code section shall be:

1726 (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
 1727 methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or
 1728 derivative of any such substance;

1729 (2) Any substance not specified in paragraph (1) of this subsection that is listed on a
 1730 schedule of controlled substances prescribed by the President for the purposes of the
 1731 Uniform Code of Military Justice of the armed forces of the United States, 10 U.S.C.
 1732 Section 801 et seq.; and

1733 (3) Any other substance not specified in paragraph (1) of this subsection or contained on
 1734 a list prescribed by the President under paragraph (2) of this subsection that is listed in
 1735 schedules I through V of the Controlled Substances Act, 21 U.S.C. Section 812.

1736 38-2-1113.

1737 Any sentinel or lookout who is found drunk or sleeping upon his or her post or leaves it
 1738 before being regularly relieved shall be punished, if the offense is committed in time of
 1739 war, by confinement of not more than ten years or other punishment as a court-martial may
 1740 direct, but if the offense is committed at any time other than in time of war, by such
 1741 punishment as a court-martial may direct.

1742 38-2-1114.

1743 Reserved.

1744 38-2-1115.

1745 Any person subject to this article who for the purpose of avoiding work, duty, or service:

1746 (1) Feigns illness, physical disablement, mental lapse, or derangement; or

1747 (2) Intentionally inflicts self-injury

1748 shall be punished as a court-martial may direct.

- 1749 38-2-1116.
1750 Any person subject to this article who causes or participates in any riot or breach of the
1751 peace shall be punished as a court-martial may direct.
- 1752 38-2-1117.
1753 Any person subject to this article who uses provoking or reproachful words or gestures
1754 toward any other person subject to this article shall be punished as a court-martial may
1755 direct.
- 1756 38-2-1118.
1757 Reserved.
- 1758 38-2-1119.
1759 Reserved.
- 1760 38-2-1120.
1761 Reserved.
- 1762 38-2-1121.
1763 Reserved.
- 1764 38-2-1122.
1765 Reserved.
- 1766 38-2-1123.
1767 Reserved.
- 1768 38-2-1124.
1769 Reserved.
- 1770 38-2-1125.
1771 Reserved.
- 1772 38-2-1126.
1773 Reserved.

1774 38-2-1127.

1775 Reserved.

1776 38-2-1128.

1777 Reserved.

1778 38-2-1129.

1779 Reserved.

1780 38-2-1130.

1781 Reserved.

1782 38-2-1131.

1783 Any person subject to this article who in a judicial proceeding or in a course of justice
 1784 willfully and corruptly:

1785 (1) Upon a lawful oath or in any form allowed by law to be substituted for an oath, gives
 1786 any false testimony material to the issue or matter of inquiry; or

1787 (2) In any declaration, certificate, verification, or statement under penalty of perjury,
 1788 subscribes any false statement material to the issue or matter of inquiry

1789 is guilty of perjury and shall be punished as a court-martial may direct.

1790 38-2-1132.

1791 Any person subject to this article:

1792 (1) Who, knowing it to be false or fraudulent:

1793 (A) Makes any claim against the United States, this state, or any officer thereof; or

1794 (B) Presents to any person in the civil or military service thereof, for approval or
 1795 payment, any claim against the United States, this state, or any officer thereof;

1796 (2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim
 1797 against the United States, this state, or any officer thereof:

1798 (A) Makes or uses any writing or other paper or electronic submission knowing it to
 1799 contain any false or fraudulent statements;

1800 (B) Makes any oath, affirmation, or certification to any fact or to any writing or other
 1801 paper or electronic submission knowing the oath, affirmation, or certification to be
 1802 false; or

1803 (C) Forges or counterfeits any signature upon any writing or other paper, or uses any
 1804 such signature knowing it to be forged or counterfeited;

1805 (3) Who, having charge, possession, custody, or control of any money or other property
 1806 of the United States or this state, furnished or intended for the armed forces of the United
 1807 States or the organized militia, knowingly delivers to any person having authority to
 1808 receive it, any amount thereof less than that for which the person receives a certificate or
 1809 receipt; or

1810 (4) Who, being authorized to make or deliver any paper certifying the receipt of any
 1811 property of the United States or this state, furnished or intended for the armed forces of
 1812 the United States or the organized militia, makes or delivers to any person such writing
 1813 without having full knowledge of the truth of the statements therein contained and with
 1814 intent to defraud the United States or this state

1815 shall, upon conviction, be punished as a court-martial may direct.

1816 38-2-1133.

1817 Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct
 1818 unbecoming an officer shall be punished as a court-martial may direct.

1819 38-2-1134.

1820 Though not specifically mentioned in this article, all disorders and neglects to the prejudice
 1821 of good order and discipline in the organized militia and all conduct of a nature to bring
 1822 discredit upon the organized militia shall be taken cognizance of by a court-martial and
 1823 punished at the discretion of a military court. However, where a crime constitutes an
 1824 offense that violates both this article and the criminal laws of the state where the offense
 1825 occurs or criminal laws of the United States, jurisdiction of the military court shall be
 1826 determined in accordance with subsection (b) of Code Section 38-2-1002.

1827 Part 11

1828 38-2-1135.

1829 (a) Courts of inquiry to investigate any matter of concern to the organized militia may be
 1830 convened by any person authorized to convene a general court-martial, whether or not the
 1831 persons involved have requested such an inquiry.

1832 (b) A court of inquiry shall consist of three or more commissioned officers. For each court
 1833 of inquiry, the convening authority shall also appoint counsel for the court.

1834 (c) Any person subject to this article whose conduct is subject to inquiry shall be
 1835 designated as a party. Any person subject to this article who has a direct interest in the
 1836 subject of inquiry has the right to be designated as a party upon request to the court. Any

1837 person designated as a party shall be given due notice and has the right to be present, to be
1838 represented by counsel, to cross-examine witnesses, and to introduce evidence.

1839 (d) Members of a court of inquiry may be challenged by a party, but only for cause stated
1840 to the court.

1841 (e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an
1842 oath to faithfully perform their duties.

1843 (f) Witnesses may be summoned to appear and testify and be examined before courts of
1844 inquiry as provided for courts-martial.

1845 (g) Courts of inquiry shall make findings of fact but shall not express opinions or make
1846 recommendations unless required to do so by the convening authority.

1847 (h) Each court of inquiry shall keep a record of its proceedings, which shall be
1848 authenticated by the signatures of the president and counsel for the court and forwarded to
1849 the convening authority. If the record cannot be authenticated by the president, it shall be
1850 signed by a member in lieu of the president. If the record cannot be authenticated by the
1851 counsel for the court, it shall be signed by a member in lieu of the counsel.

1852 38-2-1136.

1853 (a) The following persons shall have the power to administer oaths for the purposes of
1854 military administration, including military justice:

1855 (1) All judge advocates;

1856 (2) All summary courts-martial;

1857 (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

1858 (4) All commanding officers of the naval militia; and

1859 (5) All other persons designated by regulations of the armed forces of the United States
1860 or by law.

1861 (b) The following persons shall have the power to administer oaths necessary in the
1862 performance of their duties:

1863 (1) The president, military judge, and trial counsel for all general and special
1864 courts-martial;

1865 (2) The president and the counsel for the court of any court of inquiry;

1866 (3) All officers designated to take a deposition;

1867 (4) All persons detailed to conduct an investigation;

1868 (5) All recruiting officers; and

1869 (6) All other persons designated by regulations of the armed forces of the United States
1870 or by law.

1871 (c) The signature without seal of any such person provided for by subsections (a) and (b)
 1872 of this Code section, together with the title of his or her office, is prima facie evidence of
 1873 the person's authority.

1874 38-2-1136.1.

1875 (a) Military judges may appoint and, at any time, remove one or more marshals who shall
 1876 execute any process, mandate, or order issued by the judge and shall perform all acts and
 1877 duties by this chapter imposed on or authorized to be performed by any sheriff as defined
 1878 in Code Section 15-16-10.

1879 (b) All such marshals shall be deemed peace officers and for the purposes of this article
 1880 shall have all the powers and immunities of peace officers.

1881 38-2-1137.

1882 (a)(1) The Code sections specified in paragraph (3) of this subsection shall be carefully
 1883 explained to each enlisted member at the time of, or within 90 days after, the member's
 1884 initial entrance into a duty status with the organized militia.

1885 (2) Such articles as provided for by paragraph (1) of this subsection shall be explained
 1886 again:

1887 (A) After the member has completed basic or recruit training; and

1888 (B) At the time when the member reenlists.

1889 (3) This subsection shall apply with respect to this Code section and Code Sections
 1890 38-2-1002 through 38-2-1005, 38-2-1007 through 38-2-1014, 38-2-1015, 38-2-1025,
 1891 38-2-1027, 38-2-1031, 38-2-1037, 38-2-1038, 38-2-1055, 38-2-1077 through 38-2-1134,
 1892 38-2-1138, and 38-2-1139.

1893 (b) The text of this article and of the regulations prescribed hereunder shall be made
 1894 available to a member of the organized militia, upon request by the member, for the
 1895 member's personal examination.

1896 (c) Failure to provide the explanations of this article as provided for by this Code section
 1897 shall not be a defense to a court-martial proceeding, the administration of nonjudicial
 1898 punishment, or any other action.

1899 38-2-1138.

1900 Any member of the organized militia who believes himself or herself wronged by a
 1901 commanding officer and who, upon due application to that commanding officer, is refused
 1902 redress may complain to any superior commissioned officer, who shall forward the
 1903 complaint to the senior force commander over the officer against whom such complaint is
 1904 made. The senior force commander shall examine into the complaint and take proper

1905 measures for redressing the wrong complained of and shall, as soon as possible, send to the
1906 adjutant general a true statement of such complaint with the proceedings had thereon. Any
1907 complaint against a senior force commander shall be made to the adjutant general who
1908 shall examine into the complaint and take proper measures for redressing the wrong
1909 complained of.

1910 38-2-1138.1.

1911 (a) The adjutant general, deputy adjutant general for army, or deputy adjutant general for
1912 air may issue to any member under his or her authority a state administrative letter of
1913 reprimand.

1914 (b) A state administrative letter of reprimand shall not be filed in the member's federal
1915 personnel records unless it meets the requirements for filing under the applicable
1916 regulations or instructions of the affected member.

1917 (c) A state administrative letter of reprimand shall be included for consideration when
1918 determining future assignments within the state for the affected member.

1919 (d) The member against whom a state administrative letter of reprimand is issued shall
1920 have the same rights to review evidence and present a rebuttal as he or she would have if
1921 the state administrative letter of reprimand were to be filed in his or her federal personnel
1922 file.

1923 38-2-1139.

1924 (a) Whenever a complaint is made to any commanding officer that willful damage has
1925 been done to the property of any person or that the person's property has been wrongfully
1926 taken by members of the organized militia, such commanding officer may, under such
1927 regulations prescribed pursuant to Part 1 of Article 2 of this chapter, convene a board to
1928 investigate the complaint. The board shall consist of from one to three commissioned
1929 officers and, for the purpose of that investigation, it has power to summon witnesses and
1930 examine them upon oath, to receive depositions or other documentary evidence, and to
1931 assess the damages sustained against the responsible parties. The assessment of damages
1932 made by the board shall be subject to the approval of the commanding officer and, in the
1933 amount approved by such commanding officer, shall be charged against the pay of the
1934 offenders. The order of the commanding officer directing charges herein authorized shall
1935 be conclusive on any disbursing officer for payment to the injured parties of the damages
1936 so assessed and approved.

1937 (b) If the offenders cannot be ascertained but the organization or detachment to which they
1938 belong is known, charges totaling the amount of damages assessed and approved may be
1939 made in such proportion as may be considered just upon the individual members thereof

1940 who are shown to have been present at the scene at the time the damages complained of
 1941 were inflicted, as determined by the approved findings of the board.

1942 38-2-1140.

1943 The Governor may delegate any authority vested in the Governor under this article and
 1944 provide for the sub delegation of any such authority; provided, however, that the Governor
 1945 shall not delegate or subdelegate the power given the Governor under Code Section
 1946 38-2-1022.

1947 38-2-1141.

1948 The fees and authorized travel expenses of all witnesses, experts, victims, court reporters,
 1949 and interpreters, fees for the service of process, the costs of collection, apprehension,
 1950 detention, and confinement, and all other necessary expenses of prosecution and the
 1951 administration of military justice, not otherwise payable by any other source, shall be paid
 1952 out of the military fund as described in Code Section 38-2-170.

1953 38-2-1142.

1954 (a) Fines collected as a result of being found in contempt shall be collected in the
 1955 following manner:

1956 (1) By cash or money order;

1957 (2) By retention of any pay or allowances due or to become due to the person fined from
 1958 a state or the United States; or

1959 (3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a
 1960 person delinquent in paying a fine, as provided by law.

1961 (b) Any sum so received or retained shall be deposited in the military justice fund as
 1962 provided in Code Section 38-2-170.

1963 38-2-1143.

1964 This article shall be so construed as to effectuate its general purpose to make it uniform,
 1965 so far as practical, with the Uniform Code of Military Justice, Chapter 47 of Title 10 of the
 1966 United States Code.

1967 38-2-1144.

1968 All persons acting under the provisions of this article, whether as a member of the military
 1969 or as a civilian, shall be immune from any personal liability for any of the acts or omissions
 1970 which they did or failed to do as part of their duties under this article.

1971 38-2-1145.

1972 The provisions of this article are hereby declared to be severable, and if any provision of
1973 this article or the application of such provision to any person or circumstance is declared
1974 invalid for any reason, such declaration shall not affect the validity of the remaining
1975 portions of this article."

1976 **SECTION 4.**

1977 This Act shall become effective on July 1, 2015, and shall apply to offenses which occur on
1978 or after that date. Any offense occurring before July 1, 2015, shall be governed by the
1979 statutes in effect at the time of such offense. The enactment of this Act shall not affect any
1980 prosecutions for acts occurring before July 1, 2015, and shall not act as an abatement of any
1981 such prosecutions.

1982 **SECTION 5.**

1983 All laws and parts of laws in conflict with this Act are repealed.