

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 138

Short Title: Military Justice Code.

(Public)

Sponsors: Senators Staton, Richardson, Raynor; Johnson of Wake, Sherron, Speed, Tally, and Winner.

Referred to: Veteran Affairs, Law Enforcement & Senior Citizens.

February 9, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT A CODE OF MILITARY JUSTICE FOR THE NORTH
3 CAROLINA NATIONAL GUARD.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to
6 read:

7 **“CHAPTER 127C.**
8 **MILITARY JUSTICE CODE.**
9 **ARTICLE 1.**
10 **GENERAL PROVISIONS.**

11 **“§ 127C-1. Definitions for this Chapter.**

12 As used in this Chapter, unless the context required otherwise:

- 13 (1) ‘Accuser’ means a person who signs and swears to charges, any person
14 who directs that charges nominally be signed and sworn to by another,
15 or any other person who has an interest other than an official interest in
16 the prosecution of the accused.
17 (2) ‘Active State duty’ means full-time duty, including annual training, in
18 the active military service of the State under an order of the Governor
19 issued under authority vested in the Governor by law, and includes
20 travel to and from such duty. The term ‘active State duty’ also
21 includes all personnel of the North Carolina National Guard
22 performing full-time military duty for periods of 180 days or more
23 under Title 32 U.S.C. 502 (f).

- 1 (3) 'Commanding officer' includes only commissioned officers.
2 (4) 'Commissioned officer' includes a commissioned warrant officer.
3 (5) 'Component' includes the Army National Guard, the Air National
4 Guard and other military forces organized under the laws of this State.
5 (6) 'Convening authority' includes, in addition to the person who
6 convened the court, a commissioned officer commanding for the time
7 being, or a successor in command.
8 (7) 'Duty status other than active State duty' means and includes any
9 periods of drill and such other training or service, other than active
10 State duty, as may be required under State or federal laws, regulations
11 or orders, and includes travel to and from such duty.
12 (8) 'Enlisted member' means a person in an enlisted grade.
13 (9) 'Grade' means a step or degree, in a graduated scale of office or
14 military rank, that is established and designated as a grade by law or
15 regulation.
16 (10) 'Judge advocate' means the State Judge Advocate or an Assistant State
17 Judge Advocate.
18 (11) 'May' is used in a permissive sense. However, the words 'no person...'
19 mean that no person is required, authorized or permitted to do the act
20 prescribed.
21 (12) 'Military' refers to any or all of the armed forces.
22 (13) 'Military court' means a court-martial, a court of inquiry or a provost
23 court.
24 (14) 'Military judge' means an official of a general or special court-martial
25 detailed in accordance with G.S. 127C-29.
26 (15) 'Officer' means commissioned or warrant officer.
27 (16) 'Organized militia' means the National Guard of the State, as defined
28 in Section 101(3) of Title 32, United States Code, and the North
29 Carolina National Guard Reserve.
30 (17) 'Rank' means the order of precedence among members of the armed
31 forces.
32 (18) 'Record', when used in connection with the proceedings of a court-
33 martial, means:
34 a. An official written transcript, written summary or other writing
35 relating to the proceedings; or
36 b. An official audiotape, videotape or similar material from which
37 sound or sound and visual images depicting the proceedings
38 may be reproduced.
39 (19) 'Shall' is used in an imperative sense.
40 (20) 'State Judge Advocate' means the commissioned officer responsible
41 for supervising the administration of the military justice in the
42 organized militia.
43 (21) 'Superior commissioned officer' means a commissioned officer
44 superior in rank or command.

1 **"§ 127C-2. Persons subject to this Chapter.**

2 The following persons who are not in federal service are subject to this Chapter:

3 (1) Members of the organized militia.

4 (2) All other persons lawfully ordered to duty in or with the organized
5 militia, from the dates they are required by the terms of the order of
6 other directive to obey the same.

7 **"§ 127C-3. Jurisdiction.**

8 (a) Personal Jurisdiction.

9 (1) Each person discharged from the organized militia who is later
10 charged with having fraudulently obtained the discharge of the person
11 is, subject to G.S. 127C-46, subject to trial by court-martial on that
12 charge and is after apprehension subject to this Chapter while in the
13 custody of the military for that trial. Upon conviction of that charge
14 the person is subject to trial by court-martial for all offenses under this
15 Chapter submitted before the fraudulent discharge.

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

19 (b) Territorial Jurisdiction.

20 (1) This Chapter applies throughout the State. It also applies to all persons
21 otherwise subject, and while they are going to and returning from such
22 service outside the State, in the same manner and to the same extent as
23 if they were serving inside the State.

24 (2) Courts-martial and courts of inquiry may be convened and held in
25 units of the organized militia while those units are serving outside the
26 State with the same jurisdiction and powers as to persons subject to
27 this Chapter as if the proceedings were held inside the State; and
28 offenses committed outside the State may be tried and punished either
29 inside or outside the State.

30 **"§ 127C-4. Dismissal of commissioned officer.**

31 (a) If any commissioned officer dismissed by order of the Governor makes a
32 written application for trial by court-martial, setting forth under oath that the officer has
33 been wrongfully dismissed, the Governor, as soon as practicable shall convene a general
34 court-martial to try that officer on the charges on which the officer was dismissed. A
35 court-martial so convened has jurisdiction to try the dismissed officer on those charges,
36 and the officer shall be considered to have waived the right to plead any statute of
37 limitations applicable to any offense with which the officer is charged. The court-
38 martial may, as part of its sentence, adjudged, as finally approved or affirmed, does not
39 include dismissal, the Adjutant General shall substitute for the dismissal ordered by the
40 Governor a form of discharge authorized for administrative issue.

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

1 (c) If a discharge is substituted for a dismissal under this Chapter, the
2 Governor alone may reappoint the officer to such commissioned grade and with such
3 rank as, in the opinion of the Governor, that former officer would have attained had the
4 officer not been dismissed. The reappointment of such a former officer may be made
5 only if a vacancy is available under applicable tables of organization. All time between
6 the dismissal and the reappointment shall be considered as actual service for all
7 purposes.

8 (d) If an officer is discharged from the organized militia by administrative
9 action or by board proceedings under law, or is dropped from the rolls by order of the
10 Governor, the officer has no right to trial under this section.

11 **"§ 127C-5. Judge advocates and legal officers.**

12 (a) The Governor, on the recommendation of the Adjutant General, shall appoint
13 an officer of the organized militia as State Judge Advocate. To be eligible for
14 appointment, an officer must be a member of the bar of the highest court of the State
15 and must have been a member of the State Bar of North Carolina for at least five years.

16 (b) The Adjutant General may appoint as many Assistant State Judge
17 Advocates as the Adjutant General deems necessary, which Assistant State Judge
18 Advocates shall be officers of the organized militia and members of the State Bar of
19 North Carolina.

20 (c) The State Judge Advocate or assistants shall make frequent inspections in
21 the field for supervision of the administration of military justice.

22 (d) Convening authorities shall at all times communicate directly with their
23 staff judge advocate or legal officers in matters relating to the administration of military
24 justice. The staff judge advocate or legal officer of any command is entitled to
25 communicate directly with the staff judge advocate or legal officer of a superior or
26 subordinate command, or with the State Judge Advocate.

27 (e) No person who has acted as member, military judge, trial counsel, assistant
28 trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who
29 has been a witness for either the prosecution or defense in any case, may later act as
30 staff judge advocate or legal officer to any reviewing authority on the same case.

31 **ARTICLE 2.**

32 **APPREHENSION AND RESTRAINT.**

33 **"§ 127C-6. 'Apprehension' defined; quelling of disorders.**

34 (a) 'Apprehension' is the taking of a person into custody.

35 (b) Any person authorized by this Chapter, or by military department
36 regulations issued pursuant to this Chapter, any marshal of a court-martial appointed
37 pursuant to the provisions of this Chapter, and any peace officer authorized to
38 apprehend persons subject to this Chapter by law may do so upon reasonable belief that
39 an offense has been committed and that the person apprehended committed it.

40 (c) Commissioned officers, warrant officers and noncommissioned officers
41 may quell quarrels, frays, and disorders among persons subject to this Chapter and may
42 apprehend persons subject to this Chapter who take part in quarrels, frays, and
43 disorders.

44 **"§ 127C-7. Apprehension of deserters.**

1 Any civil officer having authority to apprehend offenders under the laws of the
2 United States or of a state, territory, commonwealth or possession, or the District of
3 Columbia, may summarily apprehend a deserter from the organized militia and deliver
4 the deserter into the custody of the organized militia. If an offender is apprehended
5 outside the State, the return of the offender to the area must be in accordance with
6 normal extradition procedures or reciprocal agreements.

7 **"§ 127C-8. Imposition of restraint; 'arrest' and 'confinement' defined.**

8 (a) Arrest is the restraint of a person by an order, not imposed as a punishment
9 for an offense, directing the person to remain within certain specified limits.
10 Confinement is the physical restraint of a person.

11 (b) An enlisted member may be ordered into arrest or confinement by any
12 commissioned officer by an oral or written order, delivered in person or through other
13 persons subject to this Chapter or through any person authorized by this Chapter to
14 apprehend persons. A commanding officer may authorize warrant officers or
15 noncommissioned officers to order enlisted members of the command of the officer or
16 subject to the authority of the officer into arrest or confinement.

17 (c) A commissioned officer or warrant officer may be ordered apprehended or
18 into arrest or confinement only by a commanding officer to whose authority the officer
19 is subject, by an order, oral or written, delivered in person or by another commissioned
20 officer. The authority to order these persons apprehended or into arrest or confinement
21 may not be delegated.

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

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

27 **"§ 127C-9. Restraint of persons charged with offenses; notice of charges; speedy**
28 **disposition.**

29 (a) Any person subject to this Chapter charged with an offense under this
30 Chapter may be ordered into arrest or confinement, as circumstances may require.
31 When charged only with an offense normally tried by a summary court-martial, that
32 person shall not ordinarily be placed in confinement.

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

36 **"§ 127C-10. Place of confinement.**

37 Confinement other than in a guard house, whether before, during or after trial by a
38 military court, shall be executed in civil jails, penitentiaries, or prisons designated by the
39 Governor or by any persons the Governor may authorize to act.

40 **"§ 127C-11. Reports and receiving of prisoners.**

41 (a) No provost marshal, commander of a guard, master-at-arms, warden, keeper,
42 or officer of a city or county jail or any other jail, penitentiary, or prison designated
43 under G.S. 127C-10, may refuse to receive or keep any prisoner committed to the

1 charge of the person, when the committing person furnishes a statement, signed by the
2 committing person, of the offense charged against the prisoner.

3 (b) Every commander of a guard, master-at-arms, warden, keeper, or officer
4 of a city or county jail, or of any other jail, penitentiary, or prison designated under G.S.
5 127C-10, to whose charge a prisoner is committed shall, within 24 hours after that
6 commitment, or as soon as the person is relieved from guard, report to the commanding
7 officer of the prisoner the name of the prisoner, the offense charged against the prisoner,
8 and the name of the person who ordered or authorized the commitment.

