

HB412 ENGROSSED



1 HB412
2 ZC2EWRK-2
3 By Representative Almond
4 RFD: Judiciary
5 First Read: 04-Apr-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Code of Military Justice; to amend Sections 31-2A-1, 31-2A-2, 31-2A-6, 31-2A-7, 31-2A-12, 31-2A-15, 31-2A-16, 31-2A-19, 31-2A-22, 31-2A-26, 31-2A-29, 31-2A-30, 31-2A-34, 31-2A-35, 31-2A-36, 31-2A-38, 31-2A-46, 31-2A-51, 31-2A-52, 31-2A-54, 31-2A-58b, 31-2A-66, 31-2A-73, 31-2A-130, and 31-2A-136, Code of Alabama 1975; to add Section 31-2A-26a to the Code of Alabama 1975; and to repeal Sections 31-2A-99, 31-2A-100, 31-2A-101, 31A-2A-102, 31-2A-104, 31-2A-105, 31-2A-110, 31-2A-112a, 31-2A-112b, 31-2A-114, and 31-2A-143, Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 31-2A-1, 31-2A-2, 31-2A-6, 31-2A-7, 31-2A-12, 31-2A-15, 31-2A-16, 31-2A-19, 31-2A-22, 31-2A-26, 31-2A-29, 31-2A-30, 31-2A-34, 31-2A-35, 31-2A-36, 31-2A-38, 31-2A-46, 31-2A-51, 31-2A-52, 31-2A-54, 31-2A-58b, 31-2A-66, 31-2A-73, 31-2A-130, and 31-2A-136, Code of Alabama 1975, are amended to read as follows:

"§31-2A-1

For the purposes of this code, ~~unless the context otherwise requires,~~ the following words have the following



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29 meanings:

30 (1) ACCUSER. ~~A person~~An individual who signs and swears
31 to charges, ~~any person~~any individual who directs that charges
32 nominally be signed and sworn to by another, and any other
33 ~~person~~individual who has an interest other than an official
34 interest in the prosecution of the accused.

35 (2) CADET, ~~or~~ CANDIDATE, ~~or~~ MIDSHIPMAN. ~~A person~~An
36 individual who is enrolled in or attending a state military
37 academy, a regional training institute, or any other formal
38 education program for the purpose of becoming a commissioned
39 officer in the state military forces.

40 (3) CLASSIFIED INFORMATION. Information that meets all
41 of the following requirements:

42 a. Any information or material that has been determined
43 by an official of the United States, the State of Alabama, or
44 any state or territory pursuant to law, ~~and~~ Presidential
45 Executive order, Governor's Executive order, or regulation to
46 require protection against unauthorized disclosure for reasons
47 of national or state security.

48 b. Any restricted data, as defined in Section 11(y) of
49 the Atomic Energy Act of 1954, ~~(42 U.S.C. § 2014(y))~~.

50 (4) CLERK OF THE COURT. Includes all individuals
51 employed or assigned to serve in this position by a state
52 staff judge advocate to manage and maintain court records.
53 This individual may administer oaths for charges and warrants.

54 ~~(4)~~ (5) CODE. This chapter.

55 ~~(5)~~ (6) COMMANDING OFFICER. Includes only commissioned
56 officers of the state military forces and shall include



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57 officers in charge only when administering nonjudicial
58 punishment under Section 31-2A-15 (Article 15). The term
59 "commander" has the same meaning as "commanding officer"
60 unless the context otherwise requires. A commander is any
61 general officer, the Adjutant General, or any other officer
62 who, by virtue of position, is designated as a commanding
63 officer.

64 ~~(6)~~ (7) CONVENING AUTHORITY. Includes, in addition to
65 the ~~person~~ individual who convened the court, a commissioned
66 officer commanding for the time being or a successor in
67 command to the convening authority.

68 ~~(7)~~ (8) DAY. A calendar day, ~~Unless~~ unless otherwise
69 specified with respect to forfeiture of pay, ~~i~~ means calendar
70 ~~day and~~ the term is not synonymous with the term "unit
71 training assembly." Any punishment authorized by this code
72 which is measured in terms of days, ~~shall~~ when served in a
73 status other than annual field training, shall be construed to
74 mean succeeding duty days.

75 ~~(8)~~ (9) DUTY STATUS OTHER THAN STATE ACTIVE DUTY. Any
76 other type of duty not in federal service and not full-time
77 duty in the active service of the state; under an order issued
78 by authority of law and includes travel to and from such duty.

79 ~~(9)~~ (10) ENLISTED MEMBER. A person in an enlisted grade.

80 ~~(10)~~ (11) JUDGE ADVOCATE.

81 (a) A commissioned officer of the organized state
82 military forces who is a member in good standing of the bar of
83 the highest court of ~~a state~~ the State of Alabama, and who is
84 ~~either of the following:~~



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85 ~~a.1. Certified~~certified or designated as a judge
86 advocate in the Judge Advocate General's Corps of the Army,
87 Air Force, Navy, or the Marine Corps, or designated as a law
88 specialist as an officer of the Coast Guard, or a reserve
89 component of one of these.

90 ~~2. Certified as a non-federally recognized judge~~
91 ~~advocate, under regulations promulgated pursuant to this code,~~
92 ~~by the senior judge advocate of the commander of the force in~~
93 ~~the state military forces of which the accused is a member, as~~
94 ~~competent to perform such military justice duties required by~~
95 ~~this code. If there is no such judge advocate available, then~~
96 ~~such certification may be made by such senior judge advocate~~
97 ~~of the commander of another force in the state military~~
98 ~~forces, as the convening authority directs.~~

99 ~~b.~~(b) In the instance when a judge advocate is detailed
100 under this code and is not a member of the bar of this state,
101 the judge advocate shall be deemed admitted pro hac vice,
102 subject to filing a certificate with the military judge
103 setting forth his or her qualifications, and with notice and
104 approval of the Alabama State Bar and Chief Justice of the
105 Alabama Supreme Court, that ~~counsel~~ the judge advocate is all
106 of the following:

107 1. A commissioned officer of the Armed Forces of the
108 United States or a component thereof.

