

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0759.01 Conrad Imel x2313

SENATE BILL 18-135

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING UPDATES TO THE COLORADO CODE OF MILITARY
102 JUSTICE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill updates the Colorado code of military justice (code). **Sections 1 and 2** of the bill define terms related to the code and clarify the applicability of the code. **Sections 4 and 6** authorize commanding officers to arrest any enlisted member, impose certain disciplinary punishments without the intervention of a court-martial, and clarify those punishments and who may impose them. **Sections 7 to 9** describe the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
February 8, 2018

punishments that may be imposed by general, special, and summary courts-martial. Section 9 also removes a person's ability to refuse trial by summary court-martial.

Section 10 authorizes the assistant adjutant general for the space, cyber, and missile defense for the Colorado National Guard; the land component commander for the Colorado Army National Guard; or the wing commander for the Colorado Air National Guard to convene a general court-martial. **Section 11** authorizes certain officers to convene a special court-martial. **Section 13** permits a military judge to be detailed to a court-martial irrespective of military branch. **Section 14** requires counsel in general or special courts-martial to be appointed as judge advocates. **Section 15** classifies as felonies offenses for which an accused may be convicted by general court-martial and receive a sentence of confinement. A conviction by summary court-martial is not a criminal conviction. All other military offenses are misdemeanors.

Section 16 authorizes the state to appeal certain decisions in a court-martial and prohibits the state from appealing a finding of not guilty by a court-martial or trial by military judge only. The bill describes the process for the state to file an appeal.

Sections 17 to 29 make changes to existing offenses in the code. **Section 30** creates an offense related to the possession and use of controlled substances.

Section 31 establishes a process by which a member of the military forces may make a complaint against a commanding officer.

Sections 3, 12, 13, and 14 require certain persons already required to be members of the Colorado state bar to be members in good standing.

The bill makes conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 28-3.1-102, **amend**
3 the introductory portion and (4); **repeal** (2); and **add** (2.3), (2.7), (6.5),
4 (10.5), (14.5), (18.4), (18.7), (22), and (23) as follows:

5 **28-3.1-102. Definitions.** As used in this ~~article~~ ARTICLE 3.1,
6 unless the context otherwise requires:

7 (2) ~~"Active state duty" means all duty authorized under the~~
8 ~~constitution and laws of the state of Colorado and all training authorized~~
9 ~~under title 32 of the United States Code.~~

10 (2.3) "CADET" OR "CANDIDATE" MEANS A PERSON WHO IS

1 ENROLLED IN OR ATTENDING A STATE MILITARY ACADEMY, A REGIONAL
2 TRAINING INSTITUTE, OR ANY OTHER FORMAL EDUCATION PROGRAM FOR
3 THE PURPOSE OF BECOMING A COMMISSIONED OR WARRANT OFFICER IN
4 THE STATE MILITARY FORCES.

5 (2.7) "CLASSIFIED INFORMATION" MEANS:

6 (a) ANY INFORMATION OR MATERIAL THAT HAS BEEN DETERMINED
7 BY AN OFFICIAL OF THE UNITED STATES OR ANY STATE PURSUANT TO LAW,
8 EXECUTIVE ORDER, OR REGULATION TO REQUIRE PROTECTION AGAINST
9 UNAUTHORIZED DISCLOSURE FOR REASONS OF NATIONAL OR STATE
10 SECURITY; AND

11 (b) ANY RESTRICTED DATA, AS DEFINED IN SECTION 11 OF THE
12 FEDERAL "ATOMIC ENERGY ACT OF 1954", 42 U.S.C. SEC. 2014 (y).

13 (4) "Commanding officer" ~~includes only~~ MEANS a commissioned
14 officer OR WARRANT OFFICER IN A POSITION OF COMMAND, OR A
15 COMMISSIONED OFFICER IN CHARGE WHEN HE OR SHE IS ADMINISTERING
16 NONJUDICIAL PUNISHMENT PURSUANT TO SECTION 28-3.1-114.

17 (6.5) "DISMISSAL" MEANS A PUNITIVE SEPARATION THAT APPLIES
18 ONLY TO COMMISSIONED OFFICERS, COMMISSIONED WARRANT OFFICERS,
19 CANDIDATES, AND CADETS, AND MAY BE ADJUDGED BY A GENERAL
20 COURT-MARTIAL. A DISMISSAL MAY BE ADJUDGED FOR ANY OFFENSE FOR
21 WHICH A COMMISSIONED OFFICER, COMMISSIONED WARRANT OFFICER, OR
22 CADET HAS BEEN FOUND GUILTY.

23 (10.5) "JUNIOR ENLISTED" MEANS AN ENLISTED PERSON HOLDING
24 THE RANK OF E-1 THROUGH E-4.

25 (14.5) "NONCOMMISSIONED OFFICER" MEANS AN ENLISTED PERSON
26 HOLDING THE RANK OF E-5 THROUGH E-9.

27 (18.4) "SAFEGUARD" MEANS A DETACHMENT, GUARD, OR DETAIL

1 POSTED BY A COMMANDER FOR THE PROTECTION OF PERSONS, PLACES, OR
2 PROPERTY OF THE ENEMY OR OF A NEUTRAL PARTY AFFECTED BY THE
3 RELATIONSHIP OF BELLIGERENT FORCES IN THEIR PROSECUTION OF WAR OR
4 DURING CIRCUMSTANCES AMOUNTING TO A STATE OF BELLIGERENCY,
5 INCLUDING A WRITTEN ORDER LEFT BY A COMMANDER WITH AN ENEMY
6 SUBJECT OR POSTED UPON ENEMY PROPERTY FOR THE PROTECTION OF
7 THAT PERSON OR PROPERTY.

8 (18.7) "STATE ACTIVE DUTY" MEANS ALL DUTY AUTHORIZED
9 UNDER THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO AND
10 ALL TRAINING AUTHORIZED UNDER TITLE 32 OF THE UNITED STATES
11 CODE, AS AMENDED.

12 (22) "UNIT TRAINING ASSEMBLY" MEANS AN AUTHORIZED AND
13 SCHEDULED TRAINING PERIOD OF NOT LESS THAN FOUR HOURS DURATION.
14 UNIT TRAINING ASSEMBLIES ARE AUTHORIZED PURSUANT TO 32 U.S.C.
15 SEC. 502, AS AMENDED, AND MAY BE CONDUCTED WITH OR WITHOUT PAY.

16 (23) "WARRANT OFFICER" MEANS A PERSON WHO HOLDS THE RANK
17 OF WARRANT OFFICER ONE THROUGH CHIEF WARRANT OFFICER FIVE.
18 THESE PERSONS RANK ABOVE ENLISTED PERSONNEL AND BELOW
19 COMMISSIONED OFFICERS.

20 **SECTION 2.** In Colorado Revised Statutes, 28-3.1-105, **amend**
21 (1); and **add** (3) as follows:

22 **28-3.1-105. Territorial applicability of this code.** (1) This code
23 ~~shall apply~~ APPLIES to all persons otherwise subject to this code, EITHER
24 IN TITLE 32 OF THE UNITED STATES CODE, AS AMENDED, OR STATE ACTIVE
25 DUTY STATUS, while they are serving outside the state and while they are
26 going to and returning from such service outside the state in the same
27 manner and to the same extent as if they were serving inside the state.

1 (3) THIS CODE DOES NOT APPLY TO PERSONS SERVING UNDER TITLE
2 10 OF THE UNITED STATES CODE, AS AMENDED.

3 **SECTION 3.** In Colorado Revised Statutes, 28-3.1-106, **amend**
4 (2) as follows:

5 **28-3.1-106. State judge advocate general and judge advocates.**

6 (2) The adjutant general may appoint as many assistant state judge
7 advocates as he or she considers necessary. To be eligible for
8 appointment, assistant state judge advocates must be officers of the state
9 military forces and members IN GOOD STANDING of the bar of the state of
10 Colorado.

11 **SECTION 4.** In Colorado Revised Statutes, 28-3.1-107, **amend**
12 (1) as follows:

13 **28-3.1-107. Apprehension and restraint.** (1) Officers, warrant
14 officers, and enlisted members of the military forces may be placed in
15 arrest by their military superiors upon reasonable belief that an offense in
16 violation of this code has been committed and that the person
17 apprehended committed such offense. An enlisted member may be
18 ordered into arrest or confinement by any commissioned officer by an
19 order, oral or written, delivered in person or through other persons subject
20 to this code or through any person authorized by this code to apprehend
21 persons. A commanding officer may authorize warrant officers or
22 noncommissioned officers to order enlisted members ~~of his or her~~
23 ~~company~~ or subject to his or her authority into arrest or confinement. A
24 commissioned officer or warrant officer may be ordered apprehended or
25 into arrest or confinement only by a commanding officer to whose
26 authority he or she is subject, by an order, oral or written, delivered in
27 person or by another commissioned officer. The authority to order such

1 persons apprehended or into arrest or confinement may not be delegated.
2 No person may be ordered apprehended or into arrest or confinement
3 except for probable cause. This section ~~shall~~ DOES not limit the authority
4 of persons authorized to apprehend offenders to secure the custody of an
5 alleged offender until proper authority may be notified.

6 **SECTION 5.** In Colorado Revised Statutes, 28-3.1-113, **amend**
7 (1) as follows:

8 **28-3.1-113. Delivery of offenders to civil authorities.** (1) Under
9 such regulations as are prescribed under this code, a person subject to this
10 code who is on STATE active ~~state~~ duty who is accused of any offense
11 against civil authority may be delivered, upon request, to the civil
12 authority for trial.

13 **SECTION 6.** In Colorado Revised Statutes, 28-3.1-114, **amend**
14 (1), (2) introductory portion, (2)(a), (2)(b)(I), (2)(b)(II), (2)(b)(IV),
15 (2)(b)(V), and (3); and **add** (2.5), (4.4), and (4.7) as follows:

16 **28-3.1-114. Commanding officer's nonjudicial punishment.**
17 (1) Punishment may be imposed for any offense cognizable by a
18 court-martial upon any member of the state military forces under this
19 section. Under such regulations as the governor may prescribe, limitations
20 may be placed on the powers granted by this section with respect to the
21 kind and amount of punishment authorized and the ~~categories~~ LEVELS of
22 commanding officers and warrant officers exercising command
23 authorized to exercise those powers. If authorized by regulations of the
24 governor, the governor or an officer of general rank in command may
25 delegate his or her powers under this section to a principal assistant. If
26 subject to disciplinary punishment, the accused ~~shall~~ MUST be afforded
27 the opportunity to be represented by defense counsel having the

1 qualifications prescribed under ~~section 28-3.1-102 (14)~~ SECTION
2 28-3.1-102 (10), if available. Otherwise, the accused ~~shall~~ MUST be
3 afforded the opportunity to be represented by any available commissioned
4 officer of his or her choice. The accused may also employ civilian counsel
5 of his or her own choosing at his or her own expense. In all proceedings,
6 the accused is allowed three duty days, or longer on written justification,
7 to reply to the notification of intent to impose punishment under this
8 section.

9 (2) Subject to subsection (1) of this section, any commanding
10 officer may, in addition to or in lieu of admonition or reprimand, impose
11 one or more of the following disciplinary punishments ~~for minor offenses,~~
12 ~~as defined by the governor,~~ without the intervention of a court-martial:

13 (a) Upon an officer of his or her command:

14 (I) Withholding of privileges for not more than two ~~consecutive~~
15 weeks, WHICH NEED NOT BE CONSECUTIVE;

16 (II) Restriction to certain specified limits, with or without
17 suspension from duty, for not more than two ~~consecutive~~ weeks, WHICH
18 NEED NOT BE CONSECUTIVE;

19 (III) If imposed by the governor, the adjutant general, or a
20 commanding officer of the Army or Air National Guard, a fine or
21 forfeiture of pay and allowance of not more than ~~two hundred fifty dollars~~
22 THE AMOUNT OF PAY AND ALLOWANCE RECEIVED FOR TWO UNIT TRAINING
23 ASSEMBLIES OR TWO DAYS OF ANNUAL TRAINING, WHICHEVER IS
24 APPLICABLE ACCORDING TO DUTY STATUS;

25 (IV) AN ADMONITION; OR

26 (V) A REPRIMAND;

27 (b) Upon other military personnel of his or her command:

1 (I) Withholding of privileges for not more than two ~~consecutive~~
2 weeks, WHICH NEED NOT BE CONSECUTIVE;

3 (II) Restriction to certain specified limits, with or without
4 suspension from duty, for not more than two ~~consecutive~~ weeks, WHICH
5 NEED NOT BE CONSECUTIVE;

6 (IV) Reduction to next inferior grade if the grade from which he
7 or she was demoted was established by the command or an equivalent or
8 lower command; OR

9 (V) ~~A fine or forfeiture of pay and allowances of not more than~~
10 ~~fifty dollars for a single offense and of not more than two hundred fifty~~
11 ~~dollars for multiple offenses~~ A FINE OF ANY AMOUNT UP TO THE MAXIMUM
12 PAY AND ALLOWANCES RECEIVED FOR TWO UNIT TRAINING ASSEMBLIES OR
13 TWO DAYS OF ANNUAL TRAINING, WHICHEVER IS APPLICABLE ACCORDING
14 TO DUTY STATUS.

15 (2.5) IF THE COMMANDING OFFICER IS OF FIELD GRADE, GRADE OF
16 O-4 OR RANK OF MAJOR OR ABOVE, HE OR SHE MAY IMPOSE ON AN
17 ENLISTED MEMBER ANY ONE OR A COMBINATION OF THE FOLLOWING
18 DISCIPLINARY PUNISHMENTS WITHOUT THE INTERVENTION OF A
19 COURT-MARTIAL:

20 (a) ANY OF THE PUNISHMENTS STATED IN SUBSECTIONS (2)(b)(I)
21 TO (2)(b)(III) OF THIS SECTION;

22 (b) A FINE OF ANY AMOUNT UP TO THE MAXIMUM PAY AND
23 ALLOWANCES RECEIVED FOR TWO UNIT TRAINING ASSEMBLIES OR TWO
24 DAYS OF ANNUAL TRAINING, WHICHEVER IS APPLICABLE ACCORDING TO
25 DUTY STATUS;

26 (c) REDUCTION TO THE LOWEST OR ANY INTERMEDIATE PAY
27 GRADE, IF THE CURRENT GRADE FROM WHICH HE OR SHE IS DEMOTED IS

1 WITHIN THE PROMOTION AUTHORITY OF THE OFFICER IMPOSING THE
2 REDUCTION OR AN OFFICER SUBORDINATE TO THE ONE IMPOSING THE
3 REDUCTION, BUT ENLISTED MEMBERS IN MILITARY GRADES ABOVE E-4
4 MAY NOT BE REDUCED BY MORE THAN TWO MILITARY GRADES.

5 (3) The governor may, by regulation, place limitations on the
6 powers granted by this section with respect to the kind and amount of
7 punishment authorized and the ~~categories~~ LEVELS of commanding officers
8 AND WARRANT OFFICERS EXERCISING COMMAND authorized to exercise
9 those powers.

10 (4.4) MAXIMUM ALLOWABLE PUNISHMENTS OF WITHHOLDING OF
11 PRIVILEGES, RESTRICTIONS, AND EXTRA DUTIES MAY NOT BE COMBINED TO
12 RUN CONSECUTIVELY.

13 (4.7) THE OFFICER WHO IMPOSES THE PUNISHMENT PURSUANT TO
14 THIS SECTION, OR THE SUCCESSOR IN COMMAND, MAY, AT ANY TIME,
15 SUSPEND, SET ASIDE, MITIGATE, OR REMIT ANY PART OR AMOUNT OF THE
16 PUNISHMENT AND RESTORE ALL RIGHTS, PRIVILEGES, AND PROPERTY
17 AFFECTED. THE OFFICER ALSO MAY:

- 18 (a) MITIGATE REDUCTION IN GRADE TO FORFEITURE OF PAY;
- 19 (b) MITIGATE ARREST IN QUARTERS TO RESTRICTION; OR
- 20 (c) MITIGATE EXTRA DUTIES TO RESTRICTION.

21 **SECTION 7.** In Colorado Revised Statutes, 28-3.1-203, **amend**
22 (1)(a), (1)(b), and (1)(c) as follows:

23 **28-3.1-203. Jurisdiction of general courts-martial.** (1) General
24 courts-martial have jurisdiction to try persons subject to this code for any
25 offense punishable under this code and may adjudge any of the following
26 punishments:

- 27 (a) Confinement for not more than two years, UNLESS OTHERWISE

1 SPECIFIED IN THIS CODE;

2 (b) A fine of ~~not more than one thousand dollars~~; ANY AMOUNT UP
3 TO THE MAXIMUM PAY AND ALLOWANCES RECEIVED FOR EIGHT UNIT
4 TRAINING ASSEMBLIES OR EIGHT DAYS OF ANNUAL TRAINING, WHICHEVER
5 IS APPLICABLE ACCORDING TO DUTY STATUS;

6 (c) Forfeiture of pay and allowances of ~~not more than two hundred~~
7 ~~dollars~~ ANY AMOUNT UP TO THE MAXIMUM PAY RECEIVED FOR EIGHT UNIT
8 TRAINING ASSEMBLIES OR EIGHT DAYS OF ANNUAL TRAINING, WHICHEVER
9 IS APPLICABLE ACCORDING TO DUTY STATUS;

10 **SECTION 8.** In Colorado Revised Statutes, **amend** 28-3.1-204
11 as follows:

12 **28-3.1-204. Jurisdiction of special courts-martial.** Special
13 courts-martial have jurisdiction to try any person subject to this code
14 ~~except officers~~, for any offense punishable under this code. A special
15 court-martial has the same powers of punishment as a general
16 court-martial; except that confinement may not be more than ninety days
17 and the fine or forfeiture of pay and allowances imposed by a special
18 court-martial may not be more than ~~five hundred dollars for a single~~
19 ~~offense~~ THE MAXIMUM PAY AND ALLOWANCES RECEIVED FOR SIX UNIT
20 TRAINING ASSEMBLIES OR SIX DAYS OF ANNUAL TRAINING, WHICHEVER IS
21 APPLICABLE ACCORDING TO DUTY STATUS.

22 **SECTION 9.** In Colorado Revised Statutes, **amend** 28-3.1-205
23 as follows:

24 **28-3.1-205. Jurisdiction of summary courts-martial.**
25 (1) Summary courts-martial have jurisdiction to try any person subject to
26 this code, ~~except officers~~ COMMISSIONED OFFICERS, WARRANT OFFICERS,
27 CADETS, AND CANDIDATES, for any offense made punishable under this

1 code.

2 (2) ~~No person shall be tried by a summary court-martial if, prior~~
3 ~~to trial, he or she objects thereto. If an objection to trial by summary~~
4 ~~court-martial is made by an accused, trial may be ordered by special or~~
5 ~~general court-martial, as appropriate.~~

6 (3) ~~A summary court-martial may sentence an offender to~~
7 ~~confinement for not more than thirty days, to a fine of not more than~~
8 ~~twenty-five dollars for a single offense, to forfeiture of pay and~~
9 ~~allowances of not more than two hundred fifty dollars for a single~~
10 ~~offense, to reduction of an enlisted person to any inferior grade, and to~~
11 ~~any combination of these punishments.~~

12 (4) A SUMMARY COURT-MARTIAL MAY ADJUDGE ANY OF THE
13 FOLLOWING PUNISHMENTS:

14 (a) CONFINEMENT FOR NOT MORE THAN THIRTY DAYS;

15 (b) A FINE OF ANY AMOUNT UP TO THE MAXIMUM PAY RECEIVED
16 FOR FOUR UNIT TRAINING ASSEMBLIES OR FOUR DAYS OF ANNUAL
17 TRAINING, WHICHEVER IS APPLICABLE ACCORDING TO DUTY STATUS;

18 (c) FORFEITURE OF PAY AND ALLOWANCES OF ANY AMOUNT UP TO
19 THE MAXIMUM PAY RECEIVED FOR FOUR UNIT TRAINING ASSEMBLIES OR
20 FOUR DAYS OF ANNUAL TRAINING, WHICHEVER IS APPLICABLE ACCORDING
21 TO DUTY STATUS;

22 (d) REDUCTION OF AN ENLISTED PERSON TO ANY INFERIOR GRADE;

23 OR

24 (e) ANY COMBINATION OF THESE PUNISHMENTS.

25 **SECTION 10.** In Colorado Revised Statutes, **amend** 28-3.1-206
26 as follows:

27 **28-3.1-206. Who may convene general courts-martial.** General

1 courts-martial may be convened by the governor; the adjutant general for
2 the Colorado National Guard; ANY GENERAL OFFICER IN THE POSITION OF
3 the assistant adjutant general for the Colorado Army National Guard; the
4 assistant adjutant general for the Colorado Air National Guard; THE
5 ASSISTANT ADJUTANT GENERAL FOR THE SPACE, CYBER, AND MISSILE
6 DEFENSE FOR THE COLORADO NATIONAL GUARD; THE LAND COMPONENT
7 COMMANDER FOR THE COLORADO ARMY NATIONAL GUARD; or the
8 ~~tactical fighter~~ wing commander FOR THE COLORADO AIR NATIONAL
9 GUARD.

10 **SECTION 11.** In Colorado Revised Statutes, **amend** 28-3.1-207
11 as follows:

12 **28-3.1-207. Who may convene special courts-martial.** The
13 commanding officer of a garrison, fort, post, camp, air base, or other
14 place where members of the military forces are on duty or of a division,
15 brigade, regiment, wing, group, detached battalion, separate squadron, or
16 any group of detached units placed under a command for this purpose
17 may convene special courts-martial. In the Colorado Army National
18 Guard, special courts-martial convening authorities ~~shall include the state~~
19 ~~aviation officer, troop command commander, and artillery brigade~~
20 ~~commander~~ ANY OFFICER WITH THE GRADE OF O-6 OR RANK OF COLONEL
21 SERVING AS THE COMMANDER OF A MAJOR SUBORDINATE COMMAND. In
22 the Colorado Air National Guard, special courts-martial convening
23 authorities ~~shall include the deputy commander for support, the~~
24 ~~detachment one commander, and the tactical control group commander~~
25 GROUP COMMANDERS. Special courts-martial may also be convened by
26 superior authority. When any such commanding officer is an accuser, the
27 court shall be convened by superior authority.

1 **SECTION 12.** In Colorado Revised Statutes, 28-3.1-209, **amend**
2 (4)(b) as follows:

3 **28-3.1-209. Who may serve on courts-martial.** (4) (b) When
4 convening a court-martial, the convening authority shall detail as
5 members thereof those persons as, in his or her opinion, are best qualified
6 for the duty by reason of age, education, training, experience, length of
7 service, and judicial temperament. No member is eligible to serve as a
8 member of a general or special court-martial when he or she is the
9 accuser or a witness for the prosecution or has acted as investigating
10 officer or as counsel in the same case. If within the command of the
11 convening authority there is present and not otherwise disqualified a
12 commissioned officer who is a member IN GOOD STANDING of the bar of
13 this state and of appropriate rank and grade, the convening authority shall
14 MAY appoint him or her as president of a general or special court-martial.
15 ~~Although this requirement shall be binding on the convening authority,~~
16 ~~failure to meet it in any case shall not divest a military court of~~
17 ~~jurisdiction.~~

18 **SECTION 13.** In Colorado Revised Statutes, 28-3.1-210, **amend**
19 (1) as follows:

20 **28-3.1-210. Military judge of a general or special**
21 **court-martial.** (1) (a) The authority convening a general or special
22 court-martial shall request the state judge advocate general to detail as
23 military judge thereof a commissioned officer who is a member IN GOOD
24 STANDING of the bar of this state. No person is eligible to act as military
25 judge in a case if he or she is the accuser or witness for the prosecution
26 or has acted as investigating officer or as counsel in the same case.

27 (b) A MILITARY JUDGE MAY BE DETAILED TO A COURT-MARTIAL

1 IRRESPECTIVE OF MILITARY BRANCH WHEN PERMITTED BY THE STATE
2 JUDGE ADVOCATE.

3 **SECTION 14.** In Colorado Revised Statutes, 28-3.1-211, **amend**
4 (2) as follows:

5 **28-3.1-211. Detail of trial and defense counsel.** (2) Trial
6 counsel and defense counsel for a general or special court-martial ~~shall~~
7 MUST be members IN GOOD STANDING of the bar of this state AND JUDGE
8 ADVOCATES APPOINTED PURSUANT TO SECTION 28-3.1-106 (2).

9 **SECTION 15.** In Colorado Revised Statutes, **add** 28-3.1-402.5
10 as follows:

11 **28-3.1-402.5. Classification of offenses.** A CONVICTION BY
12 GENERAL COURT-MARTIAL OF ANY MILITARY OFFENSE FOR WHICH AN
13 ACCUSED MAY RECEIVE A SENTENCE OF CONFINEMENT IS A FELONY
14 OFFENSE. EXCEPT FOR CONVICTIONS BY A SUMMARY COURT-MARTIAL, ALL
15 OTHER MILITARY OFFENSES ARE MISDEMEANORS. ANY CONVICTION BY A
16 SUMMARY COURT-MARTIAL IS NOT A CRIMINAL CONVICTION.

17 **SECTION 16.** In Colorado Revised Statutes, **add** 28-3.1-421 as
18 follows:

19 **28-3.1-421. Appeal by the state.** (1) IN A TRIAL BY
20 COURT-MARTIAL OR IN A TRIAL BY MILITARY JUDGE ONLY PURSUANT TO
21 SECTION 28-3.1-316 (4) IN WHICH A PUNITIVE DISCHARGE MAY BE
22 ADJUDGED, THE STATE MAY NOT APPEAL A FINDING OF NOT GUILTY WITH
23 RESPECT TO THE CHARGE OR SPECIFICATION. IN A TRIAL BY
24 COURT-MARTIAL IN WHICH A PUNITIVE DISCHARGE MAY BE ADJUDGED, THE
25 STATE MAY APPEAL THE FOLLOWING:

26 (a) AN ORDER OR RULING OF THE MILITARY JUDGE THAT
27 TERMINATES THE PROCEEDINGS WITH RESPECT TO A CHARGE OR

1 SPECIFICATION;

2 (b) AN ORDER OR RULING THAT EXCLUDES EVIDENCE THAT IS
3 SUBSTANTIAL PROOF OF A FACT MATERIAL IN THE PROCEEDING;

4 (c) AN ORDER OR RULING THAT DIRECTS THE DISCLOSURE OF
5 CLASSIFIED INFORMATION;

6 (d) AN ORDER OR RULING THAT IMPOSES SANCTIONS FOR
7 NONDISCLOSURE OF CLASSIFIED INFORMATION;

8 (e) A REFUSAL OF THE MILITARY JUDGE TO ISSUE A PROTECTIVE
9 ORDER SOUGHT BY THE STATE TO PREVENT THE DISCLOSURE OF CLASSIFIED
10 INFORMATION; OR

11 (f) A REFUSAL BY THE MILITARY JUDGE TO ENFORCE AN ORDER
12 DESCRIBED IN SUBSECTION (1)(e) OF THIS SECTION THAT HAS PREVIOUSLY
13 BEEN ISSUED BY THE APPROPRIATE AUTHORITY.

14 (2) AN APPEAL OF AN ORDER OR RULING MAY NOT BE TAKEN
15 UNLESS THE TRIAL COUNSEL PROVIDES THE MILITARY JUDGE WITH
16 WRITTEN NOTICE OF APPEAL FROM THE ORDER OR RULING WITHIN
17 SEVENTY-TWO HOURS OF THE ORDER OR RULING. SUCH NOTICE MUST
18 INCLUDE A CERTIFICATION BY THE TRIAL COUNSEL THAT THE APPEAL IS
19 NOT TAKEN FOR THE PURPOSE OF DELAY AND, IF THE ORDER OR RULING
20 APPEALED IS ONE THAT EXCLUDES EVIDENCE, THAT THE EVIDENCE
21 EXCLUDED IS SUBSTANTIAL PROOF OF A FACT MATERIAL IN THE
22 PROCEEDING.

23 (3) AN APPEAL UNDER THIS ARTICLE 3.1 MUST BE DILIGENTLY
24 PROSECUTED AS PROVIDED BY LAW.

25 (4) AN APPEAL UNDER THIS ARTICLE 3.1 MUST BE FORWARDED TO
26 THE COURT PRESCRIBED IN THIS CODE. IN RULING ON AN APPEAL UNDER
27 THIS ARTICLE 3.1, THAT COURT MAY ACT ONLY WITH RESPECT TO MATTERS

1 OF LAW.

2 (5) ANY PERIOD OF DELAY RESULTING FROM AN APPEAL UNDER
3 THIS ARTICLE 3.1 MUST BE EXCLUDED IN DECIDING ANY ISSUE REGARDING
4 DENIAL OF A SPEEDY TRIAL UNLESS AN APPROPRIATE AUTHORITY
5 DETERMINES THAT THE APPEAL WAS FILED SOLELY FOR THE PURPOSE OF
6 DELAY WITH THE KNOWLEDGE THAT IT WAS TOTALLY FRIVOLOUS AND
7 WITHOUT MERIT.

8 **SECTION 17.** In Colorado Revised Statutes, **amend** 28-3.1-501
9 as follows:

10 **28-3.1-501. Principal defined.** A "principal", as used in this code,
11 means any person punishable under this code who commits an offense
12 punishable by this code or intentionally aids, abets, counsels, commands,
13 SOLICITS, or procures its commission or intentionally causes an act to be
14 done which if directly performed by him or her would be punishable by
15 this code.

16 **SECTION 18.** In Colorado Revised Statutes, 28-3.1-507, **amend**
17 (1)(a) as follows:

18 **28-3.1-507. Fraudulent enlistment, appointment, or**
19 **separation.** (1) Any person shall be punished as a court-martial directs
20 if he or she:

21 (a) Procures his or her own enlistment or appointment in the state
22 military forces by knowingly false representation or deliberate
23 concealment as to his or her qualifications OR MEDICAL FITNESS for that
24 enlistment or appointment and receives pay or allowances thereunder; or

25 **SECTION 19.** In Colorado Revised Statutes, **amend** 28-3.1-511
26 as follows:

27 **28-3.1-511. Missing movement.** Any person subject to this code

1 who, through neglect or design, misses the movement of a ship, aircraft,
2 or unit with which he or she is required in the course of duty to move
3 ~~shall~~ MUST be punished as a court-martial directs.

4 **SECTION 20.** In Colorado Revised Statutes, 28-3.1-514, **amend**
5 (1) introductory portion as follows:

6 **28-3.1-514. Assaulting or willfully disobeying superior**
7 **commissioned officer.** (1) Any person subject to this code shall be
8 punished BY CONFINEMENT OF NOT MORE THAN TEN YEARS OR SUCH
9 OTHER PUNISHMENT as a court-martial directs if he or she:

10 **SECTION 21.** In Colorado Revised Statutes, **amend** 28-3.1-516
11 as follows:

12 **28-3.1-516. Failure to obey order or regulation.** Any person
13 subject to this code who violates or fails to obey any lawful general order
14 or regulation, including an order to report for state active duty, OR IS IN
15 DERELICT IN THE PERFORMANCE OF HIS OR HER DUTIES shall be punished
16 as a court-martial directs.

17 **SECTION 22.** In Colorado Revised Statutes, **amend** 28-3.1-517
18 as follows:

19 **28-3.1-517. Cruelty and maltreatment of inferiors.** Any person
20 subject to this code who is guilty of cruelty toward, or oppression or
21 maltreatment of, any person subject to his or her orders ~~shall~~ MUST be
22 punished as a court-martial directs.

23 **SECTION 23.** In Colorado Revised Statutes, 28-3.1-518, **amend**
24 (4) as follows:

25 **28-3.1-518. Mutiny and sedition.** (4) Any person who is found
26 guilty of attempted mutiny, sedition, or failure to suppress or report a
27 mutiny or sedition shall be punished BY CONFINEMENT OF NOT MORE THAN

1 TEN YEARS OR SUCH OTHER PUNISHMENT as a court-martial directs.

2 **SECTION 24.** In Colorado Revised Statutes, 28-3.1-523, **amend**

3 (1) introductory portion as follows:

4 **28-3.1-523. Misbehavior before the enemy or any hostile force.**

5 (1) Any person subject to this code shall be punished BY CONFINEMENT
6 OF NOT MORE THAN TEN YEARS OR SUCH OTHER PUNISHMENT as a
7 court-martial directs when he or she, before or in the presence of the
8 enemy or any hostile force:

9 **SECTION 25.** In Colorado Revised Statutes, **amend** 28-3.1-525
10 as follows:

11 **28-3.1-525. Improper use of countersign.** Any person subject to
12 this code who discloses the parole or countersign to any person not
13 entitled to receive it, or who gives to another who is entitled to receive
14 and use the parole or countersign a different parole or countersign from
15 that which, to his or her knowledge, he or she was authorized and
16 required to give, shall be punished BY CONFINEMENT OF NOT MORE THAN
17 TEN YEARS OR SUCH OTHER PUNISHMENT as a court-martial directs.

18 **SECTION 26.** In Colorado Revised Statutes, 28-3.1-527, **amend**
19 (2)(b) as follows:

20 **28-3.1-527. Captured or abandoned property.** (2) Any person
21 subject to this code shall be punished as a court-martial directs if he or
22 she:

23 (b) Buys, sells, trades, or in any way deals in or disposes of
24 captured, STOLEN, or abandoned property whereby he or she receives or
25 expects any profit, benefit, or advantage to himself or herself or another
26 directly or indirectly connected with himself or herself; or

27 **SECTION 27.** In Colorado Revised Statutes, **amend** 28-3.1-533

1 as follows:

2 **28-3.1-533. Driving while impaired - reckless driving.** Any
3 person subject to this code who operates any vehicle while ~~drunk~~
4 IMPAIRED BY ALCOHOL, MARIJUANA, DRUGS, OR INTOXICANTS OF ANY
5 KIND, OR ANY COMBINATION THEREOF, or in a reckless or wanton manner
6 shall be punished as a court-martial directs.

7 **SECTION 28.** In Colorado Revised Statutes, **amend** 28-3.1-534
8 as follows:

9 **28-3.1-534. Impaired on duty - leaving or sleeping on post.**
10 Any person subject to this code who is found ~~drunk~~ IMPAIRED BY
11 ALCOHOL, MARIJUANA, DRUGS, OR INTOXICANTS OF ANY KIND, OR ANY
12 COMBINATION THEREOF, on duty or sleeping upon his or her post or who
13 leaves his or her post before he or she is regularly relieved shall be
14 punished as a court-martial directs.

15 **SECTION 29.** In Colorado Revised Statutes, **amend** 28-3.1-548
16 as follows:

17 **28-3.1-548. Conduct unbecoming an officer.** Any commissioned
18 officer, CADET, OR CANDIDATE who is convicted of conduct unbecoming
19 an officer and a gentleman shall be punished as a court-martial directs.

20 **SECTION 30.** In Colorado Revised Statutes, **add** 28-3.1-550 as
21 follows:

22 **28-3.1-550. Controlled substances - wrongful use - possession**
23 **- transfer.** (1) ANY PERSON SUBJECT TO THIS CODE WHO WRONGFULLY
24 USES, POSSESSES, MANUFACTURES, DISTRIBUTES, IMPORTS INTO THE
25 CUSTOMS TERRITORY OF THE UNITED STATES, EXPORTS FROM THE UNITED
26 STATES, OR INTRODUCES INTO AN INSTALLATION, VESSEL, VEHICLE, OR
27 AIRCRAFT USED BY OR UNDER THE CONTROL OF THE ARMED FORCES OF THE

1 UNITED STATES OR OF THE MILITARY FORCES OF ANY STATE A SUBSTANCE
2 DESCRIBED IN SUBSECTION (2) OF THIS SECTION MUST BE PUNISHED AS A
3 COURT-MARTIAL MAY DIRECT.

4 (2) THE SUBSTANCES REFERRED TO IN SUBSECTION (1) OF THIS
5 SECTION ARE THE FOLLOWING:

6 (a) OPIUM, HEROIN, COCAINE, AMPHETAMINE, LYSERGIC ACID
7 DIETHYLAMIDE, METHAMPHETAMINE, PHENCYCLIDINE, BARBITURIC ACID,
8 AND MARIJUANA AND ANY COMPOUND OR DERIVATIVE OF ANY SUCH
9 SUBSTANCE;

10 (b) ANY SUBSTANCE NOT SPECIFIED IN SUBSECTION (2)(a) OF THIS
11 SECTION THAT IS LISTED ON A SCHEDULE OF CONTROLLED SUBSTANCES
12 PRESCRIBED BY THE PRESIDENT OF THE UNITED STATES FOR THE PURPOSES
13 OF THE FEDERAL "UNIFORM CODE OF MILITARY JUSTICE", 10 U.S.C. SEC.
14 801 ET SEQ., AS AMENDED; AND

15 (c) ANY OTHER SUBSTANCE THAT IS LISTED IN SCHEDULES I
16 THROUGH V OF ARTICLE 202 OF THE FEDERAL "CONTROLLED SUBSTANCES
17 ACT", 21 U.S.C. SEC. 812, AS AMENDED.

18 **SECTION 31.** In Colorado Revised Statutes, **repeal and reenact,**
19 **with amendments,** 28-3.1-604 as follows:

20 **28-3.1-604. Complaints of wrongs.** ANY MEMBER OF THE STATE
21 MILITARY FORCES WHO BELIEVES HIMSELF OR HERSELF WRONGED BY A
22 COMMANDING OFFICER, AND WHO, UPON DUE APPLICATION TO THAT
23 COMMANDING OFFICER, IS REFUSED REDRESS, MAY COMPLAIN TO ANY
24 SUPERIOR COMMISSIONED OFFICER, WHO SHALL FORWARD THE COMPLAINT
25 TO THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION
26 OVER THE OFFICER AGAINST WHOM IT IS MADE. THE OFFICER EXERCISING
27 GENERAL COURT-MARTIAL JURISDICTION SHALL EXAMINE INTO THE

1 COMPLAINT AND TAKE PROPER MEASURES FOR REDRESSING THE WRONG
2 COMPLAINED OF, AND SHALL, AS SOON AS POSSIBLE, SEND TO THE
3 ADJUTANT GENERAL A TRUE STATEMENT OF THAT COMPLAINT, WITH THE
4 PROCEEDINGS HAD THEREON.

5 **SECTION 32. Potential appropriation.** Pursuant to section
6 2-2-703, C.R.S., any bill that results in a net increase in periods of
7 imprisonment in state correctional facilities must include an appropriation
8 of money that is sufficient to cover any increased capital construction, any
9 operational costs, and increased parole costs that are the result of the bill
10 for the department of corrections in each of the first five years following
11 the effective date of the bill. Because this act may increase periods of
12 imprisonment, this act may require a five-year appropriation.

13 **SECTION 33. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.