9 **"§ 127C-12. Punishment prohibited before trial.**

10 A person, while being held for trial, may not be subjected to punishment or penalty
11 other than arrest or confinement upon the charges pending against him, nor shall the
12 arrest or confinement imposed be any more rigorous than the circumstances required to
13 insure his presence, but he may be subjected to minor punishment during that period for
14 infractions of discipline.

15 **"§ 127C-13. Delivery of offenders to civil authorities; redelivery to military**
16 **authority.**

17 (a) Under military department regulations issued pursuant to this Chapter, a
18 person on active State duty subject to this Chapter who is accused of an offense against
19 civil authority may be delivered, upon request by a civil authority, to that civil authority
20 for trial.

21 (b) When delivery under this section is made to any civil authority of a person
22 undergoing sentence of a court-martial pursuant to subsection (a) of this section, the
23 delivery, if followed by conviction in a civil tribunal, interrupts the execution of the
24 sentence of the court-martial, and the offender after having answered to the civil
25 authorities for the civil offense shall, upon the request of competent military authority,
26 be returned to military custody for the completion of the court-martial sentence of the
27 offender.

28 **"§ 127C-14. Confinement pending trial for failure to appear.**

29 When an accused person shall have been arrested for failure to appear before a
30 court-martial for trial, the military judge, the president of a court-martial, or a summary
31 court officer to whom the charges have been referred for trial may issue, subject to the
32 prior approval of the State Judge Advocate, a commitment for confinement of that such
33 person pending trial. No person shall be kept in confinement pending trial longer than
34 seven days.

35 **ARTICLE 3.**

36 **NONJUDICIAL PUNISHMENT.**

37 **"§ 127C-15. Imposition and enforcement of disciplinary punishment without**
38 **court-martial.**

39 (a) The Governor, may, by rule, impose limitations on the powers granted by this
40 section with respect to the kind and amount of punishment authorized, the categories of
41 commanding officers and warrant officers exercising command authorized to exercise
42 those powers, the applicability of this section to an accused who demands trial by court-
43 martial, and the kinds of courts-martial to which a case may be referred. Punishment
44 may not be imposed upon any member of the organized militia under this section if the

1 member has, before the imposition of that punishment demanded trial by court-martial
2 in lieu of the punishment. The Governor may issue rules regulating the suspension of
3 punishments authorized by this section. Subject to rules issued by the Governor, the
4 Governor, the Adjutant General, or an officer of a general rank in command may
5 delegate powers under this section to a principal assistant who is a member of the
6 organized militia.

7 (b) Subject to subsection (a) of this section, any commanding officer may, in
8 addition to or in lieu of admonition or reprimand, impose one or more of the following
9 disciplinary punishments for minor offenses, without the intervention of a court-martial:

10 (1) Upon officers of the command:

11 a. Restriction to certain specified limits, with or without
12 suspension from duty, for not more than 15 consecutive duty or
13 drill days, the punishment to be completed within 90 days of the
14 date punishment was imposed.

15 b. If imposed by the Governor, the Adjutant General, or an officer
16 of a general rank in command:

17 — (i) Arrest in quarters for not more than 15 consecutive
18 duty or drill days, the punishment to be completed within
19 90 days of the date punishment was imposed.

20 — (ii) Forfeiture of pay of not more than two-thirds of one
21 month's pay for three months.

22 (2) Upon other military personnel of the command:

23 a. Forfeiture of pay of not more than two-thirds of one month's
24 pay for three months.

25 b. Reduction to the next inferior pay grade, if the grade from
26 which demoted is within the promotion authority of the officer
27 imposing the reduction or any officer subordinate to the one
28 who imposes the reduction;

29 c. Extra duties, including fatigue or other duties, not to exceed two
30 hours per day, including holidays, for not more than 15
31 consecutive duty or drill days, the punishment to be completed
32 within 90 days of the date punishment was imposed;

33 d. Restriction to certain specified limits, with or without
34 suspension from duty, for not more than 15 consecutive duty or
35 drill days, the punishment to be completed within 90 days of the
36 date punishment was imposed; or

37 e. If imposed by an officer of the grade of major or above:

38 — (i) Forfeiture of pay of not more than two-thirds of one
39 month's pay for two months;

40 — (ii) Reduction to the lowest or any intermediate pay
41 grade, if the grade from which demoted is within the
42 promotion authority of the officer imposing the reduction
43 or any officer subordinate to the one who imposes the

1 reduction, but an enlisted member in a pay grade above
2 E-4 may not be reduced more than two pay grades;

3 — (iii) The punishment authorized under sub-
4 subdivision c. or

5 — (iv) The punishment authorized under sub-
6 subdivision d.

7 (c) No two or more of the punishments of arrest in quarters, extra duties, and
8 restriction may be combined to run consecutively if the maximum punishment is
9 imposed for each. When any of those punishments are combined to run consecutively,
10 there must be an apportionment.

11 (d) An officer in charge of a unit may impose on enlisted members assigned
12 to the unit any of the punishments authorized under sub-subdivisions a., b., c. and d. of
13 subdivision (2) of subsection (b) of this section pursuant to regulations issued by the
14 Governor.

15 (e) The officer who imposes the punishments authorized by subsection (b) of
16 this section, or a successor in command, may, at any time, suspend probationally a
17 reduction in grade or a forfeiture imposed under subsection (b) of this section, whether
18 or not executed. In addition, that officer may, at any time, remit or mitigate any part or
19 amount of the unexecuted punishment and may set aside in whole or in part the
20 punishment, whether executed or unexecuted, and restore all rights, privileges and
21 property affected. The officer may also mitigate reduction in grade to forfeiture of pay.
22 When mitigating an arrest in quarters to restriction or extra duties to restriction, the
23 mitigated punishment shall not be for a greater period than the punishment mitigated.
24 When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture
25 shall not be greater than the amount that could have been imposed initially under this
26 section by the officer who imposed the punishment mitigated.

27 (f) A person punished under this section who considers the punishment unjust or
28 disproportionate to the offense may, through the proper channels, appeal to the next
29 superior authority. The appeal shall be promptly forwarded and decided, but the person
30 punished may still be required to undergo the punishment adjudged pending the appeal.
31 The superior authority may exercise the same powers with respect to the punishment
32 imposed as may be exercised under subsection (e) of this section by the officer who
33 imposed the punishment. Before acting on an appeal from a punishment of:

34 (1) Arrest in quarters for more than seven days;

35 (2) Forfeiture of pay of more than two-thirds of one month's pay for one
36 month; or

37 (3) Reduction of one or more pay grades from the fourth or a higher pay
38 grade

39 the authority who is to act on the appeal shall refer the case to a staff judge advocate or
40 legal officer for consideration and advice, and may refer the case upon appeal from any
41 punishment imposed under subsection (b) of this section.

42 (g) The imposition and enforcement of disciplinary punishment under this
43 section for any act or omission is not a bar to trial by court-martial or other legal
44 proceeding for a serious crime or offense growing out of the same act or omission, and

1 not properly punishable under this section. The fact that a disciplinary punishment has
2 been enforced may be shown by the accused upon trial, and when shown shall be
3 considered in determining the measure of punishment to be adjudged in the event of a
4 finding of guilt.

5 (h) Whenever a punishment of forfeiture of pay is imposed under this section,
6 the forfeiture may apply to pay accruing on or after the date that punishment is imposed
7 and to any pay accrued before that date.

8 (i) The Governor may issue rules prescribing the form of records to be kept of
9 proceedings under this section and may also order that certain categories of those
10 proceedings shall be in writing.

11 **§ 127C-16. Reserved for future codification.**

12 **ARTICLE 4.**

13 **COURTS-MARTIAL JURISDICTION.**

14 **"§ 127C-17. Courts-martial of organized militia not in federal service;**
15 **composition.**

16 (a) In the organized militia not in federal service, there are general, special and
17 summary courts-martial constituted like similar courts of the Army and Air Force. They
18 have the jurisdiction and powers, except as to punishment, and shall follow the forms
19 and procedures provided for those courts as far as applicable, except as otherwise
20 provided in this Chapter.

21 (b) The three kinds of courts-martial shall be constituted as follows:

22 (1) General courts-martial, consisting of:

23 a. A military judge and not less than five members; or

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

29 (2) Special courts-martial, consisting of:

30 a. Not less than three members; or

31 b. A military judge and not less than three members; or

32 c. A military judge alone, if one has been detailed to the court, and
33 the accused under the same conditions prescribed in sub-
34 subdivision b. of subdivision (1) of this subsection requests trial
35 by judge alone.

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

37 **"§ 127C-18. Jurisdiction of courts-martial of each component.**

38 Each component of the organized militia has court-martial jurisdiction over all
39 persons subject to this Chapter. The exercise of jurisdiction by one component over
40 personnel of another component shall be in accordance with military department rules
41 issued by the Governor.

42 **"§ 127C-19. Jurisdiction of general courts-martial.**

43 Subject to G.S. 127C-18, general courts-martial have jurisdiction to try persons
44 subject to this Chapter for any offense made punishable by this Chapter and may,

1 subject to rules issued by the Governor, may prescribe, adjudge any of the following
2 punishments:

- 3 (1) A fine of not more than two hundred dollars (\$200.00);
- 4 (2) Forfeiture of pay and allowances;
- 5 (3) Dishonorable discharge, bad conduct discharge, or dismissal;
- 6 (4) Reprimand;
- 7 (5) Reduction of a noncommissioned officer to the ranks; or
- 8 (6) Any combination of these punishments.

9 **"§ 127C-20. Jurisdiction of special courts-martial.**

10 (a) Subject to G.S. 127C-18, special courts-martial shall have jurisdiction to try
11 persons, except officers, for any offense for which they may be punished under this
12 Chapter.

13 (b) A special court-martial has the same powers of punishment as a general
14 court-martial, except that a fine imposed by a special court-martial may not be more
15 than one hundred dollars (\$100.00) for a single offense.

16 **"§ 127C-21. Jurisdiction of summary courts-martial.**

17 (a) Subject to G.S. 127C-18, summary courts-martial have jurisdiction to try
18 persons subject to this Chapter, except officers, for any offense made punishable by this
19 Chapter.

20 (b) No person with respect to whom summary courts-martial have jurisdiction
21 may be brought to trial before a summary court-martial if the person objects thereto,
22 unless the person has been permitted to refuse punishment under G.S. 127C-15 and has
23 elected to refuse the punishment. If objection to trial by summary court-martial is made
24 by an accused who has not been permitted to refuse punishment under G.S. 127C-16,
25 trial shall be ordered by special or general court-martial, as may be appropriate.

26 (c) A summary court-martial may sentence to a fine of not more than twenty-
27 five dollars (\$25.00) for a single offense, to forfeiture of pay and allowances and to
28 reduction of a noncommissioned officer to the ranks.