109 2. A member in good standing of the bar of the highest
110 court of a state.

111 3. ~~Meets the qualifications~~Qualified detailed in
112 accordance with paragraph a subsection (a).



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113 ~~(11)~~(12) MILITARY COURT. A court-martial or a court of
114 inquiry.

115 ~~(12)~~(13) MILITARY JUDGE. An official of a general or
116 special court-martial detailed in accordance with ~~Section~~
117 Sections 31-2A-26 and 31-2A-26a (ArticleArticles 26 and 26a).

118 ~~(13)~~(14) MILITARY OFFENSES. Those offenses prescribed
119 under Part X which are not also covered by federal or state
120 law.

121 ~~(14)~~(15) NATIONAL SECURITY. The national defense and
122 foreign relations of the United States.

123 ~~(15)~~(16) OFFICER. A commissioned or warrant officer.

124 ~~(16)~~ OFFICER IN CHARGE. ~~A member of the naval militia,~~
125 ~~the Navy, the Marine Corps, or the Coast Guard designated as~~
126 ~~such by appropriate authority.~~

127 (17) RECORD. When used in connection with the
128 proceedings of a court-martial, means either of the following:

129 a. An official written transcript, written summary, or
130 other writing relating to the proceedings.

131 b. An official audiotape, videotape, digital image or
132 file, or similar material from which sound, or sound and
133 visual images, depicting the proceedings may be reproduced.

134 (18) RULES OF COURT. The applicable rules of court
135 shall be the Alabama Rules of Court, as applied in any state
136 or municipal court or appellate proceedings within the state.

137 ~~(18)~~(19) SENIOR FORCE COMMANDER. The commander of the
138 same ~~forces~~service ofwithin the state military forces as the
139 accused, with courts-martial convening authority, as delegated
140 by the Adjutant General.



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141 ~~(19)~~ (20) SENIOR FORCEARMY OR AIR STAFF JUDGE ADVOCATE.

142 The ~~senior~~ State Staff judge advocate Judge Advocate, or
143 delegate, ~~offor~~ the ~~commander~~ Adjutant General of the same
144 ~~foree~~ service ~~of~~ within the state military forces as the accused
145 and ~~who is that commander's chief legal advisor.~~

146 ~~(20)~~ (21) STATE. The State of Alabama.

147 (22) STATES. One of the several states, the District of
148 Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S.
149 Virgin Islands.

150 ~~(21)~~ (23) STATE ACTIVE DUTY. Full-time duty in the state
151 military forces under an order of the Governor or otherwise
152 issued by authority of law under Chapter 2 of ~~this title~~ Title
153 31 and paid in whole or in part by state funds, and includes
154 travel to and from such duty.

155 ~~(22)~~ (24) STATE MILITARY FORCES. The Alabama National
156 Guard, as defined in Title 32, United States Code, Section 271
157 of the Constitution of Alabama ~~1901~~ of 2022, and Section
158 31-2-3. The unorganized militia, state defense force, state
159 national guard, home guard, or any other name of any state
160 force that does not meet this definition shall ~~not be part of~~
161 ~~the "state military forces"~~ be under the jurisdiction and terms
162 of this code, as defined in Section 31-2-3.

163 ~~(23)~~ (25) SUPERIOR COMMISSIONED OFFICER. A commissioned
164 officer superior in rank or command."

165 "§31-2A-2

166 (a) This code applies to all members of the state
167 military forces at all times and in all places, ~~except it does~~
168 ~~not apply to a member for any offenses committed while in a~~



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169 ~~duty status under Title 10 U.S.C.~~

170 (b) Subject matter jurisdiction is established if a
171 clear and convincing nexus exists between an offense, either
172 military or non-military, and the state military force. When a
173 member is in ~~any~~ duty status (State Active Duty (SAD), T.32
174 and T.10)~~under either Title 32 U.S.C. or State Active Duty~~
175 then a rebuttable presumption exists that the nexus is
176 established. A proper civilian court has primary jurisdiction
177 of an offense when an act or omission violates ~~both this code~~
178 ~~and civilian criminal law, foreign or domestic. In such a~~
179 ~~case, a court-martial may be initiated only after the civilian~~
180 ~~prosecutorial authority has declined to prosecute or dismissed~~
181 ~~the charge, provided jeopardy has not attached. Courts-martial~~
182 shall have primary jurisdiction over all military offenses
183 defined in this code. ~~Jurisdiction over attempted crimes,~~
184 ~~conspiracy crimes, solicitation, and accessory crimes must be~~
185 ~~determined by the underlying offense."~~

186 "§31-2A-6

187 (a) The ~~senior force judge advocates in~~Alabama Army or
188 Air National Guard State Staff Judge Advocate of each branch
189 of service within~~of the state's military forces~~Alabama
190 National Guard or that ~~judge advocate's~~State Staff Judge
191 Advocate's delegate or delegates shall make frequent
192 inspections in the field in supervision of the administration
193 of military justice ~~in~~for that ~~force~~branch of service.

