

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 18-135

BY SENATOR(S) Gardner, Crowder, Kagan, Lambert;
also REPRESENTATIVE(S) Carver and Lee, Exum, Gray, Hansen,
Melton, Michaelson Jenet, Rosenthal, Saine, Valdez, Wist, Young.

CONCERNING UPDATES TO THE COLORADO CODE OF MILITARY JUSTICE.

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

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

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

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

(2.3) "CADET" OR "CANDIDATE" MEANS A PERSON WHO IS ENROLLED IN OR ATTENDING A STATE MILITARY ACADEMY, A REGIONAL TRAINING INSTITUTE, OR ANY OTHER FORMAL EDUCATION PROGRAM FOR THE PURPOSE OF BECOMING A COMMISSIONED OR WARRANT OFFICER IN THE STATE

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

MILITARY FORCES.

(2.7) "CLASSIFIED INFORMATION" MEANS:

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

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

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

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

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

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

(18.4) "SAFEGUARD" MEANS A DETACHMENT, GUARD, OR DETAIL POSTED BY A COMMANDER FOR THE PROTECTION OF PERSONS, PLACES, OR PROPERTY OF THE ENEMY OR OF A NEUTRAL PARTY AFFECTED BY THE RELATIONSHIP OF BELLIGERENT FORCES IN THEIR PROSECUTION OF WAR OR DURING CIRCUMSTANCES AMOUNTING TO A STATE OF BELLIGERENCY, INCLUDING A WRITTEN ORDER LEFT BY A COMMANDER WITH AN ENEMY SUBJECT OR POSTED UPON ENEMY PROPERTY FOR THE PROTECTION OF THAT PERSON OR PROPERTY.

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

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

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

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

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

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

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

28-3.1-106. State judge advocate general and judge advocates. (2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the state military forces and members IN GOOD STANDING of the bar of the state of Colorado.

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

28-3.1-107. Apprehension and restraint. (1) Officers, warrant officers, and enlisted members of the military forces may be placed in arrest by their military superiors upon reasonable belief that an offense in violation of this code has been committed and that the person apprehended committed such offense. 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. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members ~~of his or her company or~~ subject to his or her authority into arrest or confinement. A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he or she is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated. No person may be ordered apprehended or into arrest or confinement except for probable cause. This section ~~shall~~ DOES not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

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

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

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

28-3.1-114. Commanding officer's nonjudicial punishment. (1) Punishment may be imposed for any offense cognizable by a court-martial upon any member of the state military forces under this section. Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized and the ~~categories~~ LEVELS of commanding officers and warrant officers exercising command authorized

to exercise those powers. If authorized by regulations of the governor, the governor or an officer of general rank in command may delegate his or her powers under this section to a principal assistant. If subject to disciplinary punishment, the accused ~~shall~~ MUST be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under ~~section 28-3.1-102 (14)~~ SECTION 28-3.1-102 (10), if available. Otherwise, the accused ~~shall~~ MUST be afforded the opportunity to be represented by any available commissioned officer of his or her choice. The accused may also employ civilian counsel of his or her own choosing at his or her own expense. In all proceedings, the accused is allowed three duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this section.

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

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

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

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

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

(IV) AN ADMONITION; OR

(V) A REPRIMAND;

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

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

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

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

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

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

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

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

(c) REDUCTION TO THE LOWEST OR ANY INTERMEDIATE PAY GRADE, IF THE CURRENT GRADE FROM WHICH HE OR SHE IS DEMOTED IS WITHIN THE PROMOTION AUTHORITY OF THE OFFICER IMPOSING THE REDUCTION OR AN OFFICER SUBORDINATE TO THE ONE IMPOSING THE REDUCTION, BUT ENLISTED MEMBERS IN MILITARY GRADES ABOVE E-4 MAY NOT BE REDUCED BY MORE THAN TWO MILITARY GRADES.

(3) The governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment

authorized and the ~~categories~~ LEVELS of commanding officers AND WARRANT OFFICERS EXERCISING COMMAND authorized to exercise those powers.

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

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

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

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

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

(a) Confinement for not more than two years, UNLESS OTHERWISE SPECIFIED IN THIS CODE;

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

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

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

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

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

28-3.1-205. Jurisdiction of summary courts-martial.

(1) Summary courts-martial have jurisdiction to try any person subject to this code, ~~except officers~~ COMMISSIONED OFFICERS, WARRANT OFFICERS, CADETS, AND CANDIDATES, for any offense made punishable under this code.