29 **"§ 127C-22. Sentences of dismissal, bad conduct discharge, or dishonorable**
30 **discharge to be approved by Governor.**

31 In the organized militia not in federal service, no sentence of dismissal, bad conduct
32 discharge, or dishonorable discharge may be executed until it is approved by the
33 Governor.

34 **"§ 127C-23. When complete record of proceedings and testimony required.**

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

38 **"§ 127C-24. Authorized sentence of general or special court-martial after**
39 **declaration of war prior to jurisdiction of United States Code of Military**
40 **Justice.**

41 A general or special court-martial convened for the trial of a person charged with
42 committing an offense after the declaration of a war or national emergency, and before
43 the time when the person is brought under the jurisdiction of the United States Uniform
44 Code of Military Justice, (Chapter 47, Title 10, United States Code), may, upon

1 conviction, adjudge any punishment that may be appropriate, except that it may not
2 exceed that authorized for a similar offense by the United States Uniform Code of
3 Military Justice.

4 **ARTICLE 5.**

5 **APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.**

6 **"§ 127C-25. Convening general courts-martial.**

7 In the organized militia not in federal service, general courts-martial may be
8 convened by the Governor or the Adjutant General.

9 **"§ 127C-26. Convening special courts-martial.**

10 In the organized militia not in federal service, the commanding officer of a garrison,
11 fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or
12 of a brigade, regiment, wing, group, detached battalion, separate squadron, or other
13 detached command, may convene special courts-martial. Special courts-martial may
14 also be convened by superior authority. When any officer authorized to convene a
15 special court-martial is an accuser, the court shall be convened by superior competent
16 authority.

17 **"§ 127C-27. Convening summary courts-martial.**

18 (a) In the organized militia not in federal service, the commanding officer of a
19 garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on
20 duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or
21 other detached command, may convene a summary court-martial.

22 (b) When only one commissioned officer is present with a command or
23 detachment that officer shall be the summary court-martial of that command or
24 detachment and shall hear and determine all summary court-martial cases. Summary
25 courts-martial may be convened in any case by superior competent authority when
26 considered desirable by that authority.

27 **"§ 127C-28. Who may serve on courts-martial.**

28 (a) Any commissioned officer of the organized militia is eligible to serve on all
29 courts-martial for the trial of any person who may lawfully be brought before the court
30 for trial.

31 (b) Any warrant officer of the organized militia is eligible to serve on general
32 and special courts-martial for the trial of any person, other than a commissioned officer,
33 who may lawfully be brought before the court for trial.

34 (c) (1) Any enlisted member of the organized militia who is not a member
35 of the same unit as the accused, is eligible to serve on general and
36 special courts-martial for the trial of any enlisted member who may
37 lawfully be brought before the court for trial, only if, before the
38 conclusion of a session called by the military judge under G.S. 127C-
39 42, prior to trial or, in the absence of a pretrial session, before the court
40 is assembled for the trial of the accused, the accused personally has
41 requested in writing that enlisted members serve on the court. After
42 the request, the accused may not be tried by a general or special court-
43 martial that does not include enlisted members in a number comprising
44 at least one-third of the total membership of the court, unless eligible

1 enlisted members cannot be obtained on account of physical conditions
2 or military exigencies. If enlisted members cannot be obtained, the
3 court may be convened and the trial held without them, but the
4 convening authority shall make a detailed written statement, to be
5 appended to the record, stating why they could not be obtained.

6 (2) As used in this section, the word 'unit' means any regularly organized
7 body of the organized militia not larger than a company, a squadron, or
8 a corresponding body.

9 (d) (1) No person subject to this Chapter shall be tried by a court-martial
10 with any member junior in rank or grade to the accused.

11 (2) When convening a court-martial, the convening authority shall detail
12 those members of the organized militia that the convening authority
13 considers, best qualified for the duty by reason of age, education,
14 training, experience, length of service, and judicial temperament. No
15 member of the organized militia is eligible to serve as a member of a
16 general or special court-martial when he is the accuser or a witness for
17 the prosecution or has acted as investigating officer or as counsel in
18 the same case.

19 (e) Before a court-martial is assembled for the trial of a case, the convening
20 authority may excuse a member of the court from participating in the case. The
21 convening authority may delegate any authority under this subsection to the State Judge
22 Advocate or designee.

23 **"§ 127C-29. Detail of military judge.**

24 (a) The authority convening a general court-martial shall, and, subject to rules
25 issued by the Governor, the authority convening a special court-martial may, detail a
26 military judge to the court. A military judge shall preside over each open session of the
27 court-martial to which the judge has been detailed.

28 (b) A military judge shall be a commissioned officer of the organized militia,
29 a commissioned officer of the active armed forces of the United States, or of the ready
30 reserve component of the armed forces of the United States, or who is a member of the
31 State Bar of North Carolina, or a member of the bar of a federal court, and who is
32 certified to be qualified for such duty by the State Judge Advocate.

33 (c) The military judge of a general or special court-martial shall be designated
34 by the State Judge Advocate, or designee, for detail by the convening authority.

35 (d) To insure the independence of the judiciary from command influence,
36 military judges shall be under the command of the State Judge Advocate, and with the
37 exception of the Adjutant General and the Governor, no convening authority or any
38 member of the staff of the convening authority shall prepare or review any report
39 concerning the effectiveness, fitness, or efficiency of a military judge which relates to
40 performance as a military judge.

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

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

4 **"§ 127C-30. Detail of trial counsel and defense counsel.**

5 (a) For each general and special court-martial the authority convening the court
6 shall detail trial counsel and defense counsel, and the assistants that the convening
7 authority considers appropriate. No person who has acted as investigating officer,
8 military judge, or court member in any case may later act as trial counsel, assistant trial
9 counsel or, unless expressly requested by the accused, as defense counsel or assistant
10 defense counsel in the same case. No person who has acted for the prosecution may
11 later act in the same case for the defense, and no person who has acted for the defense
12 may later act in the same case for the prosecution.

13 (b) Trial counsel or defense counsel detailed for a general court martial must
14 be:

15 (1) A person who is a member of the State Bar of North Carolina, or a
16 member of the bar of a federal court; and

17 (2) Certified as competent to perform such duties by the State Judge
18 Advocate.

19 (c) In the case of a special court-martial:

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

23 (2) If the trial counsel is a member of the State Bar of North Carolina, the
24 defense counsel detailed by the convening authority must have the
25 same qualifications.

26 **"§ 127C-31. Detail or employment of reporters and interpreters.**

27 Under rules issued by the Governor, the convening authority of a general or special
28 court-martial or court of inquiry shall detail or employ qualified court reporters, who
29 shall record the proceedings and the testimony taken before that court. The convening
30 authority of a military court may detail or employ interpreters who shall interpret for the
31 court.

32 **"§ 127C-32. Absent and additional members; effect of absences on the trial.**

33 (a) No member of a general or special court-martial shall be absent or excused
34 after the court has been assembled for the trial of the accused except for physical
35 disability, as a result of a challenge, or by order of the convening authority for good
36 cause.

37 (b) Whenever a general court-martial, other than a general court-martial
38 composed of a military judge alone, is reduced below five members, the trial may not
39 proceed unless the convening authority details new members sufficient in number to
40 provide not less than five members. When the new members have been sworn, the trial
41 may proceed after the recorded testimony of each witness previously examined has been
42 read to the court in the presence of the military judge, the accused, and the counsel for
43 both sides.

1 (c) Whenever a special court-martial, other than a special court-martial
2 composed of a military judge alone, is reduced below three members, the trial may not
3 proceed unless the convening authority details new members sufficient in number to
4 provide not less than three members. When the new members have been sworn, the
5 trial shall proceed as if no evidence has previously been introduced, unless a verbatim
6 record of the testimony of previously examined witnesses or a stipulation of previous
7 testimony is read to the court in the presence of the military judge, if any, the accused
8 and the counsel for both sides.

9 (d) If the military judge of a court-martial composed of a military judge alone
10 is unable to proceed with the trial because of physical disability, as a result of a
11 challenge or for other good cause, the trial shall proceed, subject to any applicable
12 conditions of G.S. 127C-17 after the detail of a new military judge as if no evidence had
13 previously been introduced unless a verbatim record of the evidence previously
14 introduced or a stipulation of previous testimony is read in court in the presence of the
15 new military judge, the accused and the counsel for both sides.

16 ARTICLE 6.

17 PRETRIAL PROCEDURE.

18 "§ 127C-33. Charges and specifications.

19 (a) Charges and specifications shall be signed under oath by a person subject to
20 this Chapter before a person authorized to administer oaths and shall state:

21 (1) That the signer has personal knowledge of, or has investigated, the
22 matters set forth therein; and

23 (2) That they are true in fact to the best of the signer's knowledge and
24 belief.

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

28 "§ 127C-34. Compulsory self-incrimination and immaterial and degrading 29 evidence prohibited.

30 (a) No person subject to this Chapter may compel any other person to incriminate
31 himself or to answer any question the answer to which may tend to incriminate him.

32 (b) No person subject to this Chapter may interrogate, or request any
33 statement from, an accused or a person suspected of an offense without first informing
34 him of the nature of the accusation and advising him that he does not have to make any
35 statement regarding the offense of which he is accused or suspected and that any
36 statement made by him may be used as evidence against him in a trial by court-martial.

37 (c) No person subject to this Chapter may compel another to make a
38 statement or produce evidence before any military tribunal if the statement or evidence
39 is not material to the issue being tried and the evidence may tend to degrade him.

40 (d) No statement obtained from any person in violation of this section, or
41 through the use of coercion, unlawful influence, or unlawful inducement may be
42 received in evidence against him in a trial by court-martial.

43 "§ 127C-35. Investigation.

1 (a) No charge or specification may be referred to a general court-martial for trial
2 until a thorough and impartial investigation has been made of all the matters set forth.
3 This investigation shall include an inquiry into the truth of the matter set forth in the
4 charges, consideration of the form of charges, and a recommendation about the
5 disposition which should be made of the case in the interest of justice and discipline.

6 (b) The accused shall be advised of the charges and of the right to be
7 represented at that investigation by counsel. Upon request, the accused shall be
8 represented by civilian counsel if provided by the accused, or by military counsel
9 selected by the accused, if such counsel is reasonably available, or by counsel detailed
10 by the officer exercising general court-martial jurisdiction over the command. At that
11 investigation a full opportunity shall be given to the accused to cross-examine
12 witnesses, if they are available, and to present anything in his own behalf, either in
13 defense or mitigation, and the investigating officer shall examine available witnesses
14 when requested to do so by the accused. If the charges are forwarded after the
15 investigation, they shall be accompanied by a statement of the substance of the
16 testimony taken on both sides and a copy of the statement shall be given to the accused.

17 (c) If an investigation of the subject matter of an offense has been conducted
18 before the accused is charged with offense, and if the accused was present at the
19 investigation and afforded the opportunities for representation, cross-examination, and
20 presentation prescribed in subsection (b) of this section, no further investigation of that
21 charge is necessary under this section unless it is demanded by the accused after being
22 informed of the charge. A demand for further investigation entitles the accused to recall
23 witnesses for further cross-examination and to offer any new evidence in his own
24 benefit.

25 (d) The requirements of this section are binding on all persons administering
26 this Chapter, but failure to follow them does not divest a military court of jurisdiction.

27 **"§ 127C-36. Forwarding of charges.**

28 When a person is held for trial by general court-martial the commanding officer
29 shall, within eight days after the accused is ordered into arrest or confinement, if
30 practicable, forward the charges, together with the investigation and allied papers, to the
31 person exercising general court-martial jurisdiction. If that is not practicable, the officer
32 shall report in writing to that person the reasons for delay.

33 **"§ 127C-37. Advice of State Judge Advocate; reference for trial; formal**
34 **corrections.**

35 (a) Before directing the trial of any charge by general court-martial, the
36 convening authority shall refer it to the State Judge Advocate for consideration and
37 advice. The convening authority may not refer a specification under a charge to a
38 general court-martial for trial unless the convening authority has been advised in writing
39 by the State Judge Advocate that:

- 40 (1) The specification alleges an offense under this Chapter;
- 41 (2) The specification is warranted by the evidence indicated in the report
42 of investigation, if any, under G.S. 127C-35; and
- 43 (3) A court-martial has jurisdiction over the accused and the offense.

1 (2) To statements and instructions given in open court by the military
2 judge, president of a special court-martial, or counsel.

3 (c) In the preparation of an effectiveness, fitness, or efficiency report or of
4 any other report or document used in whole or in part for the purpose of determining
5 whether a member of the organized militia is qualified to be advanced in grade, or used
6 in determining the assignment or transfer of a member of the organized militia, or used
7 in determining whether a member should be retained on active duty, no person subject
8 to this Chapter may, in preparing the report:

9 (1) Consider or evaluate the performance of duty of any such member as a
10 member of a court-martial; or

11 (2) Give a less favorable rating or evaluation of any member of the
12 organized militia because of the zeal with which that member, as
13 counsel, represented any accused before a court-martial.

14 **"§ 127C-41. Duties of trial counsel and defense counsel.**

15 (a) The trial counsel of a general or special court-martial shall prosecute in the
16 name of the State of North Carolina and shall, under the direction of the court, prepare
17 the record of the proceedings.

18 (b) The accused has the right to be represented in his defense before a general
19 or special court-martial by civilian counsel if provided by him, or by military counsel of
20 his own selection if reasonably available, or by the defense counsel detailed under G.S.
21 127C-30. Should the accused have counsel of his own selection, the defense counsel
22 and assistant defense counsel, if any, who were detailed, shall, if the accused desires, act
23 as associate counsel; otherwise they shall be excused by the military judge or by the
24 president of a court-martial without a military judge.

25 (c) In every court-martial proceeding the defense counsel may, in the event of
26 conviction, forward for attachment to the record of proceedings a brief of any matters
27 that the defense counsel feels should be considered in behalf of the accused on review,
28 including any objection to the contents of the record.

29 (d) An assistant trial counsel of a general court-martial may, under the
30 direction of the trial counsel or when qualified to be a trial counsel as required by G.S.
31 127C-30, perform any duty imposed by law, regulation, or the custom of the service
32 upon the trial counsel of the court. An assistant trial counsel of a special court-martial
33 may perform any duty of the trial counsel.

34 (e) An assistant defense counsel of a general or special court-martial may, under
35 the direction of the defense counsel or when qualified to be the defense counsel as
36 required by G.S. 127C-30, perform any duty imposed by law, regulation, or the custom
37 of the service upon counsel for the accused.

38 **"§ 127C-42. Sessions.**

39 (a) At any time after the service of charges which have been referred for trial to a
40 court-martial composed of a military judge and members, the military judge may,
41 subject to G.S. 127C-38, call the court into session without the presence of the members
42 for the purpose of:

- 1 (1) Hearing and determining motions, defenses, or objections which are
2 capable of determination without trial of the issues raised by a plea of
3 not guilty;
4 (2) Hearing and ruling upon any matter which may be ruled upon by the
5 military judge under this Chapter, whether or not the matter is
6 appropriate for later consideration or decision by the members of the
7 court;
8 (3) If permitted by rules of the Governor, holding the arraignment and
9 receiving the pleas of the accused; and
10 (4) Performing any other procedural function which may be performed by
11 the military judge under this Chapter or under rules prescribed
12 pursuant to G.S. 127C-39 and which does not require the presence of
13 the members of the court.

14 (b) These proceedings shall be conducted in the presence of the accused, the
15 defense counsel, and the trial counsel and shall be made a part of the record.

16 (c) When the members of a court-martial deliberate or vote, only the
17 members of the court may be present. All other proceedings, including any other
18 consultation of the members of the court with counsel or the military judge, shall be
19 made a part of the record and shall be in the presence of the accused, the defense
20 counsel, the trial counsel, and in cases in which a military judge has been detailed to the
21 court, the military judge.

22 **"§ 127C-43. Continuances.**

23 The military judge or the President of a court-martial without a military judge may,
24 for reasonable cause, grant a continuance to any party for as long a time, and as often, as
25 may appear to be just.

26 **"§ 127C-44. Challenges.**

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

33 (b) Each accused and the trial counsel is entitled to one peremptory challenge,
34 but the military judge may not be challenged except for cause.

35 **"§ 127C-45. Oaths.**

36 (a) The military judge, interpreters, and in general and special courts-martial,
37 members, trial counsel, assistant trial counsel, defense counsel, assistant defense
38 counsel, and reporters shall take an oath or affirmation in the presence of the accused to
39 perform their duties faithfully.

40 (b) Each witness before a military court shall be examined on oath or
41 affirmation.

42 **"§ 127C-46. Statute of limitation.**

43 (a) A person charged with desertion or absence without leave in time of war, or
44 with aiding the enemy, may be tried and punished at any time without limitation.

1 (b) Except as otherwise provided in this section, a person charged with
2 desertion in time of peace or the offense punishable under G.S. 127C-114 is not liable to
3 be tried by court-martial if the offense was committed more than three years before the
4 receipt of sworn charges and specifications by an officer exercising summary court-
5 martial jurisdiction over the command or before the imposition of punishment under
6 G.S. 127C-15.

7 (c) Except as otherwise provided in this section, a person charged with any
8 offense is not liable to be tried by court-martial or punished under G.S. 127C-15 if the
9 offense was committed more than two years before the receipt of sworn charges and
10 specifications by an officer exercising summary court-martial jurisdiction over the
11 command or before the imposition of punishment under G.S. 127C-15.

12 (d) Periods in which the accused was absent from territory in which the state
13 has the authority to apprehend the accused, or in the custody of civil authorities, or in
14 the hands of the enemy, shall be excluded in computing the period of limitation
15 prescribed in this section.

16 **"§ 127C-47. Former jeopardy.**

17 (a) No person may, without his consent, be tried a second time for the same
18 offense.

19 (b) No proceeding in which an accused has been found guilty by a court-
20 martial upon any charge or specification is a trial in the sense of this section until the
21 finding of guilty has become final after review of the case has been fully completed.

22 (c) A proceeding which, after the introduction of evidence but before a
23 finding, is dismissed or terminated by the convening authority or on motion of the
24 prosecution for failure of available evidence or witnesses without any fault of the
25 accused is a trial for purposes of subsection (a) of this section.

26 **"§ 127C-48. Pleas of accused.**

27 (a) If an accused, arraigned before a court-martial, makes an irregular pleading,
28 or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the
29 accused has entered the plea of guilty improvidently or through lack of understanding of
30 its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty
31 shall be entered in the record, and the court shall proceed as though the accused had
32 pleaded not guilty.

33 (b) With respect to any charge or specification to which a plea of guilty has
34 been made by the accused and accepted by the military judge or by a court-martial
35 without a military judge, a finding of guilty of the charge or specification may be
36 entered immediately without vote. This finding shall constitute the finding of the court
37 unless the plea of guilty is withdrawn prior to announcement of the sentence, in which
38 event the proceedings shall continue as though the accused had pleaded not guilty.

39 **"§ 127C-49. Opportunity to obtain witnesses and evidence.**

40 (a) The trial counsel, the defense counsel, and the court-martial shall have equal
41 opportunity to obtain witnesses and other evidence in accordance with such military
42 department regulations as the Governor may prescribe.

43 (b) The military judge, the President of a court-martial, or a summary court
44 officer may:

- 1 (1) Issue a warrant for the arrest of any accused person who, having been
2 served with a warrant and a copy of the charges, disobeys a written
3 order by the convening authority to appear before the court;
4 (2) Issue subpoenas **duces tecum** and other subpoenas;
5 (3) Enforce by attachment the attendance of witnesses and the production
6 of books and papers; and
7 (4) Sentence for refusal to be sworn or to answer, as provided in contempt
8 actions before civil courts of the State.

9 (c) Process issued in court-martial cases to compel witnesses to appear and
10 testify and to compel the production of other evidence shall run to any part of the State.

11 **"§ 127C-50. Refusal to appear or testify.**

12 (a) Any person not subject to this Chapter, is guilty of an offense against the
13 State when he:

- 14 (1) Has been duly subpoenaed to appear as a witness before a court-
15 martial, court of inquiry, or any other military court or board, or before
16 any military or civil officer designated to take a deposition to be read
17 in evidence before a court, commission, or board;
18 (2) Has been duly paid or tendered the fees and mileage of a witness
19 pursuant to G.S. 7A-314; and
20 (3) Willfully neglects or refuses to appear, or refuses to qualify as a
21 witness or to testify or to produce any evidence which that person may
22 have been legally subpoenaed to produce.

23 (b) Any person who commits an offense described in subsection (a) of this
24 section shall be tried in the district court of the county where the offense occurred.
25 Upon conviction, a person violating subsection (a) of this section shall be punished by a
26 fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more
27 than six months, or both.

28 (c) The district attorney of the county in which the offense occurred, upon
29 certification of the facts by the military court, court of inquiry or board, shall prosecute
30 any person who commits the offense described in subsection (a) of this section.

31 **"§ 127C-51. Contempts.**

32 A military court may punish for contempt any person who uses any menacing word,
33 sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.
34 The punishment may not exceed confinement for 30 days or a fine of one hundred
35 dollars (\$100.00), or both.

36 **"§ 127C-52. Depositions.**

37 (a) At any time after charges have been signed, as provided in G.S. 127C-32, any
38 party may take oral or written depositions unless the military judge or court-martial
39 without a military judge hearing the case or, if the case is not being heard, an authority
40 competent to convene a court-martial for the trial of those charges forbids it for good
41 cause. If a deposition is to be taken before charges are referred for trial, the convening
42 authority may designate commissioned officers to represent the prosecution and the
43 defense and may authorize those officers to take the deposition of any witness.

1 (b) The party at whose instance a deposition is to be taken shall give
2 reasonable written notice of the time and place for taking the deposition to every other
3 party.

4 (c) Depositions may be taken before, and authenticated by, any military or
5 civil officer authorized by the law to administer oaths.

6 (d) A duly authenticated deposition taken upon reasonable notice to the other
7 parties, so far as otherwise admissible under the rules of evidence, may be read in
8 evidence or, in the case of audiotape, videotape or similar material, may be played as
9 evidence before any military court or commission, in any proceeding before any court-
10 martial or in any proceeding before a court of inquiry, if it appears:

11 (1) That the witness resides or is beyond the state in which the court-
12 martial or court of inquiry is ordered to sit, or beyond the distance of
13 100 miles from the place of hearing;

14 (2) That the witness by reason of death, age, sickness, bodily infirmity,
15 imprisonment, military necessity, nonamenability to process, or other
16 reasonable cause, is unable or refuses to appear and testify in person at
17 the place of trial or hearing; or

18 (3) That the present whereabouts of the witness is unknown.

19 **"§ 127C-53. Admissibility of records of courts of inquiry.**

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

26 (b) Testimony may be read in evidence only by the defense in cases extending
27 to the dismissal of a commissioned officer.

28 (c) Testimony may also be read in evidence before a court of inquiry or a
29 military board.

30 **"§ 127C-54. Voting and rulings.**

31 (a) Voting by members of a general or special court-martial on the findings and
32 on the sentence, and by members of a court-martial without a military judge upon
33 questions of challenge, on the findings, and on the sentence shall be by secret written
34 ballot. The junior member of the court shall in each case count the votes. The count
35 shall be checked by the President, who shall forthwith announce the result of the ballot
36 to the members of the court.

37 (b) The military judge and, except for questions of challenge, the President of
38 a court-martial without a military judge, shall rule upon all questions of law and all
39 interlocutory questions, arising during the proceedings. Any ruling made by the
40 military judge upon any question of law or any interlocutory question other than the
41 factual issue of mental responsibility of the accused, or by the President of a court-
42 martial without a military judge upon any question of law other than a motion for a
43 finding of not guilty, is final and constitutes the ruling of the court. The military judge,
44 or the President of a court-martial without a military judge, may change a ruling at any

1 time during the trial. Unless the ruling is final, if any member objects, the court shall be
2 cleared and closed and the question decided by a voice vote as provided in G.S. 127C-
3 55 beginning with the junior in rank.

4 (c) Before a vote is taken on the findings, the military judge or the President
5 of a court-martial without a military judge shall, in the presence of the accused and
6 counsel, instruct the members of the court as to the elements of the offense and charge
7 them:

8 (1) That the accused must be presumed to be innocent until guilt is
9 established by legal and competent evidence beyond reasonable doubt;

10 (2) That in the case being considered, if there is a reasonable doubt as to
11 the guilt of the accused, the doubt must be resolved in favor of the
12 accused and the accused must be acquitted;

13 (3) That if there is a reasonable doubt as to the degree of guilt, the findings
14 must be in a lower degree as to which there is no reasonable doubt;
15 and

16 (4) That the burden of proof is to establish the guilt of the accused beyond
17 reasonable doubt is upon the State.

18 (d) Subsections (a),(b), and (c) of this section do not apply to a court-martial
19 composed of a military judge only. In those cases the military judge shall determine all
20 questions of law and fact arising during the proceedings, and, if the accused is
21 convicted, adjudge an appropriate sentence. The military judge deciding the case alone
22 shall make a general finding and shall, in addition, on request, find the facts specially.
23 If an opinion or memorandum of decision is filed, it will be sufficient if the findings of
24 fact are included.

25 **"§ 127C-55. Number of votes required.**

26 (a) No person may be convicted of an offense, except by the concurrence of two-
27 thirds of the members present at the time the vote is taken.

28 (b) All sentences shall be determined by the concurrence of two-thirds of the
29 members present at the time that the vote is taken.

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

38 **"§ 127C-56. Court to announce action.**

39 A court-martial shall announce its findings and sentence to the parties as soon as
40 determined.

41 **"§ 127C-57. Record of trial.**

42 (a) Each general court-martial shall keep a separate record of the proceedings of
43 the trial of each case brought before it and the record shall be authenticated by the
44 signature of the military judge. If the record cannot be authenticated by the military

1 judge, by reason of death, disability or absence, it shall be authenticated by the signature
2 of the trial counsel or by that of a member if the trial counsel is unable to authenticate it
3 by reason of death, disability or absence.

4 (b) Each special and summary court-martial shall keep a separate record of
5 the proceedings in each case, and the record shall be authenticated in the manner
6 required by the regulations the Governor may prescribe.

7 (c) A complete record of the proceedings and testimony shall be prepared (i)
8 in each general court-martial case in which the sentence adjudged includes a dismissal,
9 a bad conduct discharge, or a dishonorable discharge and (ii) in each special court-
10 martial case in which the sentence adjudged includes a dishonorable discharge.

11 (d) In all other court-martial cases the record shall contain any matters
12 prescribed by regulations of the Governor.

13 (e) A copy of the record of the proceedings of each general and special court-
14 martial shall be given to the accused as soon as it is authenticated.

15 **ARTICLE 8.**
16 **SENTENCES.**

17 **"§ 127C-58. Cruel and unusual punishments prohibited.**

18 Punishment by flogging, or by branding, marking or tattooing on the body, or by any
19 other cruel or unusual punishment, may not be adjudged by any court-martial or
20 inflicted upon any person subject to this Chapter. The use of irons, single or double,
21 except for the purpose of safe custody, is prohibited.

22 **"§ 127C-59. Punishments limited.**

23 (a) The punishments which a court-martial may direct for an offense may not
24 exceed limits prescribed by this Chapter.

25 (b) Unless otherwise provided in a regulation prescribed by the Governor or
26 Adjutant General, a court-martial sentence of an enlisted member in a pay grade above
27 E-1 reduces that member to pay grade E-1, effective on the date on which the sentence
28 is approved by the convening authority, when the sentence includes a dishonorable
29 discharge, a bad conduct discharge, or dismissal.

30 (c) If the sentence of a member who is reduced in pay grade under subsection
31 (b) of this section is set aside, disapproved or as finally approved does not include any
32 punishment described in subsection (b) of this section, the rights and privileges of which
33 the member was deprived of because of that reduction shall be restored and the member
34 shall be entitled to the increased pay and allowances for the period the reduction was in
35 effect.

36 **"§ 127C-60. Effective date of sentence.**

37 (a) Whenever a sentence of a court-martial, as lawfully adjudged and approved,
38 includes a forfeiture of pay or allowances, the forfeiture may apply to pay or allowances
39 becoming due on or after the date the sentence is approved by the convening authority.
40 No forfeiture may extend to any pay or allowances accrued before that date.

41 (b) Any period of confinement included in a sentence of a court-martial
42 begins to run from the date the sentence is ordered to be executed by the convening
43 authority but periods during which the sentence to confinement is suspended or deferred
44 shall be excluded in computing the service of the term of confinement. Regulations

1 prescribed by the Governor may provide that sentences of confinement may not be
2 executed until approved by designated officers.

3 (c) All other sentences of courts-martial are effective on the date ordered
4 executed.

5 **"§ 127C-61. Execution of confinement.**

6 (a) A sentence of confinement adjudged by a military court, whether or not the
7 sentence includes discharge or dismissal, and whether or not the discharge or dismissal
8 has been executed, may be carried into execution by confinement in any place of
9 confinement under the control of any of the forces of the organized militia or in any jail,
10 penitentiary, or prison designated for that purpose. Persons confined in a jail,
11 penitentiary, or prison are subject to the same discipline and treatment as persons
12 confined or committed to the jail, penitentiary, or prison by the courts of the State.

13 (b) The keepers, officers, and wardens of jails, penitentiaries, or prisons
14 designated by the Governor shall receive persons ordered into confinement before trial
15 and persons committed to confinement by a military court and shall confine them
16 according to law. No such keeper, officer, or warden may require payment of any fee or
17 charge for receiving or confining a person.

18 **"§ 127C-62. Confinement as alternative to fine.**

19 In the organized militia not in federal service, a court-martial may, instead of
20 imposing a fine, sentence to confinement for not more than one day for each dollar of
21 the authorized fine.

22 **ARTICLE 9.**

23 **REVIEW OF COURTS-MARTIAL.**

24 **"§ 127C-63. Approval and execution or suspension of sentence.**

25 Except as provided in G.S. 127C-22 and G.S. 127C-68, a court-martial sentence,
26 unless suspended, may be ordered executed by the convening authority when approved.
27 The convening authority shall approve the sentence or any part, amount, or commuted
28 form of the sentence as he sees fit, and may suspend the execution of the sentence as
29 approved.

30 **"§ 127C-64. Initial review and action on trial record.**

31 (a) After a trial by court-martial the record shall be forwarded to the convening
32 authority, as reviewing authority, and action may be taken by the person who convened
33 the court, a commissioned officer commanding for the time being, a successor in
34 command or by the Governor.

35 (b) The convening authority shall refer the record of each general court-
36 martial to the State Judge Advocate, who shall submit a written opinion about the record
37 to the convening authority. If the final action of the court has resulted in an acquittal of
38 all charges and specifications, the opinion shall be limited to questions of jurisdiction.

39 **"§ 127C-65. Reconsideration and revision of court's ruling.**

40 (a) If a specification before a court-martial has been dismissed on motion and the
41 ruling does not amount to a finding of not guilty, the convening authority may return the
42 record to the court for reconsideration of the ruling and any further appropriate action.

43 (b) Where there is an apparent error or omission in the record, or where the
44 record shows improper or inconsistent action by a court-martial with respect to a finding

1 or sentence which can be rectified without material prejudice to the substantial rights of
2 the accused, the convening authority may return the record to the court for appropriate
3 action. In no case, however, may the record be returned:

4 (1) For reconsideration of a finding of not guilty of any specification, or a
5 ruling which amounts to a finding of not guilty;

6 (2) For reconsideration of a finding of not guilty of any charge, unless the
7 record shows a finding of guilty under a specification laid under that
8 charge, which sufficiently alleges a violation of some section of this
9 Chapter; or

10 (3) For increasing the severity of the sentence unless the sentence
11 prescribed for the offense is mandatory.

12 **"§ 127C-66. Rehearings.**

13 (a) If the convening authority disapproves the findings and sentence of a court-
14 martial the convening authority may, except where there is lack of sufficient evidence in
15 the record to support the findings, order a rehearing. The convening authority shall state
16 the reasons for a disapproval of the findings of the court. If the convening authority
17 disapproves the findings and sentence and does not order a rehearing, the convening
18 authority shall dismiss the charges.

19 (b) Each rehearing shall take place before a court-martial composed of
20 members who were not members of the court-martial which first heard the case. Upon a
21 rehearing the accused may not be tried for any offense of which the accused was found
22 not guilty by the first court-martial, and no sentence in excess of or more severe than the
23 original sentence may be imposed, unless the sentence is based upon a finding of guilty
24 of an offense not considered upon the merits in the original proceedings, or unless the
25 sentence prescribed for the offense is mandatory.

26 **"§ 127C-67. Approval by convening authority.**

27 In acting on the findings and sentence of a court-martial, the convening authority
28 may approve only findings of guilty, and the sentence or any part or amount of the
29 sentence, as the convening authority finds correct in law and fact and determines should
30 be approved. Unless the convening authority indicates otherwise, approval of the
31 sentence is approval of the findings and sentence.

32 **"§ 127C-68. Review of records; disposition.**

33 (a) If the convening authority is the Governor, action by the Governor on the
34 review of any record of trial is final.

35 (b) In all other cases not covered by subsection (a) of this section, if the
36 sentence of a special court-martial as approved by the convening authority includes a
37 dishonorable discharge, whether or not suspended, the entire record shall be sent to the
38 appropriate Judge Advocate of the State force concerned to be reviewed in the same
39 manner as a record of trial by general court-martial. The record and the opinion of the
40 Judge Advocate shall then be sent to the State Judge Advocate for review.

41 (c) All other special and summary court-martial records shall be sent to the
42 judge advocate of the appropriate force of the organized militia and shall be acted upon,
43 transmitted, and disposed of as may be prescribed by the Governor.

1 (d) The State Judge Advocate shall personally review the record of trial in
2 each case sent to the State Judge Advocate for review as provided under subsection (b)
3 of this section. If the final action of the court-martial has resulted in an acquittal of all
4 charges and specifications, the opinion of the State Judge Advocate shall be limited to
5 questions of jurisdiction.

6 (e) The State Judge Advocate shall personally take final action in any case to be
7 reviewed by the State Judge Advocate.

8 (f) In a case reviewable by the State Judge Advocate under this section, the State
9 Judge Advocate may act only with respect to the findings and sentence as approved by
10 the convening authority. The State Judge Advocate may affirm only the findings of
11 guilty, and the sentence or any part or amount of the sentence, as he finds correct in law
12 and fact and determines, on the basis of the entire record, should be approved. In
13 considering the record the State Judge Advocate may weigh the evidence, judge the
14 credibility of witnesses, and determine controverted questions of fact, recognizing that
15 the trial court saw and heard the witnesses. If the State Judge Advocate sets aside the
16 findings and sentence, he may, except where the setting aside is based on lack of
17 sufficient evidence in the record to support the findings, order a rehearing. If the State
18 Judge Advocate sets aside the findings and sentence and does not order a rehearing, the
19 State Judge Advocate shall order that the charges be dismissed.

20 (g) In a case reviewable by the State Judge Advocate under this section, he shall
21 instruct the convening authority to act in accordance with his decision on the review. If
22 the State Judge Advocate has ordered a rehearing but the convening authority finds a
23 rehearing impracticable, the State Judge Advocate may dismiss the charges.

24 (h) The State Judge Advocate may order one or more boards of review each
25 composed of not less than three commissioned officers of the organized militia, each of
26 whom must be a member of the State Bar of North Carolina. Each board of review shall
27 review the record of any trial by special court-martial referred to it by the State Judge
28 Advocate. Boards of review have the same authority on review as the State Judge
29 Advocate has under this section.

30 **"§ 127C-69. Error of law; lesser included offense.**

31 (a) A finding or sentence of a court-martial may not be held incorrect on the
32 ground of an error of law unless the error materially prejudices the substantial rights of
33 the accused.

34 (b) Any reviewing authority with the power to approve or affirm a finding of
35 guilty may approve or affirm so much of the finding as includes a lesser included
36 offense.

37 **"§ 127C-70. Review counsel.**

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

42 (b) Upon the request of an accused entitled to be so represented, the State
43 Judge Advocate shall appoint a lawyer who is a member of the organized militia and
44 who has the qualifications prescribed in G.S. 127C-30, if available, to represent the

1 accused before the reviewing authority, before the staff judge advocate or legal officer,
2 as the case may be, and before the State Judge Advocate, in the review of cases
3 specified in subsection (a) of this section.

4 (c) An accused entitled to be represented, may be represented at his own
5 expense by civilian counsel before the reviewing authority, before the staff judge
6 advocate or legal officer, as the case may be, and before the State Judge Advocate.

7 **"§ 127C-71. Vacation of suspension.**

8 (a) Before the vacation of the suspension of a special court-martial sentence
9 which as approved includes a dishonorable discharge, or of any general court-martial
10 sentence, the officer having court-martial jurisdiction over the probationer shall hold a
11 hearing on the alleged violation of probation. The probationer shall be represented at
12 the hearing by counsel if the probationer so desires.

13 (b) The record of the hearing and the recommendation of the officer having
14 special court-martial jurisdiction shall be sent for action to the Governor in cases
15 involving a general court-martial sentence and to the commanding officer of the force of
16 the organized militia of which the probationer is a member in all other cases covered by
17 subsection (a) of this section. If the Governor or commanding officer vacates the
18 suspension, any unexecuted part of the sentence except a dismissal shall be executed.

19 (c) The suspension of any other sentence may be vacated by any authority
20 competent to convene a court of the kind that imposed the sentence for the command in
21 which the accused is serving or assigned.

22 **"§ 127C-72. Petition for new trial.**

23 At any time within two years after approval by the convening authority of a court-
24 martial sentence which extends to dismissal or dishonorable discharge, the accused may
25 petition the Governor for a new trial on ground of newly discovered evidence or fraud
26 on the court-martial.

27 **"§ 127C-73. Remission and suspension.**

28 (a) A convening authority may remit or suspend any part or amount of the
29 unexecuted part of any sentence, including all uncollected forfeitures.

30 (b) The Governor may, for good cause, substitute an administrative form of
31 discharge for a discharge or dismissal executed in accordance with the sentence of a
32 court-martial.

33 **"§ 127C-74. Restoration.**

34 (a) Under military department regulations prescribed by the Governor, all rights,
35 privileges and property affected by an executed part of a court-martial sentence which
36 has been set aside or disapproved, except an executed dismissal or discharge, shall be
37 restored unless a new trial or rehearing is ordered and the executed part is included in a
38 sentence imposed upon the new trial or rehearing.

39 (b) If a previously executed sentence of dishonorable discharge is not
40 imposed on a new trial, the Governor shall substitute another form of discharge
41 authorized for administrative issuance unless the accused is to serve out the remainder
42 of the enlistment.

43 (c) If a previously executed sentence of dismissal is not imposed on a new
44 trial, the Governor shall substitute a form of discharge authorized for administrative

1 issue, and the commissioned officer dismissed by that sentence may be reappointed by
2 the Governor to a commissioned grade and rank that the Governor believes that former
3 officer would have attained had the officer not been dismissed. The reappointment of a
4 former officer may be made if a position vacancy is available under applicable tables of
5 organization. All time between the dismissal and the reappointment shall be considered
6 as service for all purposes.

7 **"§ 127C-75. Finality of proceedings, findings and sentences.**

8 The proceedings, findings and sentences of court-martial as reviewed and approved,
9 as required by this Chapter, and all dismissals and discharges carried into execution
10 under sentences by court-martial following review and approval, as required by this
11 Chapter, are final and conclusive. Orders publishing the proceedings of court-martial
12 and all action taken pursuant to those proceedings are binding upon all departments,
13 courts, agencies and officers of the State, subject only to action upon a petition for a
14 new trial as provided in G.S. 127C-72.

15 **"§ 127C-75A. Trial De Novo.**

16 Any accused convicted by a court-martial may appeal to the superior court for trial
17 de novo. Notice of appeal may be given orally in open court, or to the trial counsel in
18 writing within 10 days of entry of judgment.

19 **ARTICLE 10.**

20 **PUNITIVE PROVISIONS.**

21 **"§ 127C-76. When persons may be tried or punished.**

22 No person may be tried or punished for any offense provided for in this Article,
23 unless it was committed while the person was in a duty status, or during a period of time
24 in which the person was under lawful orders to be in a duty status.

25 **"§ 127C-77. Principals.**

26 Any person subject to this Chapter who (i) commits an offense punishable by this
27 Chapter, or aids, abets, counsels, commands or procures its commission or (ii) causes an
28 act to be done which if directly performed by the person would be punishable by this
29 Chapter is a principal.

30 **"§ 127C-78. Accessory after fact.**

31 Any person subject to this Chapter who, knowing that an offense punishable by this
32 Chapter has been committed, receives, comforts, or assists the offender in order to
33 hinder or prevent the apprehension, trial, or punishment of the offender shall be
34 punished as a court-martial may direct.

35 **"§ 127C-79. Conviction of lesser included offense.**

36 An accused may be found guilty of an offense necessarily included in the offense
37 charged or of an attempt to commit either the offense charged or an offense necessarily
38 included in it.

39 **"§ 127C-80. Attempts.**

40 (a) An act done with specific intent to commit an offense under this Chapter,
41 amounting to more than mere preparation and tending even though failing to effect its
42 commission, is an attempt to commit that offense.

1 (b) Any person subject to this Chapter who attempts to commit any offense
2 punishable by this Chapter shall be punished as a court-martial may direct, unless
3 otherwise specifically prescribed.

4 (c) Any person subject to this Chapter may be convicted of an attempt to
5 commit an offense although it appears on the trial that the offense was consummated.

6 **"§ 127C-81. Conspiracy.**

7 Any person subject to this Chapter who conspires with any other person to commit
8 an offense under this Chapter shall, if one or more of the conspirators does an act to
9 effect the object of the conspiracy, be punished as a court-martial may direct.

10 **"§ 127C-82. Solicitation.**

11 (a) Any person subject to this Chapter who solicits or advises another or others to
12 desert in violation of G.S. 127C-85 or sedition in violation of G.S. 127C-94 shall be
13 punished as a court-martial may direct.

14 Any person subject to this Chapter who solicits or advises another or others to
15 commit an act of misbehavior before the enemy in violation of G.S. 127C-99 or sedition
16 in violation of G.S. 127C-94 shall be punished as a court-martial may direct.

17 **"§ 127C-83. Fraudulent enlistment, appointment or separation.**

18 Any person who: (i) procures the person's own enlistment or appointment in the
19 organized militia by knowingly false representation, deliberate concealment as to
20 qualifications for that enlistment or appointment and receives pay or allowances
21 thereunder or (ii) procures the person's own separation from the organized militia by
22 knowingly false representation or deliberate concealment as to eligibility for that
23 separation shall be punished as a court-martial may direct.

24 **"§ 127C-84. Unlawful enlistment, appointment or separation.**

25 Any person subject to this Chapter who effects an enlistment or appointment in or a
26 separation from the organized militia of any person who is known to the person to be
27 ineligible for that enlistment, appointment or separation because it is prohibited by law,
28 regulation or order shall be punished as a court-martial may direct.

29 **"§ 127C-85. Desertion.**

30 (a) Any member of the organized militia who:

31 (1) Without authority goes or remains absent from the unit, organization
32 or place of duty of the member with intent to remain away therefrom
33 permanently;

34 (2) Quits the unit, organization or place of duty of the member with intent
35 to avoid hazardous duty or to shirk important service; or

36 (3) Without being regularly separated from one of the forces of the
37 organized militia enlists or accepts an appointment in the same or
38 another one of the forces of the organized militia without fully
39 disclosing the fact that the member has not been regularly separated;

40 is guilty of desertion.