194 (b) Convening authorities shall at all times
195 communicate directly with their judge advocates in matters
196 relating to the administration of military justice. The judge



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197 advocate of any command is entitled to communicate directly
198 with the judge advocate of a superior or subordinate command,
199 or with ~~the~~ a State Staff Judge Advocate.

200 (c) No ~~person~~ individual who has acted as member,
201 military judge, trial counsel, defense counsel, or
202 investigating officer, or who has been a witness, in any case
203 may later act as a judge advocate providing legal advice to
204 ~~any~~ the reviewing authority ~~upon~~ concerning the same case."

205 "§31-2A-7

206 (a) Apprehension is the taking of ~~a person~~ an individual
207 into custody.

208 (b) Any ~~person~~ individual authorized by this code ~~or by~~
209 ~~Chapter 47 of Title 10, U.S.C., or by regulations~~ regulation
210 ~~issued under either,~~ to apprehend persons subject to this
211 code, any marshal of a court-martial appointed pursuant to the
212 provisions of this code, and any peace officer or civil
213 officer having authority to apprehend offenders under the laws
214 of the United States or of ~~a state~~ the State of Alabama, may do
215 so upon probable cause that an offense has been committed and
216 that the person apprehended committed it.

217 (c) Commissioned officers, warrant officers, petty
218 officers, and noncommissioned officers have authority to quell
219 quarrels, frays, and disorders among ~~persons~~ individuals
220 subject to this code and to apprehend ~~persons~~ individuals
221 subject to this code who take part therein.

222 (d) If an offender is apprehended outside the
223 ~~state~~ State of Alabama, the offender's return to the area must
224 be in accordance with normal extradition procedures or by



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225 reciprocal agreement, unless it is solely a military offense.

226 (e) No ~~person~~individual authorized by this article to
227 apprehend ~~persons~~individuals subject to this code or the place
228 where such offender is confined, restrained, held, or
229 otherwise housed may require payment of any fee or charge for
230 ~~so~~-receiving, apprehending, confining, restraining, holding,
231 or otherwise housing ~~a person~~an individual except as otherwise
232 provided by Section 31-2-106."

233 "§31-2A-12

234 No member of the Alabama National Guard may be placed
235 in confinement in immediate association with enemy prisoners
236 or other foreign nationals not members of the Armed Forces.
237 This section does not preclude an Alabama National Guard
238 service member from being confined in a state, county, or
239 municipal jail or detention facility that may also house
240 illegal immigrants, immigrants, or foreign nationals within
241 the same facility or holding cell."

242 "§31-2A-15

243 (a) Under such regulations as prescribed, any
244 commanding officer may impose disciplinary punishments for
245 minor offenses without the intervention of a court-martial
246 pursuant to this article. The Governor, the Adjutant General,
247 or an officer ~~or~~in a general or flag rank in command may
248 delegate the powers under this article to a principal
249 assistant who is a member of the Alabama National Guard.

250 (b) For the purposes of this article, the term "day"
251 shall mean the following:

252 (1) For the purposes of pay, one day shall equal one



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253 active duty military payday.

254 (2) For all other purposes, one day shall equal one
255 calendar day.

256 (c) For the purposes of this ~~part~~section, all members
257 must be in military status when punishment is imposed.

258 (d) Any commanding officer serving as a brigade
259 commander (Army) or wing/group/base or the commander of a
260 geographically separated unit (Air) may impose upon enlisted
261 members of the officer's command any of the following:

262 (1) An admonition.

263 (2) A reprimand.

264 (3) The withholding of privileges for up to six
265 consecutive months.

266 (4) The forfeiture of pay of up to ~~eight~~12 days' ~~pay~~.

267 (5) A reduction to the next inferior pay grade, ~~if the~~
268 ~~grade from which demoted is within the promotion authority of~~
269 ~~the commander imposing the reduction~~ of an enlisted member who
270 is E-6 and below.

271 (6) Extra duties, including fatigue or other duties,
272 for up to eight days, which need not be consecutive.

273 (7) Restriction to certain specified limits, with or
274 without suspension from duty, for not more than ~~eight~~14 days,
275 which need not be consecutive.

276 ~~(e) Any commanding officer of the grade of major or~~
277 ~~lieutenant commander, or above may impose upon enlisted~~
278 ~~members of the officer's command any of the following:~~

279 ~~(1) Any punishment authorized in subdivisions (1), (2),~~
280 ~~and (3) of subsection (d).~~



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281 ~~(2) The forfeiture of pay of up to 12 days' pay.~~

282 ~~(3) A reduction to the lowest or any intermediate pay~~
283 ~~grade, if the grade from which demoted is within the promotion~~
284 ~~authority of the commanding officer imposing the reduction,~~
285 ~~but an enlisted member in a pay grade above E-4 may not be~~
286 ~~reduced more than two pay grades.~~

287 ~~(4) Extra duties, including fatigue or other duties,~~
288 ~~for not more than 14 days which need not be consecutive.~~

289 ~~(5) Restriction to certain specified limits, with or~~
290 ~~without suspension from duty, for not more than 14 days which~~
291 ~~need not be consecutive.~~

292 ~~(f)~~ (e) The Governor, the Adjutant General, an officer
293 exercising general court-martial convening authority, or an
294 officer of a general or flag rank in command may impose both
295 of the following:

296 (1) Upon officers of the officer's command, any
297 punishment authorized in subdivisions ~~(1), (2), (3),~~ (1) - (4),
298 (6), and ~~(5)~~ (7) of subsection ~~(e)~~ (d).

299 (2) Upon enlisted members of the officer's command, any
300 punishment authorized in subsection (d).

301 ~~(g)~~ (f) Whenever any of those punishments are combined
302 to run consecutively, the total length of the combined
303 punishment cannot exceed the authorized duration of the
304 longest punishment in the combination, and there must be an
305 apportionment of punishments so that no single punishment in
306 the combination exceeds its authorized length under this
307 article.

308 ~~(h)~~ (g) Prior to the offer of non-judicial punishment,



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309 the commanding officer shall determine whether restriction
310 shall be considered as a punishment. ~~Should the commanding~~
311 ~~officer determine that the punishment option may include~~
312 ~~restriction,~~ The determination of whether restriction is a
313 punishment option does not prohibit the accused ~~shall be~~
314 ~~notified of the~~ from requesting his or her right to demand
315 trial by special court-martial. ~~Should the commanding officer~~
316 ~~determine that the punishment option will not include~~
317 ~~restriction, the accused shall be notified that there is no~~
318 ~~right to trial by court-martial in lieu of non-judicial~~
319 ~~punishment.~~

320 ~~(i)~~ (h) The officer who imposes the punishment, or the
321 successor in command, at any time, may suspend, set aside,
322 mitigate, or remit any part or amount of the punishment and
323 restore all rights, privileges, and property affected. The
324 officer also may do either of the following:

- 325 (1) Mitigate reduction in grade to forfeiture of pay.
326 (2) Mitigate extra duties to restriction.

327 The mitigated punishment shall not be for a greater
328 period than the punishment mitigated. When mitigating
329 reduction in grade to forfeiture of pay, the amount of the
330 forfeiture shall not be greater than the amount that could
331 have been imposed initially under this article by the officer
332 who imposed the punishment mitigated.

333 ~~(j)~~ (i) ~~A person~~ An individual punished under this
334 article who considers the punishment unjust or
335 disproportionate to the offense, through the proper channel,
336 may appeal to the next superior authority within ~~45~~ 30 days



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337 after the punishment is either announced or sent to the
338 accused, as the commander may determine. The appeal shall be
339 promptly forwarded and decided. During the pendency of the
340 appeal, the punishment shall not be implemented. The superior
341 authority may exercise the same powers with respect to the
342 punishment imposed as may be exercised under subsection ~~(i)~~(h)
343 by the officer who imposed the punishment. Before acting on an
344 appeal from a punishment, the authority that is to act on the
345 appeal may refer the case to a judge advocate for
346 consideration and advice.

347 ~~(k)~~(j) The imposition and enforcement of disciplinary
348 punishment under this article for any act or omission is not a
349 bar to trial by court-martial or a civilian court of competent
350 jurisdiction for a serious crime or offense growing out of the
351 same act or omission and not properly punishable under this
352 article; however, the fact that a disciplinary punishment has
353 been enforced may be shown by the accused upon trial and, when
354 ~~so~~ shown, it shall be considered in determining the measure of
355 punishment to be adjudged in the event of a finding of guilty.

356 ~~(l)~~(k) Whenever a punishment of forfeiture of pay is
357 imposed under this article, the forfeiture may apply to pay
358 accruing before, on, or after the date that punishment is
359 imposed.

360 ~~(m)~~(l) Regulations may prescribe the form of records to
361 be kept of proceedings under this article and may require that
362 certain categories of those proceedings be in writing.

363 ~~(n)~~(m) The accused shall be informed of the location of
364 and right to consult counsel with regard to any non-judicial



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365 punishment. The Commander shall ensure the ~~member~~accused is
366 given appropriate means to contact counsel."

367 "§31-2A-16

368 The three kinds of courts-martial in the state military
369 forces are:

370 (1) General courts-martial, consisting of either of the
371 following:

372 a. A military judge and not less than five members.

373 b. Only a military judge, if before the court is
374 assembled the accused, knowing the identity of the military
375 judge and after consultation with defense counsel, requests
376 orally on the record or in writing a court composed only of a
377 military judge and the military judge approves.

378 (2) Special courts-martial, consisting of ~~either of the~~
379 following:

380 a. A military judge ~~and not less than three~~
381 members alone.

382 b. ~~Only a~~The military judge, if one has been shall be
383 detailed to the court, and the accused under the same
384 conditions as those prescribed in paragraph b. of subdivision
385 (1) so requests by the State Staff Judge Advocate of either
386 the Alabama Army or Air National Guard.

387 c. The military judge may hear cases arising from any
388 service or branch within the state military forces.

389 (3) Summary courts-martial, consisting of one
390 commissioned officer."

391 "§31-2A-19

392 Subject to Section 31-2A-17 (Article 17), special



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393 courts-martial have jurisdiction to try ~~persons~~individuals
394 subject to this code for ~~any offense~~military-specific offenses
395 made punishable by this code, and under such limitations as
396 the Governor may prescribe, may adjudge any punishment not
397 forbidden by this code except dishonorable discharge,
398 dismissal, confinement for more than six months, or forfeiture
399 of pay exceeding 24 days., ~~which must be completed within one~~
400 ~~year~~ Additional punishments under this section include
401 reduction of soldiers or airmen in the rank of E-6 and below
402 to the rank of E-1. Soldiers or airmen in the rank of E-7
403 through E-9 can be reduced to the rank of E-4. Officers may be
404 reduced in rank to the highest rank where the officer last
405 served honorably before the underlying offense occurred."

406 "§31-2A-22

407 (a) General courts-martial may be convened by any one
408 of the following:

409 (1) The Governor.

410 (2) The Adjutant General.

411 (3) ~~A~~Any General Officer ~~who is designated as a~~
412 ~~commander~~reserving in the Alabama Army or Air National Guard.