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

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

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

(a) CONFINEMENT FOR NOT MORE THAN THIRTY DAYS;

(b) A FINE OF ANY AMOUNT UP TO THE MAXIMUM PAY RECEIVED FOR

FOUR UNIT TRAINING ASSEMBLIES OR FOUR DAYS OF ANNUAL TRAINING, WHICHEVER IS APPLICABLE ACCORDING TO DUTY STATUS;

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

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

(e) ANY COMBINATION OF THESE PUNISHMENTS.

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

28-3.1-206. Who may convene general courts-martial. General courts-martial may be convened by the governor; the adjutant general for the Colorado National Guard; ANY GENERAL OFFICER IN THE POSITION OF the assistant adjutant general for the Colorado Army National Guard; the assistant adjutant general for the Colorado Air National Guard; 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 ~~tactical fighter~~ fighter wing commander FOR THE COLORADO AIR NATIONAL GUARD.

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

28-3.1-207. Who may convene special courts-martial. The commanding officer of a garrison, fort, post, camp, air base, or other place where members of the military forces are on duty or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or any group of detached units placed under a command for this purpose may convene special courts-martial. In the Colorado Army National Guard, special courts-martial convening authorities ~~shall include the state aviation officer, troop command commander, and artillery brigade commander~~ ANY OFFICER WITH THE GRADE OF O-6 OR RANK OF COLONEL SERVING AS THE COMMANDER OF A MAJOR SUBORDINATE COMMAND. In the Colorado Air National Guard, special courts-martial convening authorities ~~shall include~~

~~the deputy commander for support, the detachment one commander, and the tactical control group commander~~ GROUP COMMANDERS. Special courts-martial may also be convened by superior authority. When any such commanding officer is an accuser, the court shall be convened by superior authority.

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

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

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

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

(b) A MILITARY JUDGE MAY BE DETAILED TO A COURT-MARTIAL IRRESPECTIVE OF MILITARY BRANCH WHEN PERMITTED BY THE STATE JUDGE ADVOCATE.

SECTION 14. In Colorado Revised Statutes, 28-3.1-211, **amend**

(2) as follows:

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

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

28-3.1-402.5. Classification of offenses. A CONVICTION BY GENERAL COURT-MARTIAL OF ANY MILITARY OFFENSE FOR WHICH AN ACCUSED RECEIVED A SENTENCE GREATER THAN ONE YEAR OF CONFINEMENT OR A CONVICTION BY A GENERAL COURT-MARTIAL OF ANY OFFENSE THAT, AT THE TIME THE OFFENSE WAS COMMITTED, CARRIES A MAXIMUM TERM OF CONFINEMENT OF THREE YEARS OR GREATER AS SET FORTH UNDER 10 U.S.C. SEC. 877 TO 10 U.S.C. SEC. 934, AS AMENDED, OR PURSUANT TO AN EXECUTIVE ORDER, IS A FELONY OFFENSE. EXCEPT FOR CONVICTIONS BY A SUMMARY COURT-MARTIAL, ALL OTHER MILITARY OFFENSES ARE MISDEMEANORS. ANY CONVICTION BY A SPECIAL COURT-MARTIAL IS A MISDEMEANOR. ANY CONVICTION BY A SUMMARY COURT-MARTIAL IS NOT A CRIMINAL CONVICTION.

SECTION 16. In Colorado Revised Statutes, 28-3.1-403, **add** (6) as follows:

28-3.1-403. Effective date of sentences. (6) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, UNLESS WAIVED BY THE ACCUSED, AN OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION SHALL DEFER SERVICE OF A SENTENCE TO CONFINEMENT PURSUANT TO SECTION 28-3.1-205 (4)(a), PENDING THE CONCLUSION OF ANY APPEAL FOLLOWING REVIEW AND APPROVAL PURSUANT TO SECTION 28-3.1-420.

