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2019 Regular Session

HOUSE BILL NO. 360

1

BY REPRESENTATIVES JONES AND FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MILITARY AFFAIRS/NATL GD: Provides for the alignment of the Louisiana National Guard Code of Conduct with the United States Code of Military Justice

AN ACT

2 To amend and reenact R.S. 29:101(A), 103, 106(E), 110, 115(D), 116(A), 118, 119, 120(A) 3 and (B), 125(C) and (D), 126(B), (C), and (D), 127(A) and (C), 128, 129, 130, 4 132(A), (B), (C), (D), (E), and (G), 134, 135, 138, 139, 140, 141, 142, 143, 145(B), 5 146, 147(A), 149, 150, 153, and 154 and to enact R.S. 29:102(D), 106a, 125(E) and 6 (F), 126(F), 126a, 130a, 145(C), and 153a, relative to the military forces of the state; 7 to provide relative to military justice; to provide for definitions; to provide relative 8 to jurisdiction; to provide for types of military courts; to provide for military legal 9 proceedings; to provide relative to jurisdiction, procedure, applicability, punishment, 10 military magistrates, duties, rights of the accused, plea agreements, and records; and 11 to provide for related matters. 12 Be it enacted by the Legislature of Louisiana: 13 Section 1. R.S. 29:101(A), 103, 106(E), 110, 115(D), 116(A), 118, 119, 120(A) and 14 (B), 125(C) and (D), 126(B), (C), and (D), 127(A) and (C), 128, 129, 130, 132(A), (B), (C), (D), (E), and (G), 134, 135, 138, 139, 140, 141, 142, 143, 145(B), 146, 147(A), 149, 150, 15 16 153, and 154 are hereby amended and reenacted and R.S. 29:102(D), 106a, 125(E) and (F), 17 126(F), 126a, 130a, 145(C), and 153a are hereby enacted to read as follows:

1	FART II. LOUISIANA CODE OF WILLITARY JUSTICE
2	SUBPART A. DEFINITIONS
3	§101. Article 1. Definitions
4	A. In this code, unless the context otherwise requires:
5	(1) "State military forces" means the national guard of the state, as defined
6	in Section 101(3), (4) and (6) of Title 32, United States Code, and any other military
7	forces organized under the laws of the state, when not in a status subjecting them to
8	jurisdiction under Chapter 47 of Title 10, United States Code.
9	(2) "Commanding officer" includes only commissioned officers.
10	(3) "Superior commissioned officer" means a commissioned officer superior
1	in rank or command.
12	(4) "Enlisted member" means a person in an enlisted grade.
13	(5) "Grade" means a step or degree, in a graduated scale of office or military
14	rank, that is established and designated as a grade by law or regulation.
15	(6) "Rank" means the order of precedence among members of the state
16	military forces.
17	(7) "Duty status" means duty in the state military forces under an order
18	issued by authority of law, and includes travel to and from such duty.
19	(8) "Military court" means a court-martial or a court of inquiry.
20	(9) "Military judge" means an official of a general or special court-martial
21	detailed in accordance with R.S. 29:126. judge advocate designated under R.S.
22	29:126(c) of this Chapter who is detailed under R.S. 29:126(a) or 130(a).
23	(10) "Legal officer" means any commissioned officer of the state military
24	forces designated to perform legal duties for a command.
25	(11)(10) "State judge advocate" means the commissioned officer responsible
26	for supervising the administration of military justice in the state military forces.
27	(12)(11) "Accuser" means a person who signs and swears to charges, any
28	person who directs that charges nominally be signed and sworn to by another, and

1	any person who has an interest other than an official interest in the prosecution of the
2	accused.
3	(13)(12) "State" means the state of Louisiana.
4	(14)(13) "Adjutant general" means the officer who, under the laws of this
5	state, performs the duties of that office. who is appointed by the governor under R.S.
6	<u>29:10.</u>
7	(15)(14) "Oath" includes affirmation.
8	(15) "Record" when used in connection with the proceedings of a court-
9	martial, means:
10	(a) an official written transcript, written summary, or other writing related
11	to the proceedings; or
12	(b) an official audiotape, videotape, or similar material from which sound,
13	or sound and visual images, depicting the proceedings may be reproduced.
14	(16) "Classified information" means:
15	(a) any information or material that has been determined by an official of the
16	United States pursuant to law, an Executive Order, or regulation to require protection
17	against unauthorized disclosure for reasons of nation security; and
18	(b) any restricted data, as defined in section 11(v) of the Atomic Energy Act
19	of 1954 (42 U.S.C. §2014(y)).
20	(17) "National Security" means the national defense and foreign relations of
21	the United States.
22	* * *
23	§102. Article 2. Persons subject to this code
24	* * *
25	D. This code applies to all persons in custody of a federal, state or local
26	penal institution while serving a sentence imposed by a court-martial convened under
27	this Chapter.

1	§103. Article 3. Jurisdiction to try certain personnel
2	A. Subject to Article 43 of this Chapter, a person who is in a status in which
3	the person subject to this Chapter and who committed an offense against this Chapter
4	while formerly in a status in which the person was subject to this Chapter is not
5	relieved from amenability to the jurisdiction of this Chapter for that offense by
6	reason of a termination of that person's former status.
7	A.B. Each person discharged from the state military forces who is later
8	charged with having fraudulently obtained his discharge is subject to trial by court-
9	martial on that charge and is after apprehension subject to this code while in the
10	custody of the military for that trial. Upon conviction of that charge he is subject to
11	trial by court-martial for all offenses under this code committed before the fraudulent
12	discharge.
13	B.C. No person who has deserted from the state military forces may be
14	relieved from amenability to the jurisdiction of this code by virtue of a separation
15	from any later period of service.
16	* * *
17	§106. Article 6. Judge advocates and legal officers
18	* * *
19	E. No person who has acted as a member, military judge, trial counsel,
20	assistant trial counsel, defense counsel, assistant defense counsel, or investigating
21	officer in any case may later act as staff judge advocate or legal officer to any
22	reviewing authority upon the same case. (1) No person who, with respect to a case,
23	serves in a capacity specified in Paragraph (2) of this Subsection may later serve as
24	a judge advocate or legal officer to any reviewing or convening authority upon the
25	same case.
26	(2) The capacities referred to in Paragraph (1) of this Subsection are, with
27	respect to the case involved, any of the following:
28	(a) Preliminary hearing officer, court member, military judge, military
29	magistrate, or appellate judge.

1	(b) Counsel who have acted in the same case or appeared in any proceeding
2	before a military judge, military magistrate, preliminary hearing officer, or appellate
3	court.
4	§106a. Article 6a. Investigation and disposition of matters pertaining to the fitness
5	of military judges
6	Procedures for the investigation and disposition of charges, allegations, or
7	information pertaining to the fitness of a military judge or military magistrate to
8	perform the duties of the position involved shall be determined in accordance with
9	procedures or regulations prescribed in Article 36 of this Code.
10	* * *
11	§110. Article 10. Restraint of persons charged with offenses
12	Any person subject to this code charged with an offense under this code may
13	be ordered into arrest or, under extraordinary circumstances, into confinement. When
14	any person subject to this code is placed in arrest or confinement prior to trial, within
15	twenty-four hours of arrest or confinement, the accused shall be informed of the
16	specific wrong of which he is accused and appointed military defense counsel.
17	Arrest or confinement prior to trial shall not exceed seventy-two hours unless
18	approved by a military judge in writing which is provided to the appointed military
19	defense counsel.
20	A.(1) Subject to Paragraph (2) of this Subsection, any person subject to this
21	Chapter who is charged with an offense under this Chapter may be ordered into
22	arrest or confinement as the circumstances require.
23	(2) When a person subject to this Chapter is charged only with an offense
24	that is normally tried by summary court-martial, the person ordinarily should not be
25	ordered into confinement.
26	B.(1) When a person subject to this Chapter is ordered into arrest or
27	confinement before trial, immediate steps shall be taken:
28	(a) To inform the person of the specific offense of which the person is
29	accused.

1	(b) To try the person or to dismiss the charges and release the person.
2	(2) The procedures relating to referral for trial, including procedures for
3	prompt forwarding of the charges and specifications and, if applicable, the
4	preliminary hearing report submitted under Article 32 of this Code, shall be
5	determined through rules and regulations prescribed under Article 36 of this Code.
6	* * *
7	§115. Article 15. Commanding officer's nonjudicial punishment
8	* * *
9	D. The officer who imposes the punishment authorized in Subsection B, or
10	his successors in command, may, at any time, suspend probationally a reduction in
11	grade or a forfeiture imposed under Subsection B, whether or not executed. In
12	addition, he may, at any time, remit or mitigate any part or amount of the unexecuted
13	punishment and may set aside in whole or in part the punishment, whether executed
14	or unexecuted, and restore all rights, privileges and property affected. He may also
15	mitigate reduction in grade to forfeiture of pay. When mitigating:
16	(1) arrest in quarters to restriction;
17	(2) confinement on bread and water or diminished rations to extra duties or
18	restriction, or both; or
19	(3)(2) extra duties to restriction; the mitigated punishment shall not be for
20	a greater period than the punishment mitigated. When mitigating reduction in grade
21	to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount
22	that could have been imposed initially under this Section by the officer who imposed
23	the punishment mitigated.
24	* * *
25	§116. Article 16. Courts-martial classified
26	A. The three kinds of courts-martial in the state military forces are:
27	(1) general courts-martial, consisting of:
28	(a) a military judge and not less than six eight members, subject to Article
29	29 of this Code; or

1	(b) only a military judge, if before the court is assembled the accused,
2	knowing the identity of the military judge, and after consultation with defense
3	counsel, requests, orally on the record or in writing a court composed only of a
4	military judge and the military judge approves the request.
5	(2)(a) special courts-martial, consisting of a military judge and not less than
6	six members, subject to Article 25(E)(3) and Article 29 of this Code; or
7	(b) only a military judge, if before the court is assembled the accused,
8	knowing the identity of the military judge, and after consultation with defense
9	counsel, requests in writing a court composed only of a military judge and the
10	military judge approves. under either of the following methods:
11	(i) if the case is so referred by the convening authority, subject to Article
12	19(D) of this Code and such limitations as may be set forth in rules or regulations
13	prescribed under Article 36 of this Code.
14	(ii) if the case is referred under Subparagraph (a) of this Paragraph and,
15	before the court is assembled the accused, knowing the identity of the military judge,
16	and after consultation with defense counsel, requests, orally on the record or in
17	writing, a court composed only of a military judge and military judge approves the
18	request.
19	(3) summary courts-martial, consisting of one commissioned officer.
20	* * *
21	§118. Article 18. General courts-martial
22	A. In the National Guard not in federal service, general courts-martial may
23	be convened by the governor or the adjutant general. Subject to R.S. 29:117, general
24	courts-martial have jurisdiction to try persons subject to this Chapter for any offense
25	made punishable by this Chapter and may, under such limitations as the Adjutant
26	General may prescribe, adjudge any punishment not forbidden by this Chapter.
27	B. In the National Guard not in federal service, general courts-martial may
28	be convened by the governor or the Adjutant General.

1	B.C. A general court-martial may sentence to:
2	(1) A fine of not more than one thousand dollars.
3	(2) Forfeiture of pay and allowances.
4	(3) A reprimand.
5	(4) Dismissal, bad conduct discharge, or dishonorable discharge.
6	(5) Reduction of a noncommissioned officer to the ranks.
7	(6) Confinement of not more than two years.
8	(7) Any combination of these punishments.
9	§119. Article 19. Special courts-martial
10	A. Subject to Article 17 of this Code, special courts-martial have jurisdiction
11	to try persons subject to this Code for any offense made punishable by this Code. A
12	special courts-martial may not try a commissioned officer.
13	A.B. In the national guard not in federal service, the commanding officer of
14	a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops
15	are on duty, or of a brigade, regiment, wing, group, detached battalion, separate
16	squadron, or other detached command, may convene special courts-martial. Special
17	courts-martial may also be convened by superior authority.
18	B. A special court-martial may not try a commissioned officer.
19	C. A special court-martial may sentence to:
20	(1) A fine of not more than two hundred dollars.
21	(2) Forfeiture of pay and allowances.
22	(3) A reprimand.
23	(4) Bad conduct discharge or dishonorable discharge.
24	(5) Reduction of a noncommissioned officer to the ranks.
25	(6) Confinement of not more than twelve months.
26	(7) Any combination of these punishments.
27	D. If the charges and specifications are referred to a special court-martial
28	consisting of a military judge alone under R.S. 29:116(C)(2)(a):

1	(1) The military judge may not sentence an accused to a bad-conduct
2	discharge, nor confinement of more than six months, nor forfeiture of pay for more
3	than six months.
4	(2) With the consent of the parties, the military judge may appoint a military
5	magistrate to preside over the special court-martial.
6	§120. Article 20. Summary courts-martial
7	A. Subject to R.S. 29:117, summary courts-martial have jurisdiction to try
8	persons subject to this Chapter, except commissioned officers, warrant officers, and
9	cadets, for any offense made punishable by this Chapter. No person may be brought
10	to trial before summary court-martial if he objects thereto. If objection to trial by
11	summary court-martial is made by an accused, trial may be ordered by special or
12	general court-martial as may be appropriate.
13	A.B. In the national guard not in federal service, the commanding officer of
14	a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops
15	are on duty, or of a brigade, regiment, wing, group, detached battalion, detached
16	squadron, detached company or other detachment, may convene a summary court-
17	martial consisting of one commissioned officer. The proceedings shall be informal.
18	B. Summary courts-martial shall not have jurisdiction over officers.
19	* * *
20	§125. Article 25. Who may serve as members of courts-martial
21	* * *
22	C.(1) Any enlisted member of the state military forces who is not a member
23	of the same unit as the accused is eligible to serve on general and special courts-
24	martial for the trial of any enlisted member of the state military forces who may
25	lawfully be brought before such courts for trial, but he shall serve as a member of a
26	court only if, before the conclusion of a session called by the military judge under
27	Article 39(A) prior to trial or, in the absence of such a session, before the court is
28	assembled for the trial of the accused, the accused personally has requested in
29	writing that enlisted members serve on it. After such a request the accused may not

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be tried by a general court-martial, the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained. is eligible to serve on a general or special court-martial for the trial of any other enlisted member. (2) In this Section, the word "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them. Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is accused may personally request, orally on the record or in writing, that: (a) the membership of the court-martial be comprised entirely of officers; or (b) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial. (3) Except as provided in Paragraph (4) of this Subsection, after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request. (4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, are not available to carry out Paragraph (2) of this Subsection, the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record. D. The accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by the members.

1	D:E.(1) When it can be avoided, no person subject to this code may be tried
2	by a court-martial any member of which is junior to him in rank or grade.
3	(2) When convening a court-martial, the convening authority shall detail as
4	members thereof such members of the state military force as, in his opinion, are best
5	qualified for the duty by reason of age, education, training, experience, length of
6	service, and judicial temperament. No member of the state military force is eligible
7	to serve as a member of a general court-martial when he is the accuser or a witness
8	for the prosecution or has acted as investigating officer, preliminary hearing officer,
9	or as counsel in the same case.
10	(3) The convening authority shall detail not less than the number of members
11	necessary to impanel the court-martial under R.S. 29:129.
12	F. Before a court-martial is assembled for trial of a case, the convening
13	authority may excuse a member of the court from participating in the case. Under
14	such regulations as the adjutant general may prescribe, the convening authority may
15	delegate his authority under this Subsection to his state judge advocate or other
16	principal assistant.
17	§126. Article 26. Military judge of a general or special court-martial
18	* * *
19	B. A military judge shall be a commissioned officer of a state military force
20	who is a member of the bar of the highest court of a state, or a member of the bar of
21	a federal court, and who is certified to be qualified, by reason of education, training,
22	experience, and judicial treatment, for such duty by a the state judge advocate.
23	C. The military judge of a general or special court-martial shall be
24	designated by the state judge advocate, or his designee, for detail by the convening
25	authority, and, unless the court-martial was convened by the governor neither the
26	convening authority nor any member of his staff shall prepare or review any report
27	concerning the effectiveness, fitness, or efficiency of the military judge so detailed,
28	which relates to his performance of duty as a military judge. (1) In accordance with

1	rules prescribed under Article 36 of this Code, a military judge of a general or special
2	court-martial shall be designated for detail by the state judge advocate.
3	(2) A commissioned officer who is certified to be qualified for duty as a
4	military judge of a general court-martial may perform duties of a judicial or
5	nonjudicial nature other than those relating to the officer's primary duty as a military
6	judge of a general court-martial when such duties are assigned to the officer by or
7	with the approval of the state judge advocate.
8	D. No person is eligible to act as a military judge in a case if he is the
9	accuser or a witness for the prosecution or has acted as investigating officer,
10	preliminary hearing officer, or as a counsel in the same case.
11	* * *
12	F. A military judge may be detailed under Subsection A of this Section to a
13	court-martial or a proceeding under R.S. 29:130.1 that is convened in a different
14	armed force or another state military force, when so permitted by the state judge
15	advocate.
16	§126a. Article 126a. Military magistrates
17	A. A military magistrate shall be a commissioned officer of the state military
18	forces who:
19	(1) Is a member of the bar of a federal court or a member of the bar of the
20	highest court of a State; and
21	(2) Is certified to be qualified, by reason of education, training, experience,
22	and judicial temperament, for duty as a military magistrate by the state judge
23	advocate.
24	B. In accordance with the Federal Rules of Courts-Martial or regulations
25	prescribed by the governor or adjutant general, in addition to duties when designated
26	under R.S. 29:119 or 130.1, a military magistrate may be assigned to perform other
27	duties of a nonjudicial nature.

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

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

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

* * *

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

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

(2) if the trial counsel is qualified to act as counsel before a general courtmartial, the defense counsel detailed by the convening authority must be a person

1	similarly qualified; and Trial counsel and assistant defense counsel detailed for a
2	special court-martial and assistant trial counsel detailed for a general court-martial
3	must be determined to be competent to perform such duties by the state judge
4	advocate or the Judge Advocate General of the United States Army or United States
5	Air Force.
6	(3) if the trial counsel is a member of the bar of the highest court of a state,
7	the defense counsel detailed by the convening authority must be one of the
8	foregoing.
9	§128. Article 28. Detail or employment of reporters and interpreters
10	Under such regulations as the governor may prescribe prescribed under
11	Article 36 of this Code, the convening authority of a general or special court-martial
12	or court of inquiry shall detail or employ qualified court reporters, who shall record
13	the proceedings of and testimony taken before that court. Under like regulations the
14	convening authority of a military court court-martial or court of inquiry may detail
15	or employ interpreters who shall interpret for the court.
16	§129. Article 29. Absent and additional members Assembly and impaneling of
17	members; detail of new members and military judges
18	A. No member of a general court-martial may be absent or excused after the
19	court has been assembled for the trial of the accused except for physical disability
20	or as the result of a challenge or by order of the convening authority for good cause.
21	The military judge shall announce the assembly of a general or special court-martial
22	with members. After such a court-martial is assembled, no member may be absent,
23	unless the member is excused:
24	(1) As a result of a challenge.
25	(2) Under Subparagraph (B)(1)(b) of this Section.
26	(3) By order of the military judge or the convening authority for disability
27	or other good cause.
28	B. Whenever a general court-martial, other than a general court-martial
29	composed of a military judge only, is reduced below five members, the trial may not

proceed unless the convening authority details new members sufficient in number	er
to provide not less than five members. The trial may proceed with the new membe	rs
present after the recorded evidence previously introduced before the members of the	ie
court has been read to the court in the presence of the military judge, the accuse	d,
and counsel for both sides. (1) Under rules prescribed under Article 36 of this Cod	<u>e,</u>
the military judge or a general or special court-martial with members shall:	
(a) After determination of challenges, impanel the court-martial; and	
(b) Excuse members who, having been assembled, are not impaneled.	
(2) In a general court-martial, the military judge shall impanel eight	<u>ht</u>
members.	
(3) In a special court-martial, the military judge shall impanel six member	<u>'S.</u>
C. If the military judge of a court-martial composed of a military judge only	y,
is unable to proceed with the trial because of physical disability, as a result of	a
challenge, or for other good cause, the trial shall proceed, subject to any applicab	le
conditions of Article 16(1)(b) of the Louisiana Code of Military Justice after the	1C
detail of a new military judge as if no evidence had previously been introduce	:d
unless a verbatim record of the evidence previously introduced or a stipulation	111
thereof is read in court in the presence of the new military judge, the accused ar	ıd
counsel for both sides. In addition to members under Subsection B of the Section	<u>n,</u>
the military judge shall impanel alternate members, if the convening authori	ty
authorizes alternate members.	
D.(1) If, after members are impaneled, the membership of the court-martin	<u>al</u>
is reduced to fewer than six members with respect with respect to a general or speci-	<u>al</u>
court-martial, the trial may not proceed unless the convening authority details ne	W
members and, from among the members so detailed, the military judge impanels ne	W
members sufficient to provide the membership specified in this Subsection.	
E. If the military judge is unable to proceed with the trial because of	<u>of</u>
disability or otherwise, a new military judge shall be detailed to the court-martial	

1	F.(1) In the case of new members under Subsection D of this Section, the
2	trial may proceed with the new members present after the evidence previously
3	introduced is read or, in the case of audiotape, videotape, or similar recording, is
4	played, in the presence of the new members, the military judge, and counsel for both
5	sides.
6	(2) In the case of a new military judge under Subsection E of this Section,
7	the trial shall proceed as if no evidence had been introduced, unless the evidence
8	previously introduced is read or, in the case of audiotape, videotape, or similar
9	recording, is played, in the presence of the new military judge, the accused, and
10	counsel for both sides.
11	§130. Article 30. Charges and specifications
12	A. Charges and specifications shall be signed by a person subject to this code
13	under oath before a person authorized by this code to administer oaths and shall
14	state:
15	(1) that the signer has personal knowledge of, or has investigated, the matters
16	set forth therein; and may be preferred only by a person subject to this Chapter; and
17	(2) that they are true in fact to the best of his knowledge and belief. shall be
18	preferred by presentment in writing, signed under oath before a commissioned
19	officer of the state military forces who is authorized to administer oaths.
20	B. Upon the preferring of charges, the proper authority shall take immediate
21	steps to determine what disposition should be made thereof in the interest of justice
22	and discipline, and the person accused shall be informed of the charges against him
23	as soon as practicable. The writing under Subsection A of this Section shall state
24	<u>that:</u>
25	(1) The signer has personal knowledge of, or has investigated, that matter set
26	forth in the charges and specifications; and
27	(2) The matters set forth in the charges and specifications are true, to the best
28	of the knowledge and belief of the signer.

1	C. When charges and specifications are preferred under Subsection A of this
2	Section, the proper authority shall, as soon as practicable:
3	(1) Inform the person accused of the charges and specifications: and
4	(2) Determine what disposition shall be made of the charges and
5	specifications in the interest of justice and discipline.
6	§130a. Article 130a. Certain proceedings conducted before referral
7	A.(1) Proceedings may be conducted to review, or otherwise act on the
8	following matters before referral of charges and specification to court-martial for
9	trail in accordance with rules or regulations prescribed under Article 36 of this Code.
10	(a) Pre-referral investigative subpoenas.
11	(b) Pre-referral warrants or orders for electronic communications.
12	(c) Pre-referral matters referred by an appellate court.
13	(2) If any matter in a proceeding under this Section becomes a subject at
14	issue with respect to chargers that have been referred to a general or special court-
15	martial, the matter shall be transferred to the military judge detailed in the court-
16	martial.
17	B. Military judges may be detailed to proceedings under Paragraph (1) of
18	Subsection A of this Article in accordance with regulations prescribed under Article
19	36 of this Code. A Section, other than a proceeding described in Subparagraph(b)
20	of that Paragraph, may designate a military magistrate to preside over the
21	proceedings.
22	* * *
23	§132. Article 32. Preliminary hearing required before referral to general court-
24	<u>martial</u>
25	A. Preliminary Hearing Required. (1) No charge or specification may be
26	referred to a general court-martial for trial until completion of a preliminary hearing,
27	unless such hearing is waived by the accused. (a) Except as provided in
28	Subparagraph (b) of this Paragraph, a preliminary hearing shall be held before
29	referral of charges and specifications for trial by general court-martial. The

1	preliminary hearing shall be conducted by an impartial hearing officer, detailed by
2	the convening authority in accordance with Subsection C of this Section.
3	(b) Under regulations prescribed under Article 36 of this Code, a preliminary
4	hearing need not be held if the accused submits a written waiver to the convening
5	authority and the convening authority determines a hearing is not required.
6	(2) The purpose of the preliminary hearing shall be limited to <u>determining</u>
7	the following:
8	(a) Whether or not the specification alleges an offense under this Chapter.
9	(a) determining whether there is probable cause to believe an offense has
10	been committed and the accused committed the offense; (b) Whether or not there is
11	probably cause to believe that the accused committed the offense charged;
12	(b) determining whether (c) Whether or not the convening authority has
13	court-martial jurisdiction over the offense and the accused;
14	(c) considering the form of the charges; and
15	(d) recommending A recommendation as to the disposition that should be
16	made of the case.
17	B. Hearing officer. (1) A preliminary hearing conducted pursuant to
18	Subsection A of under this Section shall be conducted by an impartial hearing
19	officer, who: judge advocate certified under Article 27(B) of this code whenever
20	practicable or, in exceptional circumstances in which the interests of justice warrant,
21	by an impartial hearing officer who is not a judge advocate. If the hearing officer is
22	not a judge advocate, a judge advocate certified under Article 27(B) shall be
23	available to provide legal advice to the hearing officer.
24	(a) Whenever practicable, shall be a judge advocate who is certified under
25	Article 27(B) of this Code; or
26	(b) When is it not practicable to appoint a judge advocate because of
27	exceptional circumstances, the convening authority may detail an impartial
28	commissioned officer, who is not the accuser, as a preliminary hearing officer.

1	(2) In the case of a hearing officer under Paragraph (1) of this Subsection,
2	a judge advocate who is certified under Article 27(B) of this Code shall be available
3	to provide legal advice to the hearing officer.
4	(2)(3) Whenever practicable, the judge advocate or other hearing officer
5	detailed to conduct a preliminary hearing shall be equal to in grade or senior in grade
6	to the military counsel detailed to represent the accused or the government at $\frac{1}{2}$
7	preliminary hearing.
8	C. Report of results to convening authority. At the conclusion of a
9	preliminary hearing conducted pursuant to Subsection A of this Section, the judge
10	advocate or other hearing officer that conducted the preliminary hearing shall
11	prepare a submit to the convening authority a written report, accompanied by a
12	recording of the preliminary hearing under Subsection E of this Section, that
13	addresses the matters specified in Paragraph $(A)(2)$ and Subsection F of this Section.
14	includes the following:
15	(1) For each specification, a statement of the reasoning and conclusion of the
16	hearing officer with respect to determinations under Paragraph (A)(2) of this Section,
17	including a summary of relevant witness testimony and documentary evidence
18	presented at this hearing and any observations of the hearing officer concerning the
19	testimony of witnesses and the availability and admissibility of evidence at trial.
20	(2) Recommendations for any necessary modifications to the form of the
21	charges and specifications.
22	(3) An analysis of any additional information submitted after the hearing by
23	the parties or by a victim of an offense, that, under such rules prescribed under
24	Article 36 of this Code, is relevant to disposition under R.S. 29:130 and 134.
25	(4) A statement of action taken on evidence adduced with respect to
26	uncharged offenses, as described in Subsection F of this Section.
27	D. Rights of accused and victim. (1) The accused shall be advised of the
28	charges against him and of his right to be represented by counsel at a preliminary
29	hearing conducted pursuant to Subsection A of this Section Article. The accused has

2	Code and in regulations prescribed under that Article.
3	(2) The accused may cross-examine witnesses who testify at the preliminary
4	hearing and present additional evidence in defense and mitigation, relevant to the
5	limited purposes of the hearing, as provided for in Paragraph (4) of this Subsection
6	and Paragraph (A)(2) of this Section that is relevant to the issues for determination
7	under Paragraph (A)(2) of this Article.
8	(3) A victim may not be required to testify at a preliminary hearing. A
9	victim who declines to testify shall be deemed to be not available for purposes of a
10	preliminary hearing. A declination under this Paragraph shall not serve as the sole
11	basis for ordering a deposition under Article 49 of this Code.
12	(4) The presentation of evidence and examination, including
13	cross-examination, of witnesses at a preliminary hearing shall be limited to the
14	matters relevant to the limited purpose of the hearing, as provided in determinations
15	under Paragraph (A)(2) of this Section Article.
16	E. Recording of preliminary hearing. A preliminary hearing under
17	Subsection A of this Section shall be recorded by a suitable recording device. The
18	victim may request the recording and shall have access to the recording as prescribed
19	by the Manual for Courts-Martial under such rules prescribed under Article 36 of this
20	Code.
21	* * *
22	G. Effect of violation. The requirements of this Section are binding on all
23	persons administering this Chapter, but failure to follow the requirement does not
24	constitute jurisdictional error. A defect in a report under Subsection C of this Article
25	is not a basis for relief in the report is in substantial compliance with that Subsection.
26	* * *

the right to be represented at the preliminary hearing as provided in Article 38 of this

2	authority before referral for trial
3	A. Before directing the trial of any charge by general court-martial, the
4	convening authority shall refer it to the state judge advocate for consideration and
5	advice. The convening authority may not refer a charge to a general court-martial
6	for trial unless he has found that the charge alleges an offense under this code and
7	is warranted by evidence indicated in the report of the investigation. General court-
8	martial. (1) Before referral of charges and specifications to a general court-martial
9	for trial, the convening authority shall submit the matter to the state judge advocate
10	for advice, which the state judge advocate shall provide to the convening authority
11	in writing. The convening authority may not refer a specification under a charge to
12	a general court-martial unless the state judge advocate advises the convening
13	authority in writing that:
14	(a) The specification alleges an offense under this Code;
15	(b) There is probable cause to believe that the accused committed the offense
16	charged; and
17	(c) A court-martial would have jurisdiction over the accused and the offense.
18	(2) Together with the written advice provided under Paragraph (1) of this
19	Subsection, the state judge advocate shall provide a written recommendation to the
20	convening authority as to the disposition that should be made of this specification in
21	the interest of justice and discipline.
22	(3) When a convening authority makes a referral for trial by general court-
23	martial, the written advice of the state judge advocate under Paragraph (1) of this
24	Subsection and the written recommendation of the state judge advocate under
25	Paragraph (2) of this Subsection with respect to each specification shall accompany
26	the referral.
27	B. If the charges or specifications are not formally correct or do not conform
28	to the substance of the evidence contained in the report of the investigating officer
29	formal corrections, and such changes in the charges and specifications as are needed

§134. Article 34. Advice of state judge advocate and reference to convening

1	to make them conform to the evidence may be made. Special court-martial. Before
2	referral of charges and specifications to a special court-martial for trial, the
3	convening authority shall consult a judge advocate on relevant legal issues.
4	C. Before referral for trial by general court-martial or special court-martial,
5	changes may be made to charges and specifications:
6	(1) To correct errors in form; and
7	(2) When applicable, to conform to the substance of the evidence contained
8	in a report under Subsection C of Article 32 of this Code.
9	D. In this Article, the term "referral" means the order of a convening
10	authority that charges and specifications against an accused be tried by a specified
11	court-martial.
12	§135. Article 35. Service of charges; continuance commencement of trial
13	A. The trial counsel to whom court-martial charges are referred for trial
14	detailed for a court-martial under Article 27 of this Code shall cause to be served
15	upon the accused a copy of the charges upon which trial is to be had and
16	specifications referred for trial. Upon a showing of good cause, the military judge
17	in a general or special court-martial may grant a continuance of any hearing in which
18	the presence of the accused is required.
19	B.(1) Subject to Paragraphs (2) and (3) of this Subsection, no trial or other
20	proceeding of a general court-martial or a special court-martial, including any
21	session under Article 39(A) of this Code may be held over the objection of the
22	accused:
23	(a) With respect to a general court-martial from the time of service through
24	the fifth day after the date of service; of
25	(b) With respect to a special court-martial, from the time of service through
26	the third day after date of service.
27	(2) An objection under Paragraph (1) of this Subsection may be raised only
28	at the first session of the trial or other proceeding and only if the first session occurs
29	before the end of the applicable period under Subparagraphs (1)(a) or (b) of this

1	Subsection. If the first session occurs before the end of the applicable period, the
2	military judge shall, at that session, inquire as to whether the defense objects under
3	this Subsection.
4	C. Upon a showing of good cause, the military judge in a general or special
5	court-martial may grant a continuance of any hearing in which the presence of the
6	accused is required.
7	* * *
8	§138. Article 38. Duties of trial counsel and defense counsel
9	A. The trial counsel of a general or special court-martial shall prosecute in
10	the name of the state, and shall, under the direction of the court, prepare the record
11	of the proceedings.
12	B.(1) The accused has the right to be represented in his defense before a
13	general or special court-martial by civilian counsel if provided by him at his own
14	expense, or by military counsel of his own selection if reasonably available, or by the
15	defense counsel detailed under Article 27 of this code. Should the accused have
16	counsel of his own selection, the defense counsel, and assistant defense counsel, if
17	any, who were detailed, shall, if the accused so desires, act as his associate counsel;
18	otherwise they shall be excused by the military judge or by the president of a court-
19	martial without a military judge. or at a preliminary hearing under Article 32 of this
20	Code as provided in this Subsection.
21	(2) The accused may be represented by civilian counsel if provided by him.
22	(3) The accused may be represented:
23	(a) By military counsel detailed under Article 27 of this Code; or
24	(b) By military counsel of his own selection if that counsel is reasonably
25	available, as determined under regulations and rules of procedure prescribed under
26	Article 36 of this Code,
27	(4) If the accused is represented by civilian counsel, the military counsel
28	detailed or selected under Paragraph (3) of this Subsection shall act as associate
29	counsel unless excused at the request of the accused.

1	(5) Except as provided under Paragraph (6) of this Subsection, if the accused
2	is represented by military counsel of his own selection under Paragraph (3)(b), an
3	military counsel detailed under Paragraph (3)(a) shall be excused.
4	(6) The accused is not entitled to be represented by more than one military
5	counsel. However, the person authorized under regulations prescribed under Article
6	27 of this Code to detail counsel, in his sole discretion:
7	(a) May detail additional military counsel as assistant defense counsel; and
8	(b) If the accused is represented by military counsel of his own selection
9	under Paragraph (3)(b), may approve a request from the accused that military
10	counsel detailed under Paragraph (3)(a) act as associate defense counsel.
11	C. In every any court-martial proceeding resulting in a conviction, the
12	defense counsel may; in the event of conviction,
13	(1) forward for attachment to the record of proceedings a brief of such
14	matters he feels determines should be considered in behalf of the accused on review,
15	including any objection to the contents of the record which he considers appropriate.
16	(2) take other action authorized by this Code.
17	D. An assistant trial counsel of a general court-martial may, under the
18	direction of the trial counsel or when he is qualified to be a trial counsel as required
19	by R.S. 29:127 Article 27 of this Code, perform any duty imposed by law,
20	regulation, or the custom of the service upon the trial counsel of the court. An
21	assistant trial counsel of a special court-martial may perform any duty of the trial
22	counsel.
23	E. An assistant defense counsel of a general or special court-martial may,
24	under the direction of the defense counsel or when he is qualified to be the defense
25	counsel as required by R.S. 29:127, perform any duty imposed by law, regulation,
26	or the custom of the service upon counsel for the accused.
27	§139. Article 39. Sessions
28	A. At any time after the service of charges which have been referred for trial
29	to a court-martial composed of a military judge and members, the military judge

1	may, subject to R.S. 29:135 Article 35 of this Code, call the court into session
2	without the presence of the members for the purpose of:
3	(1) hearing and determining motions raising defenses or objections which
4	are capable of determination without trial of the issues raised by a plea of not guilty;
5	(2) hearing and ruling upon any matter which may be ruled upon by the
6	military judge under this code, whether or not the matter is appropriate for later
7	consideration or decision by the members of the court;
8	(3) if permitted by regulations of the governor, holding the arraignment and
9	receiving the pleas of the accused; and
10	(4) conducting a sentencing proceeding and sentencing the accused; and
11	(4)(5) performing any other procedural function which may be performed
12	by the military judge under this code or under rules prescribed pursuant to R.S.
13	29:136 Article 36 and which does not require the presence of the members of the
14	court.
15	B. These proceedings Proceedings under Subsection A of this Section shall
16	be conducted in the presence of the accused, the defense counsel, and the trial
17	counsel and shall be made a part of the record. These proceedings may be conducted
18	notwithstanding the number of members of the court and without regard to Article
19	29 of this Code. If authorized by procedures and regulations specified in Article 36
20	of this Code, and if at least one defense counsel is physically in the presence of the
21	accused, the presence required by this Subsection may otherwise be established by
22	audiovisual technology, such as video teleconferencing technology.
23	B.C. When the members of a court-martial deliberate or vote, only the
24	members may be present. All other proceedings, including any other consultation
25	of the members of the court with counsel or the military judge, shall be made a part
26	of the record and shall be in the presence of the accused, the defense counsel, the
27	trial counsel, and in cases in which a military judge has been detailed to the court,
28	the military judge.

§140.	Article 40.	Continuances
3	1 11 01010	0 0111111111111111111

The military judge or a <u>summary</u> court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

§141. Article 41. Challenges

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

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

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

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

C. Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

§142. Article 42. Oaths

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

B. Each witness before a court-martial shall be examined on oath. §143. Article 43. Statute of limitations

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

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

C. Except as otherwise provided in this Section, a person charged with any offense is not liable to be tried by court-martial or punished under R.S. 29:115 if the offense was committed more than two years before the receipt of sworn charges and

1	specifications by an officer exercising summary court-martial jurisdiction over the
2	command or before the imposition of punishment under R.S. 29:115.
3	D.(1) Periods in which he accused is absent without authority or fleeing from
4	just shall be excluded in computing the period of limitation prescribed in this Article.
5	(2) Periods in which the accused was absent from Louisiana or in the hands
6	of the enemy shall be excluded in computing the period of limitation prescribed in
7	this Article.
8	E.(1) If charges or specifications are dismissed are defective or insufficient
9	for any cause and the period prescribed by the applicable statute of limitations has
10	expired or will expire within one hundred eighty days after date of dismissal of the
11	charges and specifications, trial and limitations if the conditions in Paragraph (2) of
12	this Subsection are met.
13	(2) In order to move forward with new charges and specifications after
14	dismissal as described in Paragraph (1) of this Subsection, the new charges and
15	specifications must:
16	(a) Be received by an officer exercising summary court-martial jurisdiction
17	over the offenses within one hundred eighty days after dismissal of the charges and
18	specification; and
19	(b) Allege the same acts or omissions that were alleged in the dismissed
20	charges or specifications, or alleged acts or omissions that were included in the
21	dismissed charges or specifications.
22	F. A person charged with fraudulent enlistment or fraudulent appointment
23	under Article 83 may be tried by court-martial if the sworn charges and
24	specifications are received by an officer exercising summary court-martial
25	jurisdiction with respect to that person as follows:
26	(1) In the case of an enlisted member, during the period of the enlistment or
27	five years, whichever provides a longer period.
28	(2) In the case of an officer, during the period of the appointment or five
29	years, whichever provides a longer period.

1	G. If DNA testing implicates an identified person in the commission of an
2	offense punishable by confinement for more than one year, no statute of limitations
3	that would otherwise preclude prosecution of the offense shall preclude such
4	prosecution until a period of time following the implication of the person by DNA
5	testing has elapsed that is equal to the otherwise applicable limitation period.
6	* * *
7	§145. Article 45. Pleas of the accused
8	* * *
9	B. With respect to any charge or specification to which a plea of guilty has
10	been made by the accused and accepted by the military judge, or by a court-martial
11	without a military judge, a finding of guilty of the charge or specification may, if
12	permitted by regulations of the governor, be entered immediately without vote. This
13	finding shall constitute the finding of the court unless the plea of guilty is withdrawn
14	prior to the announcement of the sentence, in which event the proceedings shall
15	continue as though the accused had pleaded not guilty.
16	C. A variance from the requirements of this Article is harmless error if the
17	variance does not materially prejudice the substantial rights of the accused.
18	§146. Article 46. Opportunity to obtain witnesses and other evidence in trial by
19	court-martial
20	A. In a case referred for trial by court-martial, the trial The trial counsel, the
21	defense counsel, and the court-martial shall have equal opportunity to obtain
22	witnesses and other evidence in accordance with such regulations as the governor
23	may prescribe. prescribed in accordance of Article 36 of this Code.
24	B. Process issued in court-martial cases to compel witnesses to appear and
25	testify and to compel the production of other evidence shall be similar to that which
26	civil courts of this state having criminal jurisdiction may lawfully issue and shall run
27	to any part of the state and may be executed by civil officers of this state.
28	C. A subpoena or other process may be issued to compel a witness to appear
29	and testify:

1	(1) Before a court-martial or court of inquiry;
2	(2) At a deposition under Article 49 of this Code; or
3	(3) As otherwise authorized under this Code.
4	D.(1) A subpoena or other process maybe issued to compel the production
5	of evidence:
6	(a) For a court-martial or court of inquiry;
7	(b) For a deposition under Article 49 of this Code;
8	(c) For an investigation of an offense under this Code;
9	(d) As otherwise authorized under this Code.
10	(2) An investigative subpoena under Paragraph (1)(c) may be issued before
11	referral of charges to a court-martial only if a general court-martial convening
12	authority has authorize counsel for the Government to issue such a subpoena or a
13	military judge issues such a subpoena pursuant to Article 30a of this Code.
14	(3) With respect to an investigation of an offense under this Code, a military
15	judge detailed in accordance with Article 26 or 30a of this Code, may issue warrants
16	or court orders for the contents of, and records concerning, wire or electronic
17	communications in the same manner as such warrants and orders may be issued by
18	a district court of this State, subject to rules prescribed under Article 36 of this Code.
19	E. If a person requests relief from a subpoena or other process under this
20	Article on grounds that compliance is unreasonable or oppressive or is prohibited by
21	law, a military judge detailed in accordance with Article 26 or 30a of this Code shall
22	review the request and shall:
23	(1) Order that the subpoena or other process be modified or withdrawn, as
24	appropriate; or
25	(2) Order the person to comply with the subpoena or other process.
26	§147. Article 47. Refusal to appear or testify
27	A.(1) Any person not subject to this code described in Paragraph (2) of this
28	Subsection who:

1	(1)(a) has Has been duly subpoenaed to appear as a witness or to produce
2	books and records before a military court or before any military or civil officer
3	designated to take a deposition to be read in evidence before such a court;
4	(2)(b) has Has been duly paid or tendered the fees and mileage of a witness
5	at the rates allowed to witnesses attending the courts of the state; and
6	(3)(c) willfully Willfully neglects or refuses to appear, or refuses to qualify
7	as a witness or to testify or to produce any evidence which that person may have
8	been legally subpoenaed to produce;
9	(d) Is is guilty of an offense against the state.
10	(2) For purposes of this Section, "person" shall mean the following:
11	(a) Any person not subject to this Chapter who:
12	(i) Is issued a subpoena or other process described in Subsection C of Article
13	46 of this Code; and
14	(ii) Is provided a means for reimbursement from the Government for fees
15	and mileage at the rate allowed to witness attending the district courts of this state
16	or, in the case of extraordinary hardship, is advanced such fees and mileage.
17	(b) Any person not subject to this Code who is issued a subpoena or other
18	process described in Subsection D of Article 46 of this Code.
19	* * *
20	§149. Article 49. Depositions
21	A. At any time after charges have been signed, as provided in R.S. 29:130,
22	any party may take oral or written depositions unless the military judge or court-
23	martial without a military judge hearing the case, or if the case is not being heard,
24	an authority competent to convene a court-martial for the trial of those charges
25	forbids it for good cause. If a deposition is to be taken before charges are referred
26	for trial, such an authority may designate commissioned officers to represent the
27	prosecution and the defense and may authorize those officers to take the deposition
28	of any witness. (1) A convening authority or a military judge may order depositions
29	at the request of any party. A denosition my be ordered only if the requesting party

1	demonstrates that, due to exceptional circumstances, it is in the best interest of
2	justice that the testimony of a prospective witness be preserved for use at a court-
3	martial, court of inquiry, or other military court or board.
4	(2) A party who request a deposition under this Article shall give to every
5	other party reasonable notice of the time and place for the deposition. A deposition
6	under this Article shall be taken before, and authenticated by, an impartial officer,
7	as follows:
8	(a) Whenever practicable, by an impartial judge advocate certified under
9	Article 27(B) of this Code.
10	(b) In exceptional circumstances, by an impartial military or civil officers
11	authorized to administer oaths by the laws of the United States or the state of
12	Louisiana.
13	B. The party at whose instance a deposition is to be taken shall give to every
14	other party reasonable written notice of the time and place for taking the deposition.
15	Representation of the parties with respect to a deposition shall be by counsel detailed
16	in the same manner as trial counsel and defense counsel are detailed under Article
17	27 of this Code. In addition, the accused shall have the right to be represented by
18	civilian or military counsel in the same manner as such counsel are provided for in
19	Article 38(B) of this Code.
20	C. Depositions may be taken before and authenticated by any military or
21	civil officer authorized by the laws of this state or by the laws of the place where the
22	deposition is taken to administer oaths. A deposition order under Subsection A of
23	this Article does not control the admissibility of the deposition in the court-martial
24	or other proceeding under this Code.
25	D. A duly authenticated deposition taken upon reasonable notice to the other
26	parties, so far as otherwise admissible under the rules of evidence, may be read in
27	evidence before any court-martial or in any proceeding before a court of inquiry, if
28	it appears:

1	(1) that the witness is a nonresident, or resides beyond the distance of one
2	hundred miles from the place of trial or hearing;
3	(2) that the witness by reason of death, age, sickness, bodily infirmity,
4	imprisonment, military necessity, nonamenability to process, or other reasonable
5	cause, is unable or refuses to appear and testify in person at the place of trial or
6	hearing; or
7	(3) that the present whereabouts of the witness is unknown.
8	§150. Article 50. Admissibility of sworn testimony from records of courts of
9	inquiry
10	A. In any case not extending to the dismissal of a commissioned officer, the
11	sworn testimony, contained in the duly authenticated record of proceedings of a court
12	of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise
13	admissible under the rules of evidence mandated by Article 36 of this Code, be read
14	in evidence by any party before a court-martial if the accused was a party before the
15	court of inquiry and if the same issue was involved or if the accused consents to the
16	introduction of such evidence.
17	B. Such testimony may be read in evidence only by the defense in cases
18	extending to the dismissal of a commissioned officer.
19	C. Such testimony may also be read in evidence before a court of inquiry or
20	a military board.
21	D. Sworn testimony that:
22	(1) Is recorded by audiotape, videotape, or similar method: and
23	(2) Is contained in the duly authenticated record of proceedings of a court of
24	<u>inquiry;</u>
25	(3) Is admissible before a court-martial, court of inquiry, or military board,
26	to the same extent as sworn testimony may be read in evidence before any such body
27	under Subsections A, B, or C of this Article.
28	* * *

1	§153. Article 53. Court to announce action Findings and sentencing
2	A court-martial shall announce its findings and sentence to the parties as soon
3	as determined. A. Announcement. A court-martial shall announce its findings and
4	sentence to the parties as soon as determined.
5	B. Sentencing Generally.
6	(1) General and Special Court-Martial
7	(a) Sentencing by Military Judge. Except as provided in Subparagraph (b)
8	of this Paragraph, if the accused is convicted of an offense in a trial, the military
9	judge shall sentence the accused.
10	(b) Sentencing by Members. If the accused is convicted of an offense by
11	general or special court-martial consisting of a military judge and members and the
12	accused elects sentencing by members under Article 25 of this Code, the members
13	shall sentence the accused.
14	(c) Sentence of the Accused. The sentence determined pursuant to this
15	Paragraph constitutes the sentence of the accused.
16	(2) Summary Courts-Martial. If the accused is convicted of an offense in a
17	trial by summary court-martial, the court-martial shall sentence the accused.
18	§153a. Article 53a. Plea agreements
19	A.(1) At any time before the announcement of findings under Article 53 of
20	this Code, the convening authority and the accused may enter into a plea agreement
21	with respect to such matters as:
22	(a) The manner in which the convening authority will depose of one or more
23	charges and specifications; and
24	(b) Limitations on the sentence that may be adjudged for one or more
25	charges and specifications.
26	(2) The military judge of a general or special court-martial may not
27	participate in discussions between the parties concerning prospective terms and
28	conditions of a plea agreement.

1	B. The military judge of a general or special court-martial shall reject a plea
2	agreement that:
3	(1) Contains a provision that has not been accepted by both parties;
4	(2) Contains a provision that is not understood by the accused;
5	(3) Except as provided in Subsection C of this Article, contains a provision
6	for a sentence that is less than the mandatory minimum sentence applicable to an
7	offense referred to in Article 56(B)(2) of this Code;
8	(4) Is prohibited by law; or
9	(5) Is contrary to, or is inconsistent with, rules promulgated by Article 36 of
10	this Code with respect to terms, conditions, or other aspects of plea agreements.
11	C. With respect to an offense referred to in Article 56(B)(2) of this Code:
12	(1) The military judge may accept a plea agreement that provides for a
13	sentence of bad conduct discharge; and
14	(2) Upon recommendation of the trial counsel, in exchange for substantial
15	assistance by the accused in the investigation or prosecution of another person who
16	has committed an offense, the military judge may accept a plea agreement that
17	provides for a sentence that is less than the mandatory minimum sentence for the
18	offense charged.
19	D. Upon acceptance by the military judge of a general or special court-
20	martial, a plea agreement shall bind the parties and the court-martial.
21	§154. Article 54. Record of trial
22	A. Each general or special court-martial shall keep a separate record of the
23	proceedings in each case brought before it., and the record shall be authenticated by
24	the signature of the military judge. If the record cannot be authenticated by the
25	military judge by reason of his death, disability or absence, it shall be authenticated
26	by the signature of the trial counsel or by that of a member if the trial counsel is
27	unable to authenticate it by reason of his death, disability, or absence. In a court-
28	martial consisting of only a military judge the record shall be authenticated by the
29	court reporter under the same conditions which would impose such a duty on a

member under this Subparagraph. If the proceedings have resulted in an acquittal
of all charges and specifications or, if not affecting a general or flag officer, in a
sentence not including discharge or confinement and not in excess of that which may
otherwise be adjudged by a special court-martial, the record shall contain such
matters as may be prescribed by regulations of the governor. The record shall be
certified by a court reporter, except that in the case of death, disability, or absence
of the court reporter, the record shall be certified by an official selected under rules
prescribed under Article 36 of this Code.
B. Each special and summary court-martial shall keep a separate record of
the proceedings in each case, and the record shall contain the matter and shall be
authenticated certified in the manner required by rules prescribed under Article 36
of this Code. such regulations as the governor may prescribe.
C.(1) Except as provided in Paragraph (2) of this Subsection, the record shall
contain such matters as required by rules prescribed under Article 36 of this Code.
(2) In accordance with rules prescribed under Article 36 of this Code, a
complete record or proceedings and testimony shall be prepared in any case of a
sentence of dismissal, discharge, confinement for more than six months, or forfeiture
of pay for more than six months.
C.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 <u>certified</u> .
E. In the case of a general or special court-martial, upon request, a copy of
all prepared records of the proceedings of the court-martial shall be given to the
victim of the offense if the victim testified during the proceedings. The records of
the proceedings shall be provided without charges and as soon as the records are
certified. The victim shall be notified of the opportunity to receive the records of the
proceedings.

DIGEST

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

HB 360 Original

2019 Regular Session

Jones

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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