413 (b) If any ~~such~~ commanding officer is an accuser, the
414 court shall be convened by superior competent authority and
415 may in any case be convened by ~~such~~the superior authority if
416 considered desirable by the authority."

417 "§31-2A-26

418 (a) A military judge shall be detailed to each general
419 ~~and special~~ court-martial. The military judge shall preside
420 over each open session of the court-martial to which the



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421 military judge has been detailed.

422 (b) A military judge shall be all of the following:

423 (1) An active or retired commissioned officer.

424 (2) A member in good standing of the bar of the highest
425 court of a state or a member of the bar of a federal court for
426 at least five years.

427 (3) Either a certified military judge or a judge of a
428 court of competent jurisdiction who is approved by the
429 Adjutant General.

430 (c) In the instance when a military judge is not a
431 member of the bar of the highest court of the state, the
432 military judge shall be deemed admitted pro hac vice, subject
433 to filing a certificate with the state judge advocate setting
434 forth such qualifications provided in subsection (b) and with
435 notice and approval of the State Bar and Chief Justice of the
436 Alabama Supreme Court.

437 (d) The military judge of a general ~~or special~~
438 court-martial shall be designated by the state judge advocate,
439 or a designee, for detail by the convening authority. Neither
440 the convening authority nor any staff member of the convening
441 authority shall prepare or review any report concerning the
442 effectiveness, fitness, or efficiency of the military judge
443 ~~se~~who is detailed, which relates to performance of duty as a
444 military judge.

445 (e) No ~~person~~individual is eligible to act as military
446 judge in a case if that ~~person~~individual is the accuser or a
447 witness, or has acted as investigating officer or a counsel in
448 the same case.



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

453 "§31-2A-29

454 (a) No member of a general or special court-martial may
455 be absent or excused after the court has been assembled for
456 the trial of the accused unless excused as a result of a
457 challenge, excused by the military judge for physical
458 disability or other good cause, or excused by order of the
459 convening authority for good cause.

460 (b) Whenever a general court-martial, other than a
461 general court-martial composed of a military judge only, is
462 reduced below five members, the trial may not proceed unless
463 the convening authority details new members sufficient in
464 number to provide not less than the applicable minimum number
465 of five members. The trial may proceed with the new members
466 present after the recorded evidence previously introduced
467 before the members of the court has been read to the court in
468 the presence of the military judge, the accused, and counsel
469 for both sides.

470 (c) If the military judge of a general court-martial is
471 unable to proceed with the trial as a result of a challenge,
472 because of physical disability, or for other good cause, trial
473 shall proceed, subject to any applicable conditions of Section
474 31-2A-16(1)b. (Article 16(1)b.), after the detail of a new
475 military judge as if no evidence had previously been
476 introduced, unless a verbatim record of the evidence



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477 previously introduced or a stipulation thereof is read in
478 court in the presence of the new military judge, the accused,
479 and counsel for both sides.

480 ~~(c) Whenever a special court-martial, other than a~~
481 ~~special court-martial composed of a military judge only, is~~
482 ~~reduced below three members, the trial may not proceed unless~~
483 ~~the convening authority details new members sufficient in~~
484 ~~number to provide not less than three members. The trial shall~~
485 ~~proceed with the new members present as if no evidence had~~
486 ~~been introduced previously at the trial, unless a verbatim~~
487 ~~record of the evidence previously introduced before the~~
488 ~~members of the court or a stipulation thereof is read to the~~
489 ~~court in the presence of the military judge, the accused, and~~
490 ~~counsel for both sides.~~

491 (d) If the military judge of a special court-martial
492 ~~composed of a military judge only~~ is unable to proceed with
493 the trial as a result of a challenge, because of physical
494 disability, ~~as a result of a challenge,~~ or for other good
495 cause, the trial shall proceed, subject to any applicable
496 conditions of ~~Section 31-2A-16(1)b. or (2)b. (Article 16(1)b.~~
497 ~~or (2)b.)~~ Section 31-2A-16(2)b. and c. (Article 16(2)b. and
498 c.), after the detail of a new military judge as if no
499 evidence had previously been introduced, unless a verbatim
500 record of the evidence previously introduced or a stipulation
501 thereof is read in court in the presence of the new military
502 judge, the accused, and counsel for both sides."

503 "§31-2A-30

504 (a) Charges and specifications shall be signed by a



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505 ~~person~~an individual subject to this code under oath before
506 either a commissioned officer or the clerk of the court as
507 authorized by Section 31-2A-136(a) (Article 136(a)) to
508 administer oaths and shall state both of the following:

509 (1) ~~That the~~The signer has personal knowledge of, or
510 has investigated, the matters set forth therein.

511 (2) ~~That the~~The charges and specifications are true in
512 fact to the best of the signer's knowledge and belief.

513 (b) Upon the preferring of charges, the proper
514 authority shall take immediate steps to determine what
515 disposition should be made thereof in the interest of justice
516 and discipline, and the person accused shall be informed of
517 the charges as soon as practicable."

518 "§31-2A-34

519 (a) Before directing the trial of any charge by general
520 or special court-martial, the convening authority shall refer
521 it to a judge advocate for consideration and advice. The
522 convening authority may refer a specification under a charge
523 to a special court-martial after advice from the servicing
524 judge advocate. This advice of counsel to the convening
525 authority can be either in writing or verbal.

526 (b) The convening authority may not refer a
527 specification under a charge to a general ~~or special~~
528 court-martial for trial unless the convening authority has
529 been advised in writing by a judge advocate of all of the
530 following:

531 (1) The specification alleges an offense under this
532 code.



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533 (2) The specification is warranted by the evidence
534 indicated in the report of investigation under Section
535 31-2A-32 (Article 32), if there is such a report.

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

538 ~~(b)~~ (c) The advice of the judge advocate under
539 ~~subsection~~ subsections (a) and (b) with respect to a
540 specification under a charge shall include a written and
541 signed statement by the judge advocate containing both of the
542 following:

543 (1) Conclusions with respect to each matter set forth
544 ~~in subsection~~ subsections (a) and (b).

545 (2) Recommended action that the convening authority
546 should take regarding the specification. If the specification
547 is referred for trial, the recommendation of the judge
548 advocate shall accompany the specification.

549 ~~(e)~~ (d) If the charges or specifications are not correct
550 formally or do not conform to the substance of the evidence
551 contained in the report of the investigating officer, formal
552 corrections, and such changes in the charges and
553 specifications as are needed to make them conform to the
554 evidence, may be made."

555 "§31-2A-35

556 The trial counsel shall serve or ~~cause~~ cause to be
557 served upon the accused a copy of the charges. No
558 ~~person~~ individual, against the ~~person's~~ individual's objection,
559 may be brought to trial before a general court-martial case
560 within a period of 45 days after the service of charges upon



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561 the accused, or in a special court-martial, within a period of
562 ~~45~~30 days after the service of charges upon the accused."

563 "§31-2A-36

564 Pretrial, trial, and post-trial procedures, including
565 modes of proof, for court-martial cases arising under this
566 code, and for courts of inquiry, may be prescribed by the
567 Governor or the Adjutant General by rules, or as otherwise
568 provided by law, which shall apply the principles of law and
569 the rules of court under the State of Alabama, to include: (i)
570 the Alabama Rules of Evidence; (ii) Alabama Rules of Criminal
571 Procedure; (iii) Alabama Rules of Juvenile Procedure; and (iv)
572 Alabama Rules of Appellate Procedure~~evidence generally~~
573 ~~recognized in military criminal cases in the courts of the~~
574 ~~Armed Forces but which may not be contrary to or inconsistent~~
575 ~~with this code."~~

576 "§31-2A-38

577 (a) The trial counsel of a general or special
578 court-martial shall prosecute in the name of the state, and,
579 under the direction of the court, shall prepare the record of
580 the proceedings.

581 (b) (1) The accused has the right to be represented in
582 defense before a general or special court-martial or at an
583 investigation under Section 31-2A-32 (Article 32) as provided
584 in this subsection.

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

587 (3) The accused may be represented by either of the
588 following:



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589 a. ~~By military~~Military counsel detailed under Section
590 31-2A-27 (Article 27).

591 b. ~~By military~~Military counsel of the accused's own
592 selection if that counsel is reasonably available as
593 determined under subdivision (7).

594 (4) If the accused is represented by civilian counsel,
595 military counsel detailed or selected under subdivision (3)
596 shall act as associate counsel unless excused at the request
597 of the accused.

598 (5) Except as provided under subdivision (6), if the
599 accused is represented by military counsel of his or her own
600 selection under paragraph (3)b., any military counsel detailed
601 under paragraph (3)a. shall be excused.

602 (6) The accused is not entitled to be represented by
603 more than one military counsel. However, the ~~person~~individual
604 authorized under rules prescribed under Section 31-2A-27
605 (Article 27) to detail counsel, in that ~~person's~~individual's
606 sole discretion:

607 a. May detail additional military counsel as assistant
608 defense counsel.

609 b. If the accused is represented by military counsel of
610 the accused's own selection under paragraph (3)b., may approve
611 a request from the accused that military counsel detailed
612 under paragraph (3)a. act as associate defense counsel.

613 (7) The ~~senior force judge advocate~~State Staff Judge
614 Advocate of the same force of which the accused is a member,
615 shall determine whether the military counsel selected by an
616 accused is reasonably available.



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617 (c) In any court-martial proceeding resulting in a
618 conviction, the defense counsel may do any of the following:

619 (1) Forward for attachment to the record of proceedings
620 a brief of such matters as counsel determines should be
621 considered in behalf of the accused on review, including any
622 objection to the contents of the record which counsel
623 considers appropriate.

624 (2) Assist the accused in the submission of any matter
625 under Section 31-2A-60 (Article 60).

626 (3) Take other action authorized by this code."

627 "§31-2A-46

628 The trial counsel, the defense counsel, and the
629 court-martial shall have equal opportunity to obtain witnesses
630 and other evidence as prescribed by regulations and provided
631 by law. Process issued in court-martial cases to compel
632 witnesses to appear and testify and to compel the production
633 of other evidence shall apply the principles of law and the
634 ~~rules of courts-martial generally recognized in military~~
635 ~~criminal cases in the courts of the Armed Forces of the United~~
636 ~~States, but which may not be contrary to or inconsistent with~~
637 ~~this code~~Alabama Rules of Criminal Procedure. Process shall
638 run to any part of the United States, or the territories,
639 commonwealths, and possessions, and may be executed by civil
640 officers as prescribed by the laws of the place where the
641 witness or evidence is located or outside of the ~~United~~
642 ~~States~~State of Alabama. A court-martial convened under this
643 code may subpoena and compel the presence of witnesses and the
644 production of documents in the same manner as a circuit court



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645 in a criminal case. Such subpoena, however, shall be signed
646 and issued by the assigned military judge and shall comply
647 with the requirements of Chapter 21 of Title 12. ~~Any reference~~
648 ~~therein to the issuance of process by a clerk of court shall~~
649 ~~not apply in a court-martial proceeding."~~

650 "§31-2A-51

651 (a) Voting by members of a general ~~or special~~
652 court-martial on the findings and on the sentence shall be by
653 secret written ballot. The junior member of the court shall
654 count the votes. The count shall be checked by the president,
655 who shall forthwith announce the result of the ballot to the
656 members of the court.

657 (b) The military judge shall rule upon all questions of
658 law and all interlocutory questions arising during the
659 proceedings. Any such ruling made by the military judge upon
660 any question of law or any interlocutory question other than
661 the factual issue of mental responsibility of the accused is
662 final and constitutes the ruling of the court. However, the
663 military judge may change the ruling at any time during the
664 trial. Unless the ruling is final, if any member objects
665 thereto, the court shall be cleared and closed and the
666 question decided by a voice vote as provided in Section
667 31-2A-52 (Article 52), beginning with the junior in rank.

668 (c) Before a vote is taken on the findings, the
669 military judge, in the presence of the accused and counsel,
670 shall instruct the members of the court as to the elements of
671 the offense and charge them with all of the following:

672 (1) The accused must be presumed to be innocent until



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673 his or her guilt is established by legal and competent
674 evidence beyond reasonable doubt.

675 (2) In the case being considered, if there is a
676 reasonable doubt as to the guilt of the accused, the doubt
677 must be resolved in favor of the accused and the accused must
678 be acquitted.

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

682 (4) The burden of proof to establish the guilt of the
683 accused beyond reasonable doubt is upon the state.

684 (d) Subsections (a), (b), and (c) do not apply to a
685 court-martial composed of a military judge only. The military
686 judge of ~~such~~ a court-martial shall determine all questions of
687 law and fact arising during the proceedings and, if the
688 accused is convicted, adjudge an appropriate sentence. The
689 military judge of such a court-martial shall make a general
690 finding, and in addition, on request, shall find the facts
691 specially. If an opinion or memorandum of decision is filed,
692 it will be sufficient if the findings of fact appear therein."

693 "§31-2A-52

694 (a) No person may be convicted of an offense except as
695 provided in Section 31-2A-45(b) (Article 45(b)) or by the
696 concurrence of two-thirds of the members present at the time
697 the vote is taken.

698 (b) All other questions to be decided by the members of
699 a general ~~or special~~ court-martial shall be determined by a
700 majority vote, but a determination to reconsider a finding of



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701 guilty or to reconsider a sentence, with a view toward
702 decreasing it, may be made by any lesser vote which indicates
703 that the reconsideration is not opposed by the number of votes
704 required for that finding or sentence. A tie vote on a
705 challenge disqualifies the member challenged. A tie vote on a
706 motion relating to the question of the accused's sanity is a
707 determination against the accused. A tie vote on any other
708 question is a determination in favor of the accused.

709 (c) Pursuant to its authority under Article XV, Section
710 271 of the Constitution of Alabama of ~~1901~~2022, the
711 Legislature finds and declares that Article I, Section 11 of
712 the Constitution of Alabama of ~~1901~~2022, does not apply to a
713 court-martial proceeding. Courts-martial existed before the
714 existence of the ~~Constitution~~ constitution, and their
715 existence is recognized in the ~~Constitution~~ constitution.
716 Further, courts-martial are an executive agency belonging to
717 the executive branch, not the judicial branch, and were
718 created by the Legislature pursuant to its authority under
719 Article XV, Section 271, to provide for disciplining the
720 militia."

721 "§31-2A-54

722 (a) Each general and special court-martial shall keep a
723 separate record of the proceedings in each case brought before
724 it, and the record shall be authenticated by the signature of
725 the military judge. If the record cannot be authenticated by
726 the military judge by reason of his or her death, disability,
727 or absence, it shall be authenticated by the signature of the
728 trial counsel or by that of a member, if the trial counsel is



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729 unable to authenticate it by reason of his or her death,
730 disability, or absence. In a court-martial consisting of only
731 a military judge, the record shall be authenticated by the
732 court reporter under the same conditions which would impose
733 such a duty on a member under this subsection.

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

737 (2) In all other court-martial cases, the record shall
738 contain such matters as may be prescribed by regulations.

739 (c) Each summary court-martial shall keep a separate
740 record of the proceedings in each case, and the record shall
741 be authenticated in the manner as may be prescribed by
742 regulations.

743 (d) A copy of the record of the proceedings of each
744 general and special court-martial shall be given to the
745 accused as soon as it is authenticated and once the accused
746 provides timely notice of appeal."

747 "§31-2A-58b

748 (a) (1) A court-martial sentence described in
749 subdivision (2) shall result in the forfeiture of pay, or of
750 pay and allowances, due that member during any period of
751 confinement or parole. The forfeiture pursuant to this article
752 shall take effect on the date determined under Section
753 31-2A-57(a) (Article 57(a)) and may be deferred as provided by
754 that article. The pay and allowances forfeited, in the case of
755 a general court-martial, shall be all pay and allowances due
756 that member during such period and, in the case of a special



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757 court-martial, shall be two-thirds of all pay due that member
758 during such period.

759 (2) A sentence covered by this article is any sentence
760 that includes ~~either of the following:~~

761 ~~a. Confinement for more than six months.~~

762 ~~b. Confinement for six months or less and a bad-conduct~~
763 ~~discharge or dismissal~~ confinement for any period of time.

764 (b) In a case involving an accused who has dependents,
765 the convening authority or other person acting under Section
766 31-2A-60 (Article 60) may waive any or all of the forfeitures
767 of pay and allowances required by subsection (a) for a period
768 not to exceed six months. Any amount of pay or allowances
769 that, except for a waiver under this subsection, would be
770 forfeited shall be paid, as the convening authority or other
771 person taking action directs, to the dependents of the
772 accused.

773 (c) If the sentence of a member who forfeits pay and
774 allowances under subsection (a) is set aside or disapproved
775 or, as finally approved, does not provide for a punishment
776 referred to in subdivision (a)(2), the member shall be paid
777 the pay and allowances which the member would have been paid,
778 except for the forfeiture, for the period during which the
779 forfeiture was in effect."

780 "§31-2A-66

781 The Governor shall establish a Military Court-Martial
782 Review Panel which shall be composed of one or more panels,
783 and each ~~such~~ panel shall be composed of not less than three
784 appellate military judges. The military judges selected for



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785 the Military Court-Martial Review Panel shall be active, ~~or~~
786 retired, or an individual who served for a minimum of eight
787 years as a judge advocatesadvocate of the Department of
788 Defense of the United Stateswithin the Alabama Army or Air
789 National Guard. Further composition and selection of judges
790 for the panel shall be established by regulation pursuant to
791 Sections 131 and 271 of the ~~Official Recompilation of the~~
792 Constitution of Alabama of ~~1901~~2022, ~~as amended~~. For the
793 purpose of reviewing courts-martial cases, the body may sit in
794 panels or as a whole in accordance with the rules prescribed
795 by the Governor. All appeals of decisions of courts-martial
796 shall proceed directly to the Military Court-Martial Review
797 Panel."

798 "§31-2A-73

799 (a) At any time within ~~two years~~30 days after notice of
800 approval by the convening authority of a court-martial
801 sentence, the accused may petition the Adjutant General for a
802 new trial on the grounds of newly discovered evidence or fraud
803 on the court-martial.

804 (b) At any time within ~~45~~30 days of discovery of ~~fraud~~
805 on the court-martial or newly discovered evidence or fraud on
806 the court-martial, the accused may petition for a new trial
807 with the Military Court-Martial Review Panel. In the event the
808 accused's case is pending before the Alabama Supreme Court,
809 the appeal shall be stayed until the Military Court-Martial
810 Review Panel rules on the petition."

811 "§31-2A-130

812 Any ~~person~~individual subject to this code is guilty of



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813 criminal trespass and shall be punished as a court-martial may
814 direct if he or she is convicted of either of the following:

815 (1) ~~who unlawfully enters~~ knowingly enters or remains
816 unlawfully in a ~~the~~ building or upon real property which is
817 fenced or enclosed in a manner designed to exclude intruders.

818 (2) ~~structure of another with intent to commit a~~
819 ~~criminal offense therein is guilty of housebreaking and shall~~
820 ~~be punished as a court-martial may direct~~ knowingly enters or
821 remains unlawfully in or on a premises."

822 "§31-2A-136

823 (a) The following persons may administer oaths for the
824 purposes of military administration, including military
825 justice:

826 (1) All judge advocates.

827 (2) All summary courts-martial.

828 (3) All adjutants, assistant adjutants, acting
829 adjutants, and personnel adjutants.

830 (4) All other persons designated by regulations of the
831 Armed Forces of the United States or by statute.

832 (b) The following persons may administer oaths
833 necessary in the performance of their duties:

834 (1) ~~The president~~ President of the United States,
835 military judge, and trial counsel, and the clerk of court for
836 all general and special courts-martial.

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

839 (3) All officers designated to take a deposition.

840 (4) ~~All persons~~ individuals detailed to conduct an



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841 investigation.

842 (5) All recruiting officers.

843 (6) All other ~~persons~~ individuals designated by
844 regulations of the Armed Forces of the United States or by
845 statute.

846 (c) The signature without seal of any ~~such~~ person
847 listed in subsection (a) or (b), together with the title of
848 his or her office, is prima facie evidence of the person's
849 authority."

850 Section 2. Section 31-2A-26a is added to the Code of
851 Alabama 1975, as follows:

852 §31-2A-26a

853 (a) A military judge shall be detailed to each special
854 court-martial. The military judge shall preside over each open
855 session of the special court-martial to which the military
856 judge has been detailed.

857 (b) A military judge shall be both of the following:

858 (1) A judge advocate who is a member in good standing
859 of the Alabama National Guard.

860 (2) A member in good standing of the State Bar of
861 Alabama for at least five years.

862 (c) The military judge of a special court-martial shall
863 be designated by a state staff judge advocate, or a designee,
864 for detail by the convening authority. Neither the convening
865 authority nor any staff member of the convening authority
866 shall prepare or review any report concerning the
867 effectiveness, fitness, or efficiency of the military judge
868 who is detailed, which relates to performance of duty as a



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869 military judge.

870 (d) No individual is eligible to act as military judge
871 in a case if that individual is the accuser or a witness, or
872 has acted as investigating officer or a counsel in the same
873 case.

874 (e) The military judge of a special court-martial may
875 not consult or communicate with any party, or party's
876 representative, regarding a matter before them except in the
877 presence of the accused, or defense counsel and trial counsel.

878 Section 3. Sections 31-2A-99, 31-2A-100, 31-2A-101,
879 31A-2A-102, 31-2A-104, 31-2A-105, 31-2A-110, 31-2A-112a,
880 31-2A-112b, 31-2A-114, and 31-2A-143, Code of Alabama 1975,
881 are repealed.

882 Section 4. This act shall become effective on October
883 1, 2024.



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House of Representatives

Read for the first time and referred04-Apr-24
to the House of Representatives
committee on Judiciary

Read for the second time and placed11-Apr-24
on the calendar:
1 amendment

Read for the third time and passed16-Apr-24
as amended
Yeas 102
Nays 0
Abstains 0

John Treadwell
Clerk