41 (b) Any commissioned officer of the organized militia who, after tender of
42 resignation and before notice of its acceptance, quits the post or proper duties of the
43 officer without leave and with intent to remain away therefrom permanently is guilty of
44 desertion.

1 (c) Any person found guilty of desertion or attempt to desert shall be
2 punished as a court-martial may direct.

3 **"§ 127C-86. Absence without leave.**

4 Any person subject to this Chapter who, without authority: (i) fails to go to the
5 appointed place of duty of the person at the time prescribed; (ii) goes from that place; or
6 (iii) is absent from the unit, organization or place of duty at which the person is required
7 to be at the time prescribed shall be punished as a court-martial may direct.

8 **"§ 127C-87. Failure to make required move.**

9 Any person subject to this Chapter who through neglect or design misses the
10 movement of a ship, aircraft or unit with which the person is required in the course of
11 duty to move shall be punished as a court-martial may direct.

12 **"§ 127C-88. Contempt toward officials.**

13 Any commissioned officer subject to this Chapter who, while on duty, uses
14 contemptuous words against the President, the Governor or the General Assembly, or
15 the Governor or legislature of any state, territory, commonwealth, or possession in
16 which that officer may be serving, shall be punished as a court-martial may direct.

17 **"§ 127C-89. Disrespect toward superior commissioned officer.**

18 Any person subject to this Chapter who behaves with disrespect toward a superior
19 commissioned officer shall be punished as a court-martial may direct.

20 **"§ 127C-90. Assaulting or willfully disobeying superior commissioned officer.**

21 Any person subject to this Chapter who: (i) strikes a superior commissioned officer
22 or draws or lifts up any weapon or offers any violence against the officer while the
23 officer is in the execution of office or who (ii) willfully disobeys a lawful command of a
24 superior commissioned officer shall be punished as a court-martial may direct.

25 **"§ 127C-91. Insubordinate conduct toward warrant officer or noncommissioned**
26 **officer.**

27 Any warrant officer or enlisted member who: (i) strikes or assaults a warrant
28 officer or noncommissioned officer while that officer is in the execution of office; (ii)
29 willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or
30 (iii) treats with contempt or is disrespectful in language or deportment toward a warrant
31 officer or noncommissioned officer while that officer is in the execution of office shall
32 be punished as a court-martial may direct.

33 **"§ 127C-92. Failure to obey order or regulation.**

34 Any person subject to this Chapter who: (i) violates or fails to obey any lawful
35 general order or regulation; (ii) having knowledge of any other lawful order issued by a
36 member of the organized militia, which it is the duty of the person to obey, fails to obey
37 the order; or (iii) is derelict in the performance of duties shall be punished as a court-
38 martial may direct.

39 **"§ 127C-93. Cruelty and maltreatment.**

40 Any person subject to this Chapter who is guilty of cruelty toward, or oppression or
41 maltreatment of, any person subject to the orders of the person shall be punished as a
42 court-martial may direct.

43 **"§ 127C-94. Mutiny or sedition.**

44 (a) Any person subject to this Chapter who:

1 (1) With intent to usurp or override lawful military authority refuses, in
2 concert with another, to obey orders or otherwise do his duty or creates
3 any violence or disturbance is guilty of mutiny;

4 (2) With intent to cause the overthrow or destruction of lawful civil
5 authority, creates, in concert with another, revolt, violence or other
6 disturbance against that authority is guilty of sedition;

7 (3) Fails to do the utmost to prevent and suppress a mutiny or sedition
8 being committed in his presence, or fails to take all reasonable means
9 to inform a superior commissioned officer or commanding officer of a
10 mutiny or sedition which he knows or has reason to believe is taking
11 place, is guilty of a failure to suppress or report a mutiny or sedition.

12 (b) A person who is found guilty of attempted mutiny, mutiny, sedition, or
13 failure to suppress or report a mutiny or sedition, shall be punished as a court-martial
14 may direct.

15 **"§ 127C-95. Resistance, breach of arrest and escape.**

16 Any person subject to this Chapter who resists apprehension or breaks arrest or who
17 escapes from custody or confinement shall be punished as a court-martial may direct.

18 **"§ 127C-96. Releasing prisoner without proper authority.**

19 Any person subject to this Chapter who, without proper authority, releases any
20 prisoner committed to his charge, or who through neglect or design suffers any such
21 prisoner to escape, shall be punished as a court-martial may direct, whether or not the
22 prisoner was committed in strict compliance with law.

23 **"§ 127C-97. Unlawful detention.**

24 Any person subject to this Chapter who, except as provided by law or regulation,
25 apprehends, arrests, or confines any person shall be punished as a court-martial may
26 direct.

27 **"§ 127C-98. Noncompliance with procedural rules.**

28 Any person subject to this Chapter who: (i) is responsible for unnecessary delay in
29 the disposition of any case of a person accused of an offense under this Chapter or (ii)
30 knowingly and intentionally fails to enforce or comply with any provision of this
31 Chapter regulating the proceedings before, during or after trial of an accused shall be
32 punished as a court-martial may direct.

33 **"§ 127C-99. Misbehavior before enemy.**

34 Any person subject to this Chapter who before or in the presence of the enemy:

35 (1) Runs away;

36 (2) Shamefully abandons, surrenders or delivers up any command, unit,
37 place or military property which it is the duty of the person to defend;

38 (3) Through disobedience, neglect or intentional misconduct endangers
39 the safety of any such command, unit, place or military property;

40 (4) Casts away arms or ammunition;

41 (5) Is guilty of cowardly conduct;

42 (6) Quits a place of duty to plunder or pillage;

43 (7) Causes false alarms in any command, unit or place under control of the
44 Armed Forces of the United States or the organized militia;

1 (8) Willfully fails to do the utmost to encounter, engage, capture or
2 destroy any enemy troops, combatants, vessels, aircraft or any other
3 thing, which it is the duty of the person so to encounter, engage,
4 capture or destroy; or

5 (9) Does not afford all practicable relief and assistance to any troops,
6 combatants, vessels or aircraft of the Armed Forces belonging to the
7 United States or their allies, to this State or to any other state, when
8 engaged in battle;

9 shall be punished as a court-martial may direct.

10 **"§ 127C-100. Subordinate compelling surrender.**

11 Any person subject to this Chapter who compels or attempts to compel the
12 commander of any force of the organized militia of this State or any other state to give it
13 up to an enemy or to abandon it, or who strikes the colors or flag to any enemy without
14 proper authority shall be punished as a court-martial may direct.

15 **"§ 127C-101. Improper use of countersign.**

16 Any person subject to this Chapter who in time of war discloses the parole or
17 countersign to any person not entitled to receive it, or who gives to another who is
18 entitled to receive and use the parole or countersign a different parole or countersign
19 from that which, to the knowledge of the person, the person was authorized and required
20 to give, shall be punished as a court-martial may direct.

21 **"§ 127C-102. Forcing safeguard.**

22 Any person subject to this Chapter who forces a safeguard shall be punished as a
23 court-martial may direct.

24 **"§ 127C-103. Captured or abandoned property.**

25 (a) All persons subject to this Chapter shall secure all public property taken from
26 the enemy for the service of the United States, and shall give notice and turn over to the
27 proper authority without delay all captured or abandoned property in their possession,
28 custody or control.

29 (b) Any person subject to this Chapter who:

30 (1) Fails to carry out the duties prescribed in subsection (a) of this section;
31 (2) Buys, sells, trades or in any way deals in or disposes of, captured or
32 abandoned property, whereby the person receives or expects any
33 profit, benefit or an advantage to self or another directly or indirectly
34 connected with self; or

35 (3) Engages in looting or pillaging;

36 shall be punished as a court-martial may direct.

37 **"§ 127C-104. Aiding enemy.**

38 Any person subject to this Chapter who: (i) aids, or attempts to aid, the enemy with
39 arms, ammunition, supplies, money or other things or (ii) without proper authority,
40 knowingly harbors or protects or gives intelligence to, or communicates or corresponds
41 with or holds any intercourse with the enemy, either directly or indirectly shall be
42 punished as a court-martial may direct.

43 **"§ 127C-105. Misconduct as prisoner.**

1 Any person subject to this Chapter who, while in the hands of the enemy in time of
2 war: (i) for the purpose of securing favorable treatment by the captors of the person
3 acts without proper authority in a manner contrary to law, custom or regulation, to the
4 detriment of others of whatever nationality held by the enemy as civilian or military
5 prisoners or (ii) while in a position of authority over such persons maltreats them
6 without justifiable cause shall be punished as a court-martial may direct.

7 **"§ 127C-106. False official statement.**

8 Any person subject to this Chapter, who, with intent to deceive, signs any false
9 record, return, regulation, order or other official document, knowing it to be false, or
10 makes any other false official statement knowing it to be false, shall be punished as a
11 court-martial may direct.

12 **"§ 127C-107. Loss, damage, destruction or wrongful disposition of military**
13 **property.**

14 Any person subject to this Chapter who, without proper authority (i) sells or
15 otherwise disposes of; (ii) willfully or through neglect damages, destroys or loses; or
16 (iii) willfully or through neglect suffers to be lost, damaged, destroyed, sold or
17 wrongfully disposed of any military property of the United States or of the State, shall
18 be punished as a court-martial may direct.

19 **"§ 127C-108. Waste, spoilage or destruction of property other than military.**

20 Any person subject to this Chapter who, while in a duty status, willfully or
21 recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any
22 property other than military property of the United States or the State shall be punished
23 as a court-martial may direct.

24 **"§ 127C-109. Improper hazarding of vessel.**

25 (a) Any person subject to this Chapter who willfully and wrongfully hazards or
26 suffers to be hazarded any vessel of the Armed Forces of the United States or of the
27 organized militia shall be punished as a court-martial may direct.

28 (b) Any person subject to this Chapter who negligently hazards or suffers to
29 be hazarded any vessel of the Armed Forces of the United States or of the organized
30 militia shall be punished as a court-martial may direct.

31 **"§ 127C-110. Driving while drunk.**

32 Any person subject to this Chapter who operates any vehicle while drunk, or in a
33 reckless or wanton manner, shall be punished as a court-martial may direct.

34 **"§ 127C-111. Drunk on duty.**

35 Any person subject to this Chapter, other than a sentinel or lookout who is found
36 drunk on duty, shall be punished as a court-martial may direct.

37 **"§ 127C-112. Sentinel or lookout drunk or sleeping on post; leaving before relief.**

38 Any sentinel or lookout who is found drunk or sleeping upon post, or who leaves it
39 before being regularly relieved shall be punished as a court-martial may direct.

40 **"§ 127C-113. Malingering.**

41 Any person subject to this Chapter who for the purpose of avoiding work duty or
42 service in the organized militia: (i) feigns illness, physical disablement, mental
43 lapse or derangement or (ii) intentionally inflicts self-injury shall be punished as a
44 court-martial may direct.

1 **"§ 127C-114. Riot or breach of peace.**

2 Any person subject to this Chapter who causes or participates in any riot or breach
3 of the peace shall be punished as a court-martial may direct.

4 **"§ 127C-115. Stealing goods.**

5 (a) Any person subject to this Chapter who wrongfully takes, obtains, or
6 withholds, by any means, from the possession of the owner or of any other person any
7 money, personal property, or article of value of any kind:

8 (1) With intent permanently to deprive or defraud another person of the
9 use and benefit of property or to appropriate it for personal use or to
10 the use of any person other than the owner, steals that property and is
11 guilty of larceny; or

12 (2) With intent temporarily to deprive or defraud another person of the use
13 and benefit of property or to appropriate it for personal use or to the
14 use of any person other than the owner, is guilty of wrongful
15 appropriation.

16 (b) Any person found guilty of larceny or wrongful appropriation shall be
17 punished as a court-martial may direct.

18 **"§ 127C-116. Perjury.**

19 Any person subject to this Chapter who in a judicial proceeding, or in a course of
20 justice conducted under this Chapter, willfully and corruptly gives, upon a lawful oath
21 or in any form allowed by law to be substituted for an oath, any false testimony material
22 to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-
23 martial may direct.

24 **"§ 127C-117. Frauds against the government.**

25 Any person subject to this Chapter:

26 (1) Who, knowing it to be false or fraudulent:

27 a. Makes any claim against the United States, the State or any
28 officer thereof; or

29 b. Presents to any person in the civil or military service thereof,
30 for approval or payment, any claim against the United States,
31 the State, or any officer thereof;

32 (2) Who, for the purpose of obtaining the approval, allowance, or payment
33 of any claim against the United States, the State or any officer thereof:

34 a. Makes or uses any writing or other paper knowing it to contain
35 any false or fraudulent statement;

36 b. Makes any oath to any fact or to any writing or other paper
37 knowing the oath to be false; or

38 c. Forges or counterfeits any signature upon any writing
39 or other paper, or uses any such signature knowing it to be
40 forged or counterfeited;

41 (3) Who, having charge, possession, custody, or control of any money or
42 other property of the United States, or the State, furnished or intended
43 for the Armed Forces of the United States or the organized militia or
44 any force, knowingly delivers to any person having authority to

1 receive it, any amount less than that for which he receives a certificate
2 or receipt; or

3 (4) Who, being authorized to make or deliver any paper certifying the
4 receipt of any property of the United States or the State furnished or
5 intended for the Armed Forces of the United States or the organized
6 militia or any force, makes or delivers to any person a writing without
7 having full knowledge of the truth of the statements contained in it and
8 with intent to defraud the United States or the State;

9 shall upon conviction, be punished as a court-martial may direct.

10 **§ 127C-118. Reserved for future codification.**

11 **"§ 127C-119. Dueling; failure to report dueling.**

12 Any person subject to this Chapter who fights or promotes or is concerned in or
13 connives at fighting a duel or who having knowledge of a challenge sent or about to be
14 sent, fails to report the fact promptly to the proper authority, shall be punished as a
15 court-martial may direct.

16 **"§ 127C-120. Provoking or reproachful words or gestures.**

17 Any person subject to this Chapter who uses provoking or reproachful words or
18 gestures toward any other person subject to this Chapter shall be punished as a court-
19 martial may direct.

20 **"§ 127C-121. Insufficient funds or credit.**

21 (a) Any person subject to this Chapter who makes, draws, utters, or delivers any
22 check, draft, or order for the payment of money upon any bank or other depository,
23 knowing at the time that the maker or drawer has not or will not have sufficient funds
24 in, or credit with, the bank or other depository for the payment of that check, draft or
25 order in full upon its presentment shall be punished as a court-martial may direct when
26 the person makes, draws or utters the check, draft or order: (i) for the procurement of
27 any article or thing of value, with intent to defraud or (ii) for the payment of any past
28 due obligation or for any other purpose with intent to deceive.

29 (b) The making, drawing, uttering or delivering by a maker or drawer of a
30 check, draft or order for which payment is refused by the drawee because of insufficient
31 funds of the maker or drawer in the drawee's possession or control is **prima facie**
32 evidence of an intent to defraud or deceive and of a knowledge of insufficient funds in,
33 or credit with, that bank or other depository unless the maker or drawer pays the holder
34 the amount due within five days after receiving notice, orally or in writing, that the
35 check, draft, or order was not paid on presentment.

36 (c) As used in this section, 'credit' means an arrangement or understanding,
37 expressed or implied, with the bank or other depository for the payment of that check,
38 draft, or order.

39 **"§ 127C-122. Unlawful force or violence.**

40 Any person subject to this Chapter who attempts or offers, with unlawful force or
41 violence, to do bodily harm to another person, whether or not the attempt or offer is
42 consummated is guilty of assault and shall be punished as court-martial may direct.

43 **"§ 127C-123. Conduct unbecoming an officer.**

1 Any commissioned officer who is convicted of conduct unbecoming an officer shall
2 be punished as a court-martial may direct.

3 **"§ 127C-124. Conduct to the prejudice of good order and discipline; limits to**
4 **jurisdiction of court-martial.**

5 Though not specifically mentioned in this Chapter, all disorders and neglects to the
6 prejudice of good order and discipline in the organized militia, of which persons subject
7 to this code may be guilty, shall be taken cognizance of by a general, special, or
8 summary court-martial, according to the nature and degree of the offense, and shall be
9 punished at the discretion of that court. However, cognizance shall not be taken of, and
10 jurisdiction may not extend to felonies, jurisdiction of which is reserved to civilian
11 criminal courts.

12 **ARTICLE 11.**

13 **MISCELLANEOUS PROVISIONS.**

14 **"§ 127C-125. Courts of inquiry.**

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

18 (b) A court of inquiry consists of three or more commissioned officers. For
19 each court of inquiry the convening authority shall also appoint counsel for the court.

20 (c) Any person subject to this Chapter whose conduct is subject to inquiry
21 shall be designated as a party. Any person subject to this Chapter or employed in the
22 State Military Department, who has a direct interest in the subject of inquiry has the
23 right to be designated as a party upon request of the court. Any person designated as a
24 party shall be given due notice and has the right to be present, to be represented by
25 counsel, to cross-examine witnesses and to introduce evidence.

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

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

30 (f) Witnesses may be summoned to appear and testify and be examined before
31 courts of inquiry, as provided for courts-martial.

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

34 (h) Each court of inquiry shall keep a record of its proceedings, which shall be
35 authenticated by the signatures of the president and counsel for the court and forwarded
36 to the convening authority. If the record cannot be authenticated by the counsel for the
37 court, it shall be signed by a member in lieu of the counsel.

38 **"§ 127C-126. Redress of injuries to property.**

39 (a) Whenever a complaint is made to any commanding officer that willful
40 damage has been done to the property of any person or that the property of any person
41 has been wrongfully taken by members of the organized militia, the officer may, subject
42 to the military department regulations that the Governor may prescribe, convene a board
43 to investigate the complaint. The board shall consist of from one to three officers and,
44 for the purpose of that investigation, it has power to summon witnesses and examine

1 them upon oath or affirmation, to receive depositions or other documentary evidence,
2 and to assess the damages sustained against the responsible parties. The assessment of
3 damages made by the board is subject to the approval of the commanding officer, and in
4 the amount approved by the officer shall be charged against the pay of the offenders.
5 The order of the commanding officer directing charges herein authorized is conclusive,
6 except as provided in subsection (c) of this section, on any disbursing officer for the
7 payment by the disbursing officer to the injured parties of the damages so assessed and
8 approved.

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

13 (c) Any person subject to this Chapter who is accused of causing willful
14 damage to property has the right to be represented by counsel, to summon witnesses in
15 behalf of the person and to cross-examine those appearing against the person. The
16 person has the right to appeal to the next higher commander.

17 **"§ 127C-127. Execution of process and sentence.**

18 In the organized militia not in federal service, the processes and sentences of its
19 courts-martial shall be executed by the civil officers prescribed by the laws of the State.
20 Where no provision is made for executing those processes and sentences, the process or
21 sentence shall be executed by a United States Marshal or deputy marshal, who shall
22 make a return to the military officer issuing the process or the court imposing the
23 sentence, pursuant to section 333 of title 32, United States Code.

24 **"§ 127C-128. Process of military courts.**

25 (a) Military courts may issue all process necessary to carry into effect the powers
26 vested in those courts. The courts may issue subpoenas and subpoenas **duces tecum**
27 and enforce by attachment attendance of witnesses and production of books and records,
28 when the courts are sitting within the State and the witnesses, books, and records sought
29 are also located within the State.

30 (b) Process may be issued by summary courts-martial, provost courts, or the
31 president or military judge of other military courts and may be directed to and may be
32 executed by the marshals of the military court or any peace officer and shall be in the
33 form as may be prescribed by military department regulations issued under this Chapter.

34 (c) All officers to whom process may be directed shall execute them and
35 make return of their acts according to the requirements of those documents. Except as
36 otherwise specifically provided in this Chapter, no officer may demand or require
37 payment of any fee or charge for receiving, executing, or returning a process or for any
38 service in connection with the process.

39 **"§ 127C-129. Payment of fines and disposition thereof.**

40 Fines may be paid to a military court or to an officer executing its process. The
41 amount of such a fine may be noted upon any State roll or account for pay of the
42 delinquent and deducted from any pay or allowance due or thereafter to become due the
43 delinquent, until the fine is liquidated. Any sum so deducted shall be turned in to the
44 military court which imposed the fine and shall be paid over by the officer receiving it

1 in like manner as provided for other fines and moneys collected under a sentence of a
2 summary court-martial. A fine or penalty imposed by a military court upon an officer
3 or enlisted man shall be paid by the officer collecting it within 30 days to the State
4 Treasurer for disposition in accordance with law.

5 **"§ 127C-130. Immunity for action of military courts.**

6 No action or proceeding may be prosecuted against the convening authority or a
7 member of a military court or officer or person acting under its authority or reviewing
8 its proceedings because of the approval, imposition, or execution of any sentence or the
9 imposition or collection of a fine or penalty, or the execution of any process of a
10 military court.

11 **"§ 127C-131. Presumption of jurisdiction.**

12 The jurisdiction of the military courts and boards established by this Chapter shall be
13 presumed and the burden of proof rests on any person seeking to oust those courts or
14 boards or jurisdiction in any action or proceeding.

15 **"§ 127C-132. Delegation of authority by Governor.**

16 The Governor may delegate any authority vested in the Governor under this Chapter,
17 and may provide for the subdelegation of any authority, except with respect to the
18 power given the Governor by G.S. 127C-22 and G.S. 127C-25.

19 **"§ 127C-133. Payment of expenses.**

20 The Adjutant General may pay all expenses incurred in the administration of State
21 military justice from any fund appropriated to the State Military Department."

22 Sec. 2. G.S. 127A-47 through G.S. 127A-61 are repealed.

23 Sec. 3. This act shall become effective July 1, 1989.