SB287

ITYF66Z-1

By Senators Givhan, Jones, Bell, Hatcher

RFD: Veterans and Military Affairs

First Read: 04-Apr-24

SYNOPSIS:

Under existing law, the Alabama Code of Military Justice creates a framework for disciplining members of the Alabama Army and Air National Guard.

This bill would update terminology and procedures for appointing staff judge advocates, clarify differences between general and special courts-martial, provide for progressive discipline, and make nonsubstantive, technical revisions to update existing code language to current style.

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-112a, 31-2A-112b, 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, 31-2A-143, 31-2A-148, and 31-2A-149, 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-112a, 31-2A-112b, 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 meanings:

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

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

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

a. Any information or material that has been determined by an official of the United States, the State of Alabama, or any state or territory pursuant to law, ~~an~~a Presidential

Executive order, Governor's Executive order, or regulation to require protection against unauthorized disclosure for reasons of national or state security.

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

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

(4)(5) CODE. This chapter.

(5)(6) COMMANDING OFFICER. Includes only commissioned officers of the state military forces and shall include officers in charge only when administering nonjudicial punishment under Section 31-2A-15 (Article 15). The term "commander" has the same meaning as "commanding officer" unless the context otherwise requires. A commander is any general officer, the Adjutant General, or any other officer who, by virtue of position, is designated as a commanding officer.

(6)(7) CONVENING AUTHORITY. Includes, in addition to the personindividual who convened the court, a commissioned officer commanding for the time being or a successor in command to the convening authority.

(7)(8) DAY. A calendar day, Unlessunless otherwise specified with respect to forfeiture of pay,; means calendar day and the term is not synonymous with the term "unit training assembly." Any punishment authorized by this code which is measured in terms of days, shall when served in a

status other than annual field training, shall be construed to mean succeeding duty days.

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

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

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

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

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

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

~~b.~~ (b) In the instance when a judge advocate is detailed under this code and is not a member of the bar of this state,

the judge advocate shall be deemed admitted pro hac vice, subject to filing a certificate with the military judge setting forth his or her qualifications, and with notice and approval of the Alabama State Bar and Chief Justice of the Alabama Supreme Court, that ~~counsel~~ the judge advocate is all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(19)~~ (20) ~~SENIOR FORCE~~ARMY OR AIR STAFF JUDGE ADVOCATE. The ~~senior~~ State Staff ~~judge advocate~~Judge Advocate, or delegate, ~~of~~for the ~~commander~~Adjutant General of the same ~~force~~service ~~of~~within the state military forces as the accused ~~and who is that commander's chief legal advisor~~.

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

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

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

~~(22)~~(24) STATE MILITARY FORCES. The Alabama National Guard, as defined in Title 32, United States Code, Section 271

of the Constitution of Alabama ~~1901~~of 2022, and Section 31-2-3. The unorganized militia, state defense force, state national guard, home guard, or any other name of any state force that does not meet this definition shall ~~not be part of the "state military forces"~~be under the jurisdiction and terms of this code, as defined in Section 31-2-3.

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

"§31-2A-2

(a) This code applies to all members of the state military forces at all times and in all places~~, except it does not apply to a member for any offenses committed while in a duty status under Title 10 U.S.C~~.

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

~~determined by the underlying offense.~~"

"§31-2A-6

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

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

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

"§31-2A-7

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

(b) Any ~~person~~individual authorized by this code ~~or by Chapter 47 of Title 10, U.S.C.,~~ or by ~~regulations~~regulation ~~issued under either,~~ to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer or civil

officer having authority to apprehend offenders under the laws of the United States or of ~~a state~~the State of Alabama, may do so upon probable cause that an offense has been committed and that the person apprehended committed it.

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

(d) If an offender is apprehended outside the ~~state~~State of Alabama, the offender's return to the area must be in accordance with normal extradition procedures or by reciprocal agreement, unless it is solely a military offense.

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

"§31-2A-12

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

the same facility or holding cell."

"§31-2A-15

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

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

(1) For the purposes of pay, one day shall equal one active duty military payday.

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

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

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

(1) An admonition.

(2) A reprimand.

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

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

(5) A reduction to the next inferior pay grade~~, if the grade from which demoted is within the promotion authority of~~

~~the commander imposing the reduction~~of an enlisted member who is E-6 and below.

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

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

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

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

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

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

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

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

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

(1) Upon officers of the officer's command, any

punishment authorized in subdivisions ~~(1), (2), (3),~~(1) - (4), (6), and ~~(5)~~(7) of subsection ~~(c)~~(d).

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

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

~~(h)~~(g) Prior to the offer of non-judicial punishment, the commanding officer shall determine whether restriction shall be considered as a punishment. ~~Should the commanding officer determine that the punishment option may include restriction,~~The determination of whether restriction is a punishment option does not prohibit the accused ~~shall be notified of the~~ from requesting his or her right to demand trial by special court-martial. ~~Should the commanding officer determine that the punishment option will not include restriction, the accused shall be notified that there is no right to trial by court-martial in lieu of non-judicial punishment.~~

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

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

(2) Mitigate extra duties to restriction.

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

~~(j)~~ (i) ~~A person~~An individual punished under this article who considers the punishment unjust or disproportionate to the offense, through the proper channel, may appeal to the next superior authority within ~~45~~30 days after the punishment is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided. During the pendency of the appeal, the punishment shall not be implemented. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection ~~(i)~~ (h) by the officer who imposed the punishment. Before acting on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a judge advocate for consideration and advice.

~~(k)~~ (j) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this article; however, the fact that a disciplinary punishment has

been enforced may be shown by the accused upon trial and, when ~~so~~ shown, it shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

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

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

~~(n)~~ (m) The accused shall be informed of the location of and right to consult counsel with regard to any non-judicial punishment. The Commander shall ensure the ~~member~~accused is given appropriate means to contact counsel."

"§31-2A-16

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

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

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

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

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

a. A military judge ~~and not less than three~~

~~members~~alone.

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

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

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

"§31-2A-19

Subject to Section 31-2A-17 (Article 17), special courts-martial have jurisdiction to try ~~persons~~individuals subject to this code for ~~any offense~~military-specific offenses made punishable by this code, and under such limitations as the Governor may prescribe, may adjudge any punishment not forbidden by this code except dishonorable discharge, dismissal, confinement for more than six months, or forfeiture of pay exceeding 24 days.~~, which must be completed within one year~~ Additional punishments under this section include reduction of soldiers or airmen in the rank of E-6 and below to the rank of E-1. Soldiers or airmen in the rank of E-7 through E-9 can be reduced to the rank of E-4. Officers may be reduced in rank to the highest rank where the officer last served honorably before the underlying offense occurred."

"§31-2A-22

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

(1) The Governor.

(2) The Adjutant General.

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

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

"§31-2A-26

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

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

(1) An active or retired commissioned officer.

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

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

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

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

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

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

"§31-2A-29

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

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number

of five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) If the military judge of a general court-martial is unable to proceed with the trial as a result of a challenge, because of physical disability, or for other good cause, trial shall proceed, subject to any applicable conditions of Section 31-2A-16(1)b. (Article 16(1)b.), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

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

(d) If the military judge of a special court-martial ~~composed of a military judge only~~ is unable to proceed with

the trial as a result of a challenge, because of physical disability, ~~as a result of a challenge,~~ or for other good cause, the trial shall proceed, subject to any applicable conditions of ~~Section 31-2A-16(1)b. or (2)b. (Article 16(1)b. or (2)b.)~~Section 31-2A-16(2)b. and c. (Article 16(2)b. and c.), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides."

"§31-2A-30

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

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

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

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

"§31-2A-34

(a) Before directing the trial of any charge by general or special court-martial, the convening authority shall refer

it to a judge advocate for consideration and advice. The convening authority may refer a specification under a charge to a special court-martial after advice from the servicing judge advocate. This advice of counsel to the convening authority can be either in writing or verbal.

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

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

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

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

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

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

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

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

"§31-2A-35

The trial counsel shall serve or ~~caused~~ cause to be served upon the accused a copy of the charges. No ~~person~~indvidual, against the ~~person's~~individual's objection, may be brought to trial before a general court-martial case within a period of 45 days after the service of charges upon the accused, or in a special court-martial, within a period of ~~45~~30 days after the service of charges upon the accused."

"§31-2A-36

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

"§31-2A-38

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

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

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

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

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

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

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

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

(6) The accused is not entitled to be represented by more than one military counsel. However, the ~~person~~individual authorized under rules prescribed under Section 31-2A-27

(Article 27) to detail counsel, in that ~~person's~~individual's sole discretion:

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

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

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

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

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

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

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

"§31-2A-46

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production

of other evidence shall apply the principles of law and the ~~rules of courts-martial generally recognized in military criminal cases in the courts of the Armed Forces of the United States, but which may not be contrary to or inconsistent with this code~~Alabama Rules of Criminal Procedure. Process shall run to any part of the United States, or the territories, commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or outside of the ~~United States~~State of Alabama. A court-martial convened under this code may subpoena and compel the presence of witnesses and the production of documents in the same manner as a circuit court in a criminal case. Such subpoena, however, shall be signed and issued by the assigned military judge and shall comply with the requirements of Chapter 21 of Title 12. ~~Any reference therein to the issuance of process by a clerk of court shall not apply in a court-martial proceeding.~~"

"§31-2A-51

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

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than

the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Section 31-2A-52 (Article 52), beginning with the junior in rank.

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

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

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

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

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

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of ~~such~~ a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The

military judge of such a court-martial shall make a general finding, and in addition, on request, shall find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein."

"§31-2A-52

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

(b) All other questions to be decided by the members of a general ~~or special~~ court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(c) Pursuant to its authority under Article XV, Section 271 of the Constitution of Alabama of ~~1901~~2022, the Legislature finds and declares that Article I, Section 11 of the Constitution of Alabama of ~~1901~~2022, does not apply to a court-martial proceeding. Courts-martial existed before the existence of the ~~Constitution~~ constitution, and their existence is recognized in the ~~Constitution~~ constitution. Further, courts-martial are an executive agency belonging to

the executive branch, not the judicial branch, and were created by the Legislature pursuant to its authority under Article XV, Section 271, to provide for disciplining the militia."

"§31-2A-54

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

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

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

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

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the

accused as soon as it is authenticated and once the accused provides timely notice of appeal."

"§31-2A-58b

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

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

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

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

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

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

"§31-2A-66

The Governor shall establish a Military Court-Martial Review Panel which shall be composed of one or more panels, and each ~~such~~ panel shall be composed of not less than three appellate military judges. The military judges selected for the Military Court-Martial Review Panel shall be active, ~~or~~ retired, or an individual who served for a minimum of eight years as a judge ~~advocates~~advocate ~~of the Department of Defense of the United States~~within the Alabama Army or Air National Guard. Further composition and selection of judges for the panel shall be established by regulation pursuant to Sections 131 and 271 of the ~~Official Recompilation of the~~ Constitution of Alabama of ~~1901~~2022~~, as amended~~. For the purpose of reviewing courts-martial cases, the body may sit in panels or as a whole in accordance with the rules prescribed by the Governor. All appeals of decisions of courts-martial shall proceed directly to the Military Court-Martial Review Panel."

"§31-2A-73

(a) At any time within ~~two years~~30 days after notice of approval by the convening authority of a court-martial

sentence, the accused may petition the Adjutant General for a new trial on the grounds of newly discovered evidence or fraud on the court-martial.

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

"§31-2A-112a

(a) Any person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the Armed Forces of the United States or of any state military forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any ~~such~~of these listed ~~substance~~substances.

(2) Any substance not specified in subdivision (1) that is listed on a schedule of controlled substances prescribed by the President of the United States for the purposes of the

Uniform Code of Military Justice of the Armed Forces of the United States, 10 U.S.C. § 801 et seq.

(3) Any other substance not specified in subdivision (1) or contained on a list prescribed by the President of the United States under subdivision (2) that is listed in Schedules I through V of Article 202 of the Controlled Substances Act, 21 U.S.C. § 812 or that is listed under Title 20 of the Code of Alabama 1975."

"§31-2A-112b

Any ~~person~~individual subject to this code who wrongfully possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the Armed Forces of the United States or of any state military forces drug paraphernalia as defined in Section 13A-12-260 shall be punished as a court-martial may direct."

"§31-2A-130

Any ~~person~~individual subject to this code is guilty of criminal trespass and shall be punished as a court-martial may direct if he or she is convicted of either of the following:

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

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

"§31-2A-136

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

(1) All judge advocates.

(2) All summary courts-martial.

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

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

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

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

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

(3) All officers designated to take a deposition.

(4) All ~~persons~~ individuals detailed to conduct an investigation.

(5) All recruiting officers.

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

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

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

§31-2A-26a

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

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

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

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

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

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

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

Section 3. 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, 31-2A-143, 31-2A-148, and 31-2A-149, Code of Alabama 1975, are repealed.

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