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

28-3.1-421. Appeal by the state. (1) IN A TRIAL BY COURT-MARTIAL OR IN A TRIAL BY MILITARY JUDGE ONLY PURSUANT TO SECTION 28-3.1-316 (4) IN WHICH A PUNITIVE DISCHARGE MAY BE ADJUDGED, THE STATE MAY NOT APPEAL A FINDING OF NOT GUILTY WITH

RESPECT TO THE CHARGE OR SPECIFICATION. IN A TRIAL BY COURT-MARTIAL IN WHICH A PUNITIVE DISCHARGE MAY BE ADJUDGED, THE STATE MAY APPEAL THE FOLLOWING:

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

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

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

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

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

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

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

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

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

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

SECTION 18. In Colorado Revised Statutes, **amend** 28-3.1-501 as follows:

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

SECTION 19. In Colorado Revised Statutes, 28-3.1-507, **amend** (1)(a) as follows:

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

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

SECTION 20. In Colorado Revised Statutes, **amend** 28-3.1-511 as follows:

28-3.1-511. Missing movement. Any person subject to this code who, through neglect or design, misses the movement of a ship, aircraft, or unit with which he or she is required in the course of duty to move ~~shall~~ MUST be punished as a court-martial directs.

SECTION 21. In Colorado Revised Statutes, 28-3.1-514, **amend** (1) introductory portion as follows:

28-3.1-514. Assaulting or willfully disobeying superior commissioned officer. (1) Any person subject to this code shall be

punished BY CONFINEMENT OF NOT MORE THAN TEN YEARS OR SUCH OTHER PUNISHMENT as a court-martial directs if he or she:

SECTION 22. In Colorado Revised Statutes, **amend** 28-3.1-516 as follows:

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

SECTION 23. In Colorado Revised Statutes, **amend** 28-3.1-517 as follows:

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

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

28-3.1-518. Mutiny and sedition. (4) Any person who is found guilty of attempted mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished BY CONFINEMENT OF NOT MORE THAN TEN YEARS OR SUCH OTHER PUNISHMENT as a court-martial directs.

SECTION 25. In Colorado Revised Statutes, 28-3.1-523, **amend** (1) introductory portion as follows:

28-3.1-523. Misbehavior before the enemy or any hostile force. (1) Any person subject to this code shall be punished BY CONFINEMENT OF NOT MORE THAN TEN YEARS OR SUCH OTHER PUNISHMENT as a court-martial directs when he or she, before or in the presence of the enemy or any hostile force:

SECTION 26. In Colorado Revised Statutes, **amend** 28-3.1-525 as follows:

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

SECTION 27. In Colorado Revised Statutes, 28-3.1-527, **amend** (2)(b) as follows:

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

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

SECTION 28. In Colorado Revised Statutes, **amend** 28-3.1-533 as follows:

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

SECTION 29. In Colorado Revised Statutes, **amend** 28-3.1-534 as follows:

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

SECTION 30. In Colorado Revised Statutes, **amend** 28-3.1-548 as follows:

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

SECTION 31. In Colorado Revised Statutes, **add** 28-3.1-550 as follows:

28-3.1-550. Controlled substances - wrongful use - possession - transfer. (1) ANY PERSON SUBJECT TO THIS CODE WHO WRONGFULLY USES, POSSESSES, MANUFACTURES, DISTRIBUTES, IMPORTS INTO THE CUSTOMS TERRITORY OF THE UNITED STATES, EXPORTS FROM THE UNITED STATES, OR INTRODUCES INTO AN INSTALLATION, VESSEL, VEHICLE, OR AIRCRAFT USED BY OR UNDER THE CONTROL OF THE ARMED FORCES OF THE UNITED STATES OR OF THE MILITARY FORCES OF ANY STATE A SUBSTANCE DESCRIBED IN SUBSECTION (2) OF THIS SECTION MUST BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

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

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

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

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

SECTION 32. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 28-3.1-604 as follows:

28-3.1-604. Complaints of wrongs. ANY MEMBER OF THE STATE MILITARY FORCES WHO BELIEVES HIMSELF OR HERSELF WRONGED BY A

COMMANDING OFFICER, AND WHO, UPON DUE APPLICATION TO THAT COMMANDING OFFICER, IS REFUSED REDRESS, MAY COMPLAIN TO ANY SUPERIOR COMMISSIONED OFFICER, WHO SHALL FORWARD THE COMPLAINT TO THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION OVER THE OFFICER AGAINST WHOM IT IS MADE. THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION SHALL EXAMINE INTO THE COMPLAINT AND TAKE PROPER MEASURES FOR REDRESSING THE WRONG COMPLAINED OF, AND SHALL, AS SOON AS POSSIBLE, SEND TO THE ADJUTANT GENERAL A TRUE STATEMENT OF THAT COMPLAINT, WITH THE PROCEEDINGS HAD THEREON.

SECTION 33. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO