

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 795

By: Senator J. Woods
By: Representative House

For An Act To Be Entitled

AN ACT TO UPDATE THE MILITARY CODE OF ARKANSAS; AND
FOR OTHER PURPOSES.

Subtitle

TO UPDATE THE MILITARY CODE OF ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 12-60-101 is amended to read as follows:
12-60-101. Title.

"This code" Chapters 60 through 64 of this title shall be known and may be cited as the "Military Code of Arkansas".

SECTION 2. Arkansas Code § 12-60-102 is amended to read as follows:
12-60-102. Definitions.

As used in this code, ~~unless the context otherwise requires:~~

~~(1) "Organized militia" means the National Guard of the state as defined in 32 U.S.C. § 101(3);~~

~~(2) "Officer" means commissioned or warrant officer;~~

~~(3) "Commissioned officer" includes a commissioned warrant officer;~~

~~(4) "Commanding officer" includes only commissioned officers;~~

~~(5) "Superior commissioned officer" means a commissioned officer superior in rank or command;~~

~~(6) "Enlisted member" means a person in an enlisted grade;~~



~~(7) “Grade” means a step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation;~~

~~(8) “Rank” means the order of precedence among members of the armed forces;~~

~~(9) “Active state duty” means duty in the active military service of the state under an order of the Governor issued pursuant to authority vested in him by law and while going to and returning from such duty;~~

~~(10) “Duty status other than active state duty” means any type of duty other than active state duty;~~

~~(11) “Military court” means a court-martial, a court of inquiry, or a provost court;~~

~~(12) “Law officer” means an official of a general court-martial detailed in accordance with this act;~~

~~(13) “State judge advocate” means the commissioned officer responsible for supervising the administration of the military justice in the organized militia;~~

~~(14) “Accuser” means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused;~~

~~(15) “Military” refers to any or all of the armed forces;~~

~~(16) “Convening authority” includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command;~~

~~(17) “May” is used in a permissive sense. The words, “no person may ...” mean that no person is required, authorized, or permitted to do the act prescribed;~~

~~(18) “Shall” is used in an imperative sense;~~

~~(19) “Code” means this act;~~

~~(20) “Enemy” shall be deemed to include any person or persons engaged or participating in a riot, riotous activity, resistance to lawful process, insurrection, or rebellious assembly.~~

(1) “Accuser” means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by

another, and any other person who has an interest other than an official interest in the prosecution of the accused;

(2) "Active state duty" means duty in the active military service of the state under an order of the Governor issued pursuant to authority vested in him by law and while going to and returning from such duty;

(3) "Code" means the Military Code of Arkansas, Title 12, Chapters 60 through 64;

(4) "Commanding officer" includes only commissioned officers;

(5) "Commissioned officer" includes a commissioned warrant officer;

(6) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer in command for the time being and successors in command;

(7) "Enemy" shall be deemed to include any person or persons engaged or participating in a riot, riotous activity, resistance to lawful process, insurrection, or rebellious assembly;

(8) "Enlisted member" means a person enlisted in, or inducted, called, or conscripted into, an armed force in an enlisted grade;

(9) "Grade" means a step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation;

(10) "Law officer" means an official of a general court-martial detailed in accordance with this act;

(11) "Military" refers to any or all of the armed forces;

(12) "Military court" means a court-martial, a court of inquiry, or a provost court;

(13) "Officer" means commissioned or warrant officer;

(14) "Organized militia" means the National Guard of the state as defined in 32 U.S.C. § 101(3);

(15) "Rank" means the order of precedence among members of the armed forces;

(16) "Sexual conduct" means any act of:

(A) Sexual gratification involving penetration, however slight, of the anus or mouth of a person by the penis of another person; or

(B) Sexual gratification involving penetration, however

slight, of the labia majora or anus of a person by any body member or foreign instrument manipulated by another person; or

(D) Penetration, however slight, of the labia majora by a penis;

(17) "State Judge Advocate" means the commissioned officer responsible for supervising the administration of the military justice in the organized militia; and

(18) "Superior commissioned officer" means a commissioned officer superior in rank or command.

SECTION 3. Arkansas Code § 12-60-104 is amended to read as follows:

12-60-104. Delegation of authority by the Governor or the commanding general of the organized militia.

(a) The Governor may delegate any authority vested in ~~him~~ the Governor under this code, and may provide for the subdelegation of any such authority, except with respect to the power ~~given him~~ authorized by in §§ 12-64-406(a) and 12-64-603(b) of this code.

(b) The commanding general of the organized militia may delegate any authority vested in the commanding general under this code, and may provide for the subdelegation of any such authority, except with respect to the power authorized in §§ 12-64-406(a) and 12-64-603(b) of this code.

SECTION 4. Arkansas Code §§ 12-64-101 and 12-64-102 are amended to read as follows:

12-64-101. Territorial applicability ~~of the code.~~

(a)(1) This code applies ~~throughout the state~~ to all persons while they are serving inside or outside the state.

~~(2) It also applies to all persons while they are serving outside the state in the same manner and to the same extent as if they were serving inside the state.~~

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

12-64-102. Jurisdiction to try certain personnel.

(a) Jurisdiction of courts-martial shall be coextensive with the jurisdiction provided for similar courts of the United States Army and United States Air Force.

~~(a)(b)(1) Each~~ A person discharged from the organized militia who is later charged with having fraudulently obtained his discharge is subject to trial by court-martial ~~hereunder~~ under this code.

~~(2) Upon conviction of that charge, he~~ A person convicted under subdivision (b)(1) of this section is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

(c) No person who has deserted from the organized militia may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

SECTION 5. Arkansas Code § 12-64-103 is repealed.

~~12-64-103. Courts of inquiry.~~

~~(a) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, whether or not the persons involved have requested such an inquiry.~~

~~(b)(1) A court of inquiry consists of three (3) or more commissioned officers.~~

~~(2) For each court of inquiry, the convening authority shall also appoint counsel for the court.~~

~~(c)(1) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party.~~

~~(2) Any person subject to this code or employed in the division of military affairs, who has a direct interest in the subject of inquiry, has the right to be designated as a party upon request to the court.~~

~~(d) Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.~~

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

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

~~(g) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts martial.~~

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

~~(i) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.~~

SECTION 6. Arkansas Code § 12-64-106 is repealed.

~~12-64-106. Dismissal of commissioned officers.~~

~~(a)(1) If any commissioned officer, dismissed, discharged, or dropped from the rolls by order of the Governor for reason other than sentence of a general court-martial, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, discharged, or dropped from the rolls, the Governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed, discharged, or dropped.~~

~~(2) A court-martial so convened has jurisdiction to try the dismissed, discharged, or dropped officer on those charges; and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged.~~

~~(3) The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, discharge, or dropping from the rolls; but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the Adjutant General shall substitute for the dismissal ordered by the Governor a form of discharge authorized for administrative issue.~~

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

~~(c)(1) If a discharge is substituted for a dismissal under this code,~~

~~the Governor alone may reappoint the officer to such commissioned grade and with such a rank as, in the opinion of the Governor, that former officer would have attained had he not been dismissed, discharged, or dropped from the rolls.~~

~~(2) The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization and the officer meets all qualifications required to obtain federal recognition in the new grade.~~

~~(3) All time between the dismissal and the reappointment shall be considered as actual service for all purposes.~~

SECTION 7. Arkansas Code § 12-64-107(a)(1), concerning code sections to be explained, is amended to read as follows:

(a)(1) Sections 12-60-103, 12-64-102, ~~12-64-107~~ 12-64-109, 12-64-107, ~~12-64-109~~, ~~12-64-201~~ 12-64-207, 12-64-201 - 12-64-203, 12-64-205 - 12-64-207, 12-64-301, 12-64-302, 12-64-407, ~~12-64-408~~, 12-64-410, 12-64-509, 12-64-601, and 12-64-801 - ~~12-64-842~~ 12-64-848 of this code shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the forces of the organized militia or within thirty (30) days thereafter.

SECTION 8. Arkansas Code § 12-64-108 is repealed.

~~12-64-108. Injury to property—Redress.~~

~~(a) Whenever a complaint is made to any commanding officer that willful damage has been done to property of any person or that his property has been wrongfully taken by members of the organized militia, he may, subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint.~~

~~(b) The board shall consist of from one (1) to three (3) officers.~~

~~(c) For the purpose of that investigation, the board has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties.~~

~~(d)(1) The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders.~~

~~(2) The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (f) of this section, on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.~~

~~(e) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military fund of the unit or units of the organized militia to which the offenders belonged.~~

~~(f)(1) Any person subject to this code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him.~~

~~(2) He has the right of appeal to the next higher commander.~~

SECTION 9. Arkansas Code § 12-64-110 is amended to read as follows:

12-64-110. Appropriations - ~~Courts-Martial Fund~~ State Military Department Fund Account.

(a) There shall be appropriated ~~biennially~~ annually, for the military department, the sum of ~~three thousand dollars (\$3,000)~~ twenty thousand dollars (\$20,000) for the ~~purpose of paying witness fees, process fees, reporters' fees, travel expenses, and other necessary expenses in holding court-martial proceedings provided in this code~~ State Judge Advocate to pay for the administration of military justice.

(b) For the foregoing purposes, there is created in the State Treasury a fund to be designated the State Military Department Fund Account-Military Justice Fund, from which ~~all~~ expenses of ~~courts-martial~~ military justice shall be paid in the amounts and manner prescribed by law.

SECTION 10. Arkansas Code § 12-64-203 is amended to read as follows:

12-64-203. ~~Imposition of restraint~~ Restraint.

~~(a)(1) "Arrest" is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits.~~

~~(2) "Confinement" is the physical restraint of a person.~~

~~(b)(1) An enlisted member may be ordered into arrest or confinement by~~

~~any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons.~~

~~(2) A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.~~

~~(c)(1) A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject by an order, oral or written, delivered in person or by another commissioned officer.~~

~~(2) The authority to order such persons apprehended or into arrest or confinement may not be delegated.~~

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

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

Subject to the orders or regulations of the Adjutant General, commanders of the organized militia may restrain persons under their jurisdiction to the same extent as military commanders in service to the United States.

SECTION 11. Arkansas Code § 12-64-204 is repealed.

~~12-64-204. Restraint of persons charged with offenses.~~

~~(a) Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require. However, when charged only with an offense normally tried by a summary court-martial, the person shall not ordinarily be placed in confinement.~~

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

SECTION 12. Arkansas Code § 12-64-206 is amended to read as follows:

12-64-206. Pretrial restraint as punishment prohibited.

~~Subject to § 12-64-604, no person, while being held for trial or the result of a trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence. However, he may be subjected to minor punishment during that period for infractions of discipline and may be required to perform such labor as may be necessary for the policing and sanitation of his living quarters and messing facilities and the area immediately adjacent thereto.~~

Pretrial restraint is not punishment and shall not be used as punishment.

SECTION 13. Arkansas Code § 12-64-301(c)-(e), concerning imposition of nonjudicial punishment, are amended to read as follows:

(c) ~~However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this subchapter if the member has, before the imposition of the punishment, demanded trial by court-martial in lieu of the punishment where confinement has not been excluded as a punishment option, a member of the organized militia may not demand trial by court-martial in lieu of nonjudicial punishment.~~

(d) The Governor or commanding general may, by order or regulation, place limitations on the powers granted by this subchapter with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

(e) ~~A field grade~~ An officer in charge ~~or executive officer~~ of a detached unit or section may, for minor offenses, impose on officers, soldiers, or airmen assigned to the unit of which he is in charge ~~such of~~ the punishment authorized to be imposed by commanding officers as the Governor or commanding general may by order or regulation specifically prescribe, as provided in subsections (a), (b), (c), and (d) of this section.

SECTION 14. Arkansas Code §§ 12-64-402 – 12-64-406 are amended to read as follows:

12-64-402. Jurisdiction generally.

(a) Each force of the organized militia has court-martial jurisdiction

and powers over all persons subject to this code and shall follow the forms and procedures provided for similar courts of the United States Army and United States Air Force.

(b) The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

(c) The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

12-64-403. ~~Jurisdiction of general~~ General courts-martial punishments.
~~Subject to § 12-64-402, general~~ General courts-martial ~~have jurisdiction to try persons subject to this code for any offense made punishable by this code and~~ may, under such limitations as the Governor may prescribe, adjudge any one (1) or more of the following punishments:

- (1) A fine or forfeiture in an amount that shall not exceed two hundred (200) days of the service member's base pay and allowances;
- (2) Confinement with hard labor for not more than two hundred (200) days;
- (3) Dishonorable discharge, bad conduct discharge, or dismissal;
- (4) Reprimand; and
- (5) Reduction of enlisted persons to a lower grade; ~~or~~
- ~~(6) Any combination of these punishments.~~

12-64-404. ~~Jurisdiction of special~~ Special courts-martial punishments.

~~(a) Subject to § 12-64-402, special courts-martial shall have jurisdiction to try persons subject to this code for any offense for which they may be punished under this code.~~

~~(b) A special court-martial may, under such limitations as the Governor may prescribe, adjudge any one (1) or more of punishment that a general court-martial may adjudge except for~~ the following punishments:

- ~~(1) Dishonorable discharge;~~
- ~~(2) Dismissal;~~
- ~~(3) Confinement with hard labor for~~ not more than one hundred

(100) days; ~~or~~

~~(4)~~(2) A fine or forfeiture of pay and allowances in an amount that ~~exceeds~~ shall not exceed one hundred (100) days of the service member's base pay and allowances;

(3) Bad conduct discharge;

(4) Reprimand; and

(5) Reduction of enlisted persons to a lower grade.

12-64-405. ~~Jurisdiction of summary~~ Summary courts-martial punishments.

(a) ~~Subject to § 12-64-402, Officers and warrant officers may not be tried by summary courts-martial have jurisdiction to try persons subject to this code, except officers and warrant officers, for any offense made punishable by this code.~~

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

(c) ~~Summary~~ A summary courts-martial court-martial may, under such limitations as the Governor may prescribe, adjudge ~~any~~ one (1) or more of the following punishments:

(1) Confinement with hard labor not exceeding twenty-five (25) days;

(2) A fine or forfeiture of pay and allowances in an amount that shall not exceed one hundred (100) days of the service member's base pay and allowances;

(3) Reprimand; and

(4) Reduction of enlisted persons to a lower grade; ~~or~~

~~(5) Any combination of these punishments.~~

12-64-406. Convening courts-martial.

(a) General, special, and summary courts-martial may be convened by the Governor or the commanding general of the organized militia.

(b)~~(1)~~ The Special courts-martial may be convened by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group,

detached battalion, separate squadron, or other detached command ~~may convene special courts-martial.~~

~~(2) Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.~~

(c)(1) The Summary courts-martial may be convened by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where the troops on duty, or of a brigade, regiment, wing, group, detached battalion, squadron, company, or other detachment may convene a summary court-martial consisting of one (1) commissioned officer.

(2) The proceedings shall be informal.

~~(2) When only one (1) commissioned officer is present with a command or detachment, he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him.~~

~~(3) Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.~~

SECTION 15. Arkansas Code § 12-64-408 is repealed.

~~12-64-408. President.~~

~~(a) If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the state and of appropriate rank, the convening authority shall appoint him as president of a special court-martial, but only for cases in which there is no military judge.~~

~~(b) Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction.~~

SECTION 16. Arkansas Code §§ 12-64-409 and 12-64-410 are amended to read as follows:

12-64-409. Military judge.

(a) A military judge shall be detailed to each general and special court-martial. ~~Subject to such regulations as may be adopted by the Governor, a military judge may be detailed to any special court-martial.~~

~~(b) The Governor may prescribe regulations providing for the manner in~~

~~which military judges are detailed for the courts martial and for the persons who are authorized to detail military judges for the courts martial. The military judge shall preside over each open session of the court martial to which he has been detailed.~~

~~(e)(b)~~ A The military judge shall be a commissioned officer who is a member of the bar of the highest court of a state or a member of the bar of a federal court and who is certified to be qualified for that duty by the State Judge Advocate.

~~(d)(c)~~ The military judge ~~of a general court martial~~ shall be ~~designated~~ detailed by the State Judge Advocate ~~or his designee in accordance with such regulations as may be prescribed under subsection (a) of this section.~~

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

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

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

12-64-410. Trial and defense counsel.

(a) For each general and special court-martial, the authority convening the court shall detail trial counsel and defense counsel ~~and such assistance as he considers appropriate.~~

(b)(1) ~~No~~ A person who has acted as investigating officer, military judge, or court member in any case ~~may~~ shall not later act as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, ~~as~~

defense counsel or assistant defense counsel in the same case.

(2) ~~No~~ A person who has acted for the prosecution ~~may~~ shall not act later in the same case for the defense~~;~~.

(3) ~~nor may any~~ A person who has acted for the defense shall not act later in the same case for the prosecution.

~~(c) Trial counsel or defense counsel detailed for a general court-martial:~~

~~(1) Must be a person who is a member of the bar of the highest court of a state or a member of the bar of a federal court; and~~

~~(2) Must be certified as competent to perform such duties by the State Judge Advocate.~~

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

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

~~(2) If the trial counsel is a member of the bar of the highest court of a state, the defense counsel detailed by the convening authority must be likewise qualified.~~

SECTION 17. Arkansas Code § 12-64-411(a), concerning court reporters, is amended to read as follows:

(a) Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial ~~or court of inquiry~~ shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court.

SECTION 18. Arkansas Code § 12-64-412 is amended to read as follows:
12-64-412. Marshals.

(a) The ~~president~~ military judge of a general and special court-martial and a summary court officer may each appoint by warrant, and at any time remove, one (1) or more marshals.

(b) Each marshal shall perform the usual duties of ~~such marshals~~ a similarly appointed marshal and shall execute any process, mandate, or order issued by ~~such president~~ the military judge or court or officer and perform all acts and duties ~~by this code~~ imposed ~~on~~ or authorized by this code to be performed by a sheriff, marshal, or constable.

~~(c)(1) Each marshal shall, before entering upon his duties, execute a bond to the state in the penal sum of five hundred dollars (\$500), the premium of which shall be paid from the State Military Department Fund with sufficient sureties to be approved by the president of the court or officer appointing him, for the faithful performance of his duties and the prompt payment of all moneys collected by him.~~

~~(2) A bond given as herein provided may be prosecuted for breach of the conditions thereof, in the name of the people, by the Attorney General, and all moneys recovered shall be paid to the Military Courts-Martial Fund.~~

SECTION 19. Arkansas Code § 12-64-508 is amended to read as follows:

12-64-508. Governor may prescribe Procedural rules.

~~The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state, but which may not be contrary to or inconsistent with this code used by general, special, and summary courts-martial shall be the same as those used by similar courts of the United States Army and United States Air Force.~~

SECTION 20. Arkansas Code § 12-64-510(b), concerning the right of the accused to defense counsel, is amended to read as follows:

~~(b)(1)~~ The accused has the right to be represented in his defense before a general or special court-martial by:

~~(1) civilian~~ Civilian counsel if provided by ~~him,~~ the accused;

~~(2) or by military~~ Military counsel of ~~his~~ the accused's own selection if reasonably available; or

~~(3) by the~~ The defense counsel detailed under this code.

~~(2) Should the accused have counsel of his own selection, the defense counsel and assistant defense counsel, if any, who were detailed shall, if the accused so desires, act as his associate counsel; otherwise, they shall be excused by the president of the court or the military judge.~~

SECTION 21. Arkansas Code § 12-64-521 is repealed.

~~12-64-521. Admissibility of records of courts of inquiry.~~

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

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

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

SECTION 22. Arkansas Code § 12-64-525 is amended to read as follows:

12-64-525. Record of trial.

~~(a)(1) Each general, special, and summary court-martial shall keep a separate record of the proceedings of the trial of each case brought before it. The record shall be authenticated by the signature of the president and the military judge if one is assigned.~~

~~(2) If the record cannot be authenticated by either the president or the military judge by reason of his death, disability, or absence, it shall be signed by a member in lieu of him.~~

~~(3) If both the president and the military judge are unavailable, the record shall be authenticated by two (2) members.~~

~~(b)(1) A record of the proceedings of a trial in which the sentence adjudged includes a bad conduct discharge or is more than that which could be adjudged by a special court martial shall contain a complete verbatim account of the proceedings and testimony before the court.~~

~~(2) All other records of trial shall contain such matter and be authenticated in such manner as the Governor may by regulation prescribe. The record of proceedings shall be prepared and authenticated in the same manner as similar courts of the United States Army and United States Air Force.~~

~~(c)(1) 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.~~

~~(2) If a verbatim record of trial by general court martial is not required by subdivision (b)(1) of this section, the accused may buy the record under such regulations as the Governor may prescribe.~~

SECTION 23. Arkansas Code § 12-64-603 is amended to read as follows:

12-64-603. Sentence of dismissal, or dishonorable discharge, etc.

(a) A dishonorable discharge, bad conduct discharge, or dismissal shall not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made.

(b) No sentence of dismissal or dishonorable discharge may be executed until it is approved by the Governor or the commanding general of the organized militia.

SECTION 24. Arkansas Code § 12-64-604(b), concerning the effective date of sentences, is amended to read as follows:

~~(b)(1) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement.~~

~~(2) Regulations prescribed by the Governor may provide that sentences of confinement may not be effective or executed until approved by designated officers.~~

(2) Periods during which confinement is suspended shall be excluded in computing the service of the term of confinement.

SECTION 25. Arkansas Code § 12-64-605 is amended to read as follows:

12-64-605. Execution or suspension of sentence.

(a) Except as otherwise provided, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him the convening authority in accordance with regulations prescribed by the Governor.

(b) He The convening authority shall approve the sentence or such part, amount, or commuted form of the sentence as he the convening authority sees fit and may suspend the execution of the sentence as approved by him.

SECTION 26. Arkansas Code § 12-64-607(a), concerning execution of

process and sentences, is amended to read as follows:

(a) In the organized militia not in federal service, the processes and sentences of its courts-martial when issued ~~shall~~ may be executed by the civil officers prescribed by the laws of the state.

SECTION 27. Arkansas Code Title 12, Chapter 64, Subchapter 6, is amended to add an additional section to read as follows:

12-64-610. Delinquent fines or forfeitures.

(a)(1) When a fine or forfeiture is delinquent for a period of ninety (90) days or more, the State Military Department shall have a cause of action against the person and property liable for the delinquent portion of the fine or forfeiture, costs of collection, penalties, and interest to which the State Military Department is entitled, plus a reasonable attorney's fee.

(2) The State Military Department shall have a lien on all property subject to forfeiture.

(b) The action shall be brought in the Pulaski County Circuit Court.

(c) The judgment awarded the State Military Department under this section shall be enforceable to the same extent and in the same manner as other civil judgments.

SECTION 28. Arkansas Code § 12-64-704(b) and (c), concerning the review of the record, are amended to read as follows:

~~(b)(1) In all other cases not covered by subsection (a) of this section~~ cases not convened by the Governor, if the sentence ~~of a special court-martial as approved by the convening authority~~ includes a dishonorable discharge, bad-conduct discharge, or dismissal, whether or not suspended, the entire record shall be sent to ~~the appropriate~~ a staff judge advocate ~~or legal officer of the state force concerned~~ to be reviewed in the ~~same~~ manner ~~as a record of trial by general court-martial~~ prescribed by the Governor.

(2) The record and the opinion of the staff judge advocate or legal officer shall then be sent to the State Judge Advocate for review.

~~(c) All other special and summary court-martial records shall be sent to the~~ a judge advocate ~~or legal officer of the appropriate force of the organized militia~~ and shall be acted upon, transmitted, and disposed of as ~~may~~ shall be prescribed by ~~regulations prescribed by~~ the Governor.

SECTION 29. Arkansas Code § 12-64-704(h)(1) and (2), concerning boards of review, are amended to read as follows:

(h)(1) The State Judge Advocate;

(A) may May order one (1) or more boards of review, each composed of not less than three (3) commissioned officers of the organized militia, each of whom must be a member of the bar of the highest court of the state; and

(B) Shall order a board of review to hear the appeal of any court-martial demanded under § 12-64-714.

(2) Each board of review shall review the record of any trial by ~~special court-martial, including a sentence to a bad conduct discharge,~~ referred to it by the State Judge Advocate.

SECTION 30. Arkansas Code § 12-64-710 is amended to read as follows:
12-64-710. Review counsel.

~~(a) Upon the final review of a sentence of a general court-martial or of a sentence to a bad conduct discharge, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate or legal officer, as the case may be, and before the State Judge Advocate.~~

~~(b) Upon the request of an accused entitled to be so represented, the State Judge Advocate shall appoint a lawyer who is a member of the organized militia and who has the qualifications prescribed in this code, if available, to represent the accused before the reviewing authority, before the staff judge advocate or legal officer, as the case may be, and before the State Judge Advocate, in the review of cases specified in subsection (a) of this section.~~

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

The accused has the right to be represented during a review of records under this subchapter by:

(1) Civilian counsel if provided by the accused;

(2) Military counsel of the accused's own selection if reasonably available;

(3) The defense counsel detailed under this code.

SECTION 31. Arkansas Code § 12-64-711(b), concerning the finality of proceedings, findings, and sentences is amended to read as follows:

(b) Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial or appeal as provided ~~herein~~ in this subchapter.

SECTION 32. Arkansas Code § 12-64-714 is amended to read as follows:

12-64-714. ~~Appeal to Supreme Court or Court of Appeals.~~

(a)~~(1)~~(A) When an accused has exhausted all ~~of his~~ other rights of review within the organized militia, ~~he~~ the accused may appeal ~~the a~~ conviction and sentence of a court-martial that sentences the accused to incarceration to:

(i) to the The Supreme Court; or

(ii) ,if If the rules of the Supreme Court Rules provide, to the Court of Appeals.

(B) The Arkansas Rules of Appellate Procedure-Criminal shall apply to all appeals to the Supreme Court and Court of Appeals under this code.

(2) When an accused has exhausted all other rights of review with the organized militia, the accused may appeal the conviction and sentence of any court-martial that does not sentence the accused to incarceration to a board of review as provided under § 12-64-704.

(b) The proceedings for an appeal shall be initiated by filing a notice of appeal with the ~~State~~ Adjutant General. The notice of appeal shall be served on the ~~State~~ Adjutant General personally or by certified mail. It shall be unnecessary to serve other parties. Any appeal shall be filed with the ~~State~~ Adjutant General no more than thirty (30) days after the effective date of the sentence under § 12-64-604.

(c) The record of any court-martial conviction and sentence appealed shall be lodged in the office of the clerk of the court within the time prescribed by law or court rule for filing an appeal of a criminal conviction in a circuit court in this state, and not thereafter, and only after the party appealing has paid to the Adjutant General the costs for preparation of

the transcript and to the court clerk the filing costs, except for paupers as provided for by the appellate court rules.

(d) In all cases of appeal to the Supreme Court or Court of Appeals, the appeal shall be taken on the record in the case, consisting of pertinent documents and papers, any transcript of evidence, and the findings and orders. The appellate jurisdiction of the Supreme Court and Court of Appeals shall extend only to questions of law, as in criminal cases appealed from the circuit courts.

(e) Upon request of the defendant and a showing of indigency, the State Judge Advocate may appoint an attorney having the qualifications prescribed in § 12-64-410~~(e)~~ to represent the defendant in the appeal of his court-martial conviction and sentence to the Supreme Court or Court of Appeals.

~~(f) Indigent defendants shall have the same right to appointed appellate defense counsel as accused persons not in the military.~~ On an appeal under subdivision (a)(1) of this section, the state shall be represented by the Attorney General or his designee.

SECTION 33. Arkansas Code § 12-64-801 is amended to read as follows:
12-64-801. Persons to be tried or punished.

~~No~~ A person may shall not be tried or punished for any offense provided for in this code, ~~unless it~~ the offense was committed while ~~he was~~ in a duty status or in conjunction with a fraudulent or unlawful enlistment or appointment.

SECTION 34. Arkansas Code § 12-64-807 is amended to read as follows:
12-64-807. Solicitation.

(a) Any person subject to this code ~~who solicits or advises another or others to desert or mutiny shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct~~ shall be punished as a court-martial may direct if with the purpose of promoting or facilitating the commission of a specific offense, the person commands, urges, or requests another person to engage in specific conduct that would:

- (1) Constitute that offense;
- (2) Constitute an attempt to commit that offense;
- (3) Cause the result specified by the definition of that offense; or
- (4) Establish the other person's complicity in the commission or attempted commission of that offense.

~~(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct. It is an affirmative defense to a prosecution under this section that the defendant prevented the commission of the offense solicited under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal purpose.~~

SECTION 35. Arkansas Code § 12-64-820 is amended to read as follows:
12-64-820. Resistance, break of arrest, and escape.

~~Any~~ A person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint, custody, or confinement lawfully imposed shall be punished as a court-martial may direct.

SECTION 36. Arkansas Code § 12-64-833 is amended to read as follows:
12-64-833. Improper hazarding of vessel or vehicle.

(a) ~~Any~~ A person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel or vehicle ~~of the armed forces~~ of the United States Armed Forces or of the organized militia shall be punished as a court-martial may direct.

(b) ~~Any~~ A person subject to this code who negligently hazards or suffers to be hazarded any vessel or vehicle of the ~~armed forces of the~~ United States Armed Forces or of the organized militia shall be punished as a court-martial may direct.

SECTION 37. Arkansas Code § 12-64-836 is amended to read as follows:
12-64-836. Dueling or fighting.

(a) Any A person subject to this code who fights, without authority,

or promotes, or is concerned in or connives at fighting a ~~duel or dueling~~, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority shall be punished as a court-martial may direct.

SECTION 38. Arkansas Code § 12-64-842 is amended to read as follows:

12-64-842. Stealing ~~goods of not more than thirty five dollars' value~~ property.

~~Any~~ A person subject to this code who wrongfully and fraudulently takes and carries away or exercises unauthorized control over the ~~personal goods~~ property of another ~~of the value of not more than thirty five dollars (\$35.00)~~, with intent to ~~steal it~~, deprive the owner of the property shall be punished as a court-martial may direct.

SECTION 39. Arkansas Code § 12-64-845 is amended to read as follows:

12-64-845. Sexual misconduct.

~~(a) Any~~ A person subject to this code who ~~attempts or offers to cause bodily harm to another person through~~ engages in sexual contact with unlawful force, abuse of authority, or violence is guilty of sexual misconduct and shall be punished as a court-martial may direct.

~~(b) Whether the attempt or offer with or without consent is consummated does not affect the conduct prescribed under this section.~~

SECTION 40. Arkansas Code § 12-64-846 is amended to read as follows:

12-64-846. Sexual harassment.

~~Any~~ A person subject to this code shall be punished as a court-martial may direct if ~~he~~ the person:

(1) ~~Engages~~ Repetitively engages in behavior that involves unwelcome sexual advances; ~~or~~

(2) Requests sexual favors from or offers sexual favors to a subordinate; or

(3) Engages in other verbal or physical conduct of a sexual nature if:

(A) Submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(B) Submission to or rejection of the conduct by a person is used as a basis for career or employment decisions affecting that person; or

(C) The conduct has the purpose or effect of unreasonably interfering with a person's work performance or creates an intimidating, hostile, or offensive working environment.

SECTION 41. Arkansas Code Title 12, Chapter 64, Subchapter 8, is amended to add an additional section to read as follows:

12-64-848. Adultery.

A married person subject to this code who has sexual conduct with a person not his or her spouse under circumstances that prejudice good order and discipline may be punished as a court martial may direct.

APPROVED: 04/